(2016) 10 P&H CK 0094

High Court Of Punjab And Haryana At Chandigarh

Case No: CR No. 4081 of 2011(O&M)

Haryana Wakf Board	APPELLANT
Vs	
Asha Rani	RESPONDENT

Date of Decision: Oct. 18, 2016

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Order 26 Rule 9
- Constitution of India, 1950 - Article 227

Citation: (2016) 4 LawHerald 3458

Hon'ble Judges: Mr. Raj Mohan Singh, J.

Bench: Single Bench

Advocate: Mr. Jai Bhagwan, Advocate, for the Petitioner; Mr. Bhag Singh, Advocate, for the Respondents

Final Decision: Dismissed

Judgement

Raj Mohan Singh, J. - Petitioner has filed this revision petition under Article 227 of Constitution of India read with Section 83 (9) of Wakf Act, 1995 for setting aside the judgment and decree dated 28.02.2011 passed by Additional District Judge, Sonepat (hereinafter referred to as Wakf Tribunal), Whereby suit of the petitioner-Board for possession and mesne profit was dismissed by the Wakf Tribunal (For short "Tribunal").

2. Petitioner-Board filed a suit for possession and mesne profit against the respondents in respect of khasra No.39 situated in the revenue estate of village Jamalpur Khurd, District Sonepat. Petitioner claimed ownership of the property and asserted that the respondents had taken illegal possession of the plot measuring 121.70 sq. yards comprised in khasra No.39 for the last three years. It was also pleaded that the plot was in unauthorized possession of the respondents. With this background, suit came to be filed.

3. Suit was contested by the respondents. Ownership of the petitioner-Board was denied. It was asserted by the respondents that one Ishwar Singh son of Shiv Lal sold the

property to respondent No.2 for a sale consideration of Rs. 95/-. Since then, respondent No.2 has been continuing in possession on the plot. Family has been residing in the suit land. Electric connection was got installed by respondent No.2 and necessary documentation in terms of ration card etc. was also done on the address of the suit property. The claim of the petitioner-Board was denied altogether. Tribunal dismissed the suit vide judgment and decree dated 28.02.2011. That is, how, the present revision petition came to be filed.

4. I have heard learned counsel for the parties.

5. The core question for consideration before this Court is whether the suit property is a wakf property or the same is owned and possessed by respondent No.2. In order to prove whether the suit property is wakf property or not, the petitioner got examined Subhash Chander, Kanungo Halqa as PW 2 who on the application of the plaintiff-petitioner had demarcated the suit property. Petitioner asserted that the suit property was found to be part of khasra No.39. The report of aforesaid Kanungo was discarded by the Court as he demarcated the property only after affixing two pucca points to carry out the measurements. The demarcation conducted by the aforesaid Local Commissioner was treated to be against the instructions issued by the Financial Commissioner (Revenue). There was no other cogent evidence led by the plaintiff-petitioner on record to prove that the suit property was a wakf property.

6. The site plan Ex.P2 prepared by PW 3 Mukesh Sharma was disbelieved on the basis of admission of the witness in cross examination that the same was prepared by him in his office at the instance of Patwari. The site plan Ex.P2 showed vacant wakf land on the eastern and western side of the suit. The document was not considered in the absence of formal proof so as to infer the suit property as a wakf property. Plaintiff-petitioner was required to stand on his own legs i.e. on the strength of its own evidence and was not supposed to draw any benefit out of the weaknesses of the defendants'' evidence.

7. The entire controversy hinges upon the legality and validity of the report submitted by the Local Commissioner i.e. Kanungo who tendered his report Ex.P7 and was also examined as PW2. PW 2 has admitted in his cross examination that he was directed by the Court to serve prior notices to the parties before conducting the demarcation. Asha Rani had refused to sign the notice Ex.P5, but he did not mention the factum of refusal by Asha Rani in the said notice. The witness further admitted that he did not issue any other notice to anyone except Wakf Board and Asha Rani. The witness did not know about Radha Krishan-defendant No.2 in the case, nor issue any notice to Radha Krishan. The witness admitted that in the title of the plaint, Radha Krishan was arrayed as defendant No.2. The witness also admitted that professor colony was situated in Killa No.4/26 and the same was shown in Aks Sajra. The report was got signed by the Patwari, however his signatures were not obtained on Ex.P6. The witness did not bring the Aks Sajra of Killa No.4/26 on the excuse that the same was not summoned. The witness did not measure the gali situated on the northern side of the suit property, nor prepared the site plan of the

suit property. The witness prepared two pucca points only before demarcation. The suit land was found to be surrounded by thickly populated area by pucca construction. House was found to be old. The witness admitted that he did not demarcate surrounding khasra numbers, but stated that for fixing pucca points he demarcated the surrounding khasra numbers. The witness did not tell about the surrounding khasra numbers in his cross examination. In his cross examination, the witness (PW 2) had admitted the factum that the demarcation was conducted only by affixing two pucca points.

