

Before Jitendra Chauhan, J.

**PUNJAB WAKF BOARD THROUGH
SECRETARY AMBALA CANTT,—Appellant**

versus

SMT. PARBATI AND ANOTHER,—Respondents

R.S.A. No. 1433 of 1985

The 23rd March, 2011

Punjab Wakf Board Act, 1959—Code of Civil Procedure, 1908, Haryana Public Wakfs (Extension of Limitation) Act, 1978—Property in dispute—A mosque used for offering prayers by muslims—Respondent encroaching mosque after partition of country—Evidence proving property as a mosque—Courts below wrongly holding defendant to be in adverse possession—Findings of Courts below suffer from perversity by misreading of documents—Appeal allowed, judgments and decrees passed by Courts below set aside.

Held, that the property in dispute was a Mosque used for offering prayers by the Muslims of the town. However, after the partition of the country, only a few Muslims families remained in town and the Mosque fell in disuse, which was encroached upon by the respondent in the year 1951-52. As per the statement of Abdul Sitar, Wakf Officer, PW1, the property in dispute was built and dedicated by the Muslims as a Mosque for offering prayer. This fact stands corroborated by the statements of Ismayeel, PW2 and Kamru Din, PW3.

(Para 16)

Further held, that as per Punjab Wakf Board Notification (Ex. P.3) and Form No. 4 (Rent Demand and Collection Register of un-acquired Evacuee Property (Ex.P6), the property in dispute has been shown as a Mosque. This fact is further proved from the Assessment Register (Mark 'A'), pertaining to the year 1974-75, that the property in dispute is Mosque Wakf Board. So findings on issue Nos. 1 and 2 of the Courts below have been arrived by misreading of the evidence and record and accordingly same are reversed by holding that the property in dispute is a Mosque vesting in the Wakf Board.

(Para 17)

Further held, that the learned Courts below ignored the provisions of the Haryana Public Wakfs (Extension of Limitation) Act, 1978 and wrongly held that the defendant/respondent is to be in adverse possession. The period of limitation in respect of suit shall enter upto 31st day of December, 1980. The suit was filed on 16th July, 1979. In the circumstances, the learned Courts below fell in error in not considering the effect of this Act. The suit being within limitation, therefore, adverse possession of defendant is not proved. The findings of both the Courts below are perverse by misreading of oral and documentary evidence.

(Para 19)

Jai Bhagwan, Advocate, *for the appellant.*

Alok Jain, Advocate, *for the respondents.*

JITENDRA CHAUHAN, J.

(1) Having remained unsuccessful in both the courts, plaintiff/appellant is in the instant second appeal before this Court.

(2) The brief facts of the plaintiff/appellant filed a suit for possession of the property in dispute i.e. Masjid. As per the averment made in the plaint, the property in dispute was built and dedicated by the Muslims as a mosque for offering prayers and that it continued to be used as mosque for offering prayer for the last about 100 years. On the basis of which, it was asserted that the property in question was a muslim/Wakf property and vested in plaintiff/appellant-Board by operation of the Wakf Act 1954.

(3) Unfortunately, after the partition of the country, the most of the Muslim population of the town migrated to Pakistan and some families migrated to other towns of the country. As a result, only small number of families were left in the town and thus the offering of prayer in the Mosque was discontinued and the property in dispute could not be looked after by the Muslim community. It was at this juncture, the defendant/respondent occupied the property in question in the year 1952 without any right or authority. It was further averred that in the suit that the defendant/respondent being trespasser had no right to continue in the possession.

(4) On behalf of defendant, it was denied that the suit property was a Muslim property and dedicated by the Muslim as a mosque for offering prayers. It was further pleaded by the defendant/respondent that the suit was beyond limitation. The defendant had become owner of the disputed property by way of adverse possession.

(5) From the pleadings of the parties, the following issues were framed :—

1. Whether the disputed property, as detailed in the heading of the plaint, is a place of mosque? OPP
2. If issue No. 1 is proved, whether the disputed property is Wakf property and vested in the plaintiff board, if so, its effect ? OPP
3. Whether the defendant is a trespasser on the property in dispute as alleged in para No. 5 of the plaintiff ? OPP
4. Whether the plaintiff has no locus-standi to file the present suit ? OPD
5. Whether the suit is within limitation ? OPD
6. Whether the suit is bad for non-joinder of necessary parties ? OPD
7. Whether the defendant has become owner of the disputed property by way of adverse possession ? OPD
8. Whether the plaintiff Board is a corporate body and Abdul Sitar, Wakf Officer, is competent to file the present suit ? OPP
9. Whether the plaintiff is estopped from filing the present suit by his own act and conduct ? OPD
10. Whether the suit is not properly valued for the purposes of court fee and jurisdiction ? OPD
11. Relief.

