



Product S.No.550985300 Licensed to: Sh.Naresh Garg, Advocate Bathinda Punjab

This judgement ranked 1 in the hitlist.

Dev Raj v. Teja Singh, (P&H) : **Law Finder Doc Id # 71803**

2004(2) R.C.R.(Civil) 753 : 2004(2) PLR 709 : 2004(3) PLR 419 : 2004(2) LJR 217

PUNJAB AND HARYANA HIGH COURT

Before:- Hemant Gupta, J.

R.S.A. No. 2628 of 1983. D/d. 17.12.2003.

Dev Raj and others - Appellants

Versus

Teja Singh and others - Respondents

For the Appellants :- Mr. R.K. Joshi, Advocate.

For the Respondent Nos. 1, 4, 5, 6 and 7 :- Mr. K.S. Cheema, Advocate.

For the Respondent No. 8 :- Mr. C.B. Goel, Advocate.

A. Specific Relief Act, 1963 - Suit for permanent injunction - Decree reversed in appeal - Finding vesting property in Wakf Board merely on basis of notification - Defendants contend that property was given on lease by Wakf Board and possession was delivered - Held, since notification is not conclusive proof of ownership of Wakf Board, finding is contrary to law and cannot sustain.

[Para [7](#)]

B. Specific Relief Act, 1963 - Suit for permanent injunction - Plaintiff alleged to have purchased property from Custodian - Revenue record reflects possession of plaintiff since Rabi 1974 - There is no issue regarding ownership of plaintiff - Wakf Board is not proved to be owner - Suit decreed by trial court which decision was reversed in appeal but is upheld by High Court - Held, it is open to parties to agitate issue of title by filing suit before competent court of law and claim possession.

[Para [7](#)]

Cases Referred :-

[Punjab Wakf Board v. Kartar Singh, 1987 P.L.J. 95.](#)

[Board of Muslim Wakf, Rajasthan v. Radha Kishan, AIR 1979 Supreme Court 289.](#)

[Punjab Wakf Board v. Commissioner, Patiala Division, 1973 RLR 467.](#)

JUDGMENT

Hemant Gupta, J. - Plaintiff-appellants filed a suit for permanent injunction on the ground that Khasra No. 134 is a *taur* which is in their possession since 1950 and using the same for tethering cattle and for storing manure of cow- dung and fodder for the cattle and, therefore, the defendants have no right to interfere.

2. Initially, the suit was decreed by the trial Court on 13.11.1978. However, in appeal, the judgment and decree dated 13.11.1978 was set aside and the case was remanded to the learned trial Court with the direction to implead Punjab Wakf Board as a defendant. Punjab Wakf Board was impleaded as a defendant in view of the pleadings of the other defendants that they are lessees of the Punjab Wakf Board. The learned trial Court framed additional issue No. 6-A to the effect whether the suit property was the ownership of the Wakf Board. The trial Court decreed the suit deciding issues No. 1, 6 and 6-A in favour of the plaintiffs. However, in appeal, the appellate Court reversed the judgment and decree passed by the trial Court.

3. The Courts below have found that Khasra No. 134 is Gair Mumkin Taur. In the Khasra Girdawari, plaintiff Dev Raj is recorded in possession of Khasra No. 134. Khasra No. 133 is recorded as Gair Mumkin Masjid in the revenue record. However, Khasra No. 134, the property in dispute, is recorded as owned by the Central Government in the revenue record. Such entries in the revenue record are rebuttable. The first appellate Court has found that Khasra No. 134 has been notified as a Wakf Board property in the gazette Exhibit D-1, which property has been leased by the Wakf Board to other defendants. Teja Singh etc. defendants are alleged to have been delivered possession vide report Exhibit D-10 dated 13.04.1974. The receipts of payment of rent are Exhibits D-2 to D-8 issued by the officers of the Wakf Board. Therefore, the defendants are in possession and consequently dismissed the suit. It was held that the plaintiffs have not been able to prove its possession over the said *taur* and since construction has been raised by the plaintiffs during the pendency of the suit, the plaintiffs were given 6 months time to remove such construction.

4. Learned counsel for the plaintiff-appellants has relied upon the decision in the case of [Punjab Wakf Board v. Kartar Singh, 1987 P.L.J. 95](#) to contend that the notification declaring the property as vesting in the Wakf Board is not conclusive regarding the rights of third person. For returning such findings, reliance was placed on the decision of the Supreme Court in the case of [Board of Muslim Wakf, Rajasthan v. Radha Kishan and others, AIR 1979 Supreme Court 289](#) and earlier judgment of this Court reported as ***Punjab Wakf Board v. Commissioner, Patiala Division and others, 1973 Revenue Law Reporter 467.***

5. The following substantial questions of law arise for consideration :-

"1. Whether finding regarding ownership of Khasra No. 134 can be recorded in the absence of Custodian/Central Government ?

2. Whether the notification to the effect that Khasra No. 134 vests with Wakf Board is conclusive and binding on the plaintiffs ?"

6. The learned first appellate Court has found that Khasra No. 134 though records the ownership of the Custodian but such entries in the revenue record stood rebutted. Such findings have been recorded even though the Central Government/Custodian is not a party to the suit. Therefore, the finding regarding ownership cannot be binding on the Central Government/Custodian.

7. The dispute is regarding ownership of Khasra No. 134 which the defendants are claiming to have vested in the Punjab Wakf Board by virtue of a notification. There is no evidence on behalf of the defendants that there was any dedication so as to vest such property in the Wakf Board. The first appellate Court had found that it is very difficult for the Wakf Board to produce evidence of original dedication of this property

by a person professing Islam faith for a religious and charitable purpose. The said finding of vesting of property in the Wakf Board merely on the basis of the notification Exhibit D-1 is contrary to law as mentioned above and cannot be sustained when there is no evidence of dedication in favour of the Wakf Board. Consequently, finding of the first appellate Court on Issue No. 6-A is set aside. Thus, in respect of question No. 2, it is held that the notification is not conclusive proof of ownership of Wakf Board.

8. The plaintiffs have produced on record Khasra Girdawari in support of their assertion of possession. During the pendency of the present appeal, an application has been filed by the plaintiff-respondents alleging therein that they had purchased the property from the Custodian. The revenue record produced reflects the possession of the plaintiffs since Rabi 1974. There is no issue regarding ownership of the plaintiffs in respect of the suit property. The Wakf Board is not proved to be the owner of the land. Therefore, it is open to the parties to agitate and raise the issue of title in a properly constituted suit before a competent court of law.

9. The first appellate Court had directed the plaintiffs to remove the superstructure from the plot in dispute, though allegedly raised during the pendency of the suit, meaning thereby that it is the plaintiffs who are now in possession of the suit property. Since the finding regarding possession has been returned against the plaintiffs on the basis of the finding on Issue No. 6-A, which has been set aside, therefore, I am unable to maintain the finding regarding possession as well.

10. In view of the above, it shall be open to the parties to claim possession on the basis of the title from a competent Court of law. Any finding recorded in these proceedings is only for the purpose of disposal of the present appeal. The parties shall be entitled to adduce independent evidence to claim ownership and title of the suit property.

The appeal stands allowed as indicated above while setting aside the impugned judgment and decree of the Court below. No costs.

Appeal allowed.

© Chawla Publications (P) Ltd.