8. The report Ex.P7 revealed that the Local Commissioner reached village Jamalpur Khurd for demarcating khasra No.39 where Jagdish, Patwari Halqa was found present along with revenue record. Other persons were also found present. The Court had directed the Local Commissioner to demarcate the khasra No.39 and to give report. Before conducting the demarcation, pucca points were searched. Killa No.4/26 was found to be in the form of professor colony and old colony. This colony was found to be adjoining to above khasra number towards northern side. A pucca street was found and the same was ascertained from the revenue record. Thereafter, demarcation was conducted.

9. Evidently, only two pucca points were searched and found by Local Commissioner and on the basis of that khasra No.39 was found to be owned by the Wakf Board. Even as per report, professor colony was treated to be pucca point. It could not be brought on record as to how entire professor colony was treated to be pucca point in the absence of any pucca pillar found in the said colony. Similarly, because the professor colony was found adjoining to the suit land and a pucca street was existing in the northern side of the suit property, no such presumption can be drawn with regard to fixing of correct pucca point in the professor colony. Asha Rani allegedly was shown present, but did not sign. Reference of refusal of notice by Asha Rani was not shown in the report. Local Commissioner never issued any notice to defendant No.2. The attendance memo Ex.P6 remained conspicuous by absence of report regarding refusal of Asha Rani. The entire procedure done by Local Commissioner was not in accordance with settled principle of law. Under Order 26, Rule 9 CPC and High Court Rules and Orders, Volume 1, Chapter I, in a suit for possession/Hadd Shikni, Local Commissioner did not fix the pucca points in accordance with norms prescribed in Chapter 1- M of the High Court Rules and Orders. If the defendant is not associated at the time of demarcation, such report of Local Commissioner has to be discarded.

10. In case of dispute of the land falling within the jurisdiction of Civil Court, it is always desirable that the enquiry be made on the spot. This can usually be done by suggesting that one party or the other should apply to the Revenue Officer to fix the limits, under Section 101(1) of the Punjab Land Revenue Act. Time for such purpose should be granted under Order 17, Rule 3 CPC. The second mode is to get a Local Commissioner Appointed. The third mode is by the Court itself making a local enquiry. The report of Local Commissioner should have contained necessary particulars.

11. Financial Commissioners have already issued detailed instructions for the guidance of Revenue Officials or Field Kanugngos appointed as Local Commissioners in the civil suits. As per the said instructions, in case of boundary dispute, the Field Kanungo should relay it from the village map prepared at the last settlement. If there is a map which has been made on the square system he should reconstruct the squares in which the disputed land lies. He should mark on the ground on the lines of the squares the places where the map shows that the disputed boundary intersected those lines, and then to find the position of points which do not fall on the lines of the squares. He should with his scale read on the map, the position and distance of those points from a line of a square, and then with a chain and cross staff mark out the position and distance of those points. Thus he can set out all the points and boundaries which are shown in the map. But if there is not a map on the square system available, he should then find three points on different sides of the place in dispute, as near to it as he can, and, if possible, not more than 200 kadams apart which are shown in the map and which the parties admit to have been undisturbed. He will chain from one to another of these points and compare the result with the distance given by the scale applied to the map. The Field Kanungo must explain in detail how he made his measurements. He should also submit a copy of the relevant portion of the current settlement field map of the village with the help of which he took measurements.

12. Evidently, the Local Commissioner has not followed the instructions issued by the Financial Commissioner on the subject matter, nor gave proper and lawful notices to the parties. He did not affix three pucca points, rather treated entire professor colony as one of the pucca point.

13. Having considered the aforesaid submissions, I do not find any substance in the revision petition and the same is accordingly dismissed.