(6) Learned trial Court decided issues No. 1 and 2 against the plaintiff and in favour of the defendant after holding that disputed property was a mosque prior to the year 1948 and it vested wrongly in the plaintiff/Board. Under issue No. 3 and 7, the learned trial Court held that the

defendant is in possession of the property in dispute since 1950 after holding that she trespassed the property in dispute after partition of the country. It has also been observed that the defendant became owner of the disputed property by way of adverse possession and accordingly decided issues No. 3 and 7 in favour of the defendant and against the plaintiff. The issues No. 5,6,8 and 10 were not pressed. As regards issues No. 4 and 9, the learned trial Court held that the defendant was in possession of the suit property as trespasser since 1950-51. The provisions of Punjab Wakf Board Act, 1959 and the Administration of Evacuee Property Act did not apply as the case of the plaintiff was not that the suit property was an evacuee property. A Mosque could not become an evacuee property. The learned trial Court further held that the possession of the defendant had become adverse to the true owner and it continued to be so, even against the successor.

(7) The findings recorded by the learned trial Court were affirmed by the learned Appellate Court.

(8) The present appeal was admitted by this Court on 2nd September, 1985.

(9) Learned counsel for the appellant has argued that on the basis of documentary as well as oral evidence, it is established that the property in dispute was a Mosque and Wakf Property but the learned trial Court wrongly relied upon the authorities on the point of user. He has further argued that the findings recorded by the courts below on issues No. 1 and 2 are totally wrong and against the record. The property in dispute has vested in the Wakf Board by the enactment of the legislature and the trial Court decided this issue against the facts on record.

(10) It has further been argued that the learned courts below ignored the fact that the Limitation Act had been extended by the *Haryana Government Gazettee (Extra), Part I, Legislative Department, Notification* dated 15th November, 1978 (Mark 'C') *vide* which the limitation was extended up to 31st December, 1980. The issues No. 3 and 7 were wrongly decided in view of the extended law of limitation.

(11) The further submission is that the possession of the defendant/respondent cannot be said to have attained finality and become adverse to the plaintiff/appellant.

(12) Lastly, the learned counsel submits that after recording the finding that the defendant/respondent was a trespasser, wrongly recorded the finding of adverse possession by ignoring the provisions of Limitation Act applicable to the *persen* case.

(13) On the other hand, learned counsel for the respondent has argued that the suit on behalf of the Wakf/Board is not maintainable and the ownership of the appellant is not proved. It has also not been proved on record that the property in dispute belongs to Shia or Suni community. Therefore, the learned counsel has argued that the appellant had no *locus standi* to file the suit. It is established on record that the property in dispute was in possession of the respondent since in the year 1951-52 and the learned trial Court rightly decided issue No. 7 in favour of the defendant/respondent.

(14) I have heard the learned counsel for the parties and perused the record with their able assistance.

(15) The substantial question of law that emerges for consideration is whether the findings recorded suffer from any perversity by misreading of documents ?

(16) From the evidence on record, it is established that the property in dispute was a Mosque used for offering prayers by the Muslims of the town. However, after the partition of the country, only a few Muslims families remained in town and the Mosque fell in disuse, which was encroached upon by the respondent in the year 1951-52. As per the statement of Abdul Sitar, Wakf Officer, PW1, the property in dispute was built and dedicated by the Muslims as a Mosque for offering prayer. This fact stands corroborated by the statements of Ismayeel, PW2 and Kamru Din, PW3.

(17) As per Punjab Wakf Board Notification, Exhibit P3 and Form No. 4 (Rent Demand and Collection Register of un-acquired Evacuee Property Exhibit P6, the property in dispute has been shown as a mosque. This fact is further proved from the Assessment Register (Mark 'A'), pertaining to the year 1974-75, that the property in dispute is Mosque Wakf Board. So findings on issues No.. 1 and 2 of the courts below have been arrived by misreading of the evidence and record and accordingly same are reversed by holding that the property in dispute is a Mosque vesting in the Wakf Board.

(18) Now the issue remain whether the Haryana Act No. 27 of 1978—The Haryana Public Wakfs (Extension of Limitation) Act 1978 (for short ‘the Act’) is applicable to the instant case or not. The relevant provisions of the Act are reproduced as under :—

- “2. In this Act, “public wakf” means the permanent dedication by a person professing Islam of any immovable property for any purpose recognised by Muslim Law as a public purpose of a pious religious or charitable nature.
3. Where a person entitled to institute a suit of the description referred to in article 64 or 65 of the Schedule to the Indian Limitation Act, 1963 for possession of any immovable property forming part of a public wakf or any interest therein has been dispossessed, at any time after the 14th day of August, 1947, and before the 7th day of May, 1954, or, as the case may be, the possession of the defendant in such a suit has become adverse to such person at any time during the said period then, notwithstanding anything contained in the said Act, the period of limitation in respect of such a suit shall extend up to the 31st day of December, 1980.”

(19) The learned courts below ignored the provisions of the Act and wrongly held that the defendant/respondent is to be in adverse possession. It has been categorically noticed that the period of limitation in respect of suit shall enter up to 31st day of December, 1980. The suit was filed on 16th July, 1979. In the circumstances, I feel that the learned Courts below fell in error in not considering the effect of this Act. The suit being within limitation, therefore, adverse possession of defendant is not proved. The findings of both the courts below are perverse by misreading of oral and documentary evidence.

(20) In view of the observation made above, discussion on the other issues is not required and accordingly, the present appeal is allowed and the judgments and decrees passed by the courts below are set aside. The suit of the plaintiff is decreed for possession of Mosque as fully mentioned in the heading of the plaint, as prayed for. There is no order as to costs.