

Before Darshan Singh, J.

KULLU RAM-- *Petitioner*

versus

PUNJAB WAQF BOARD, AMBALA AND OTHERS--*Respondents*

CR No. 2042 of 2016

May 03, 2016

Administration of Justice—Procedural law—Plaintiff has to stand on its own legs—He cannot take the benefit of weakness in case of defendants—Disputed property alleged to be owned by the proprietors of Shamlat Patti Khel—It was incumbent upon the petitioner-plaintiff to establish that the suit property was donated but he proprietors of Shamlat Patti Khel to the father of the plaintiff—Clear cut contradiction in the stand of the petitioner—plaintiff—With respect to the mode of gift—Revenue record and notification dated 11.04.1987 shows the property in dispute is of Wakf—plaintiff has not been able to establish that the suit property was ever orally gifted to his father—Dismissal of suit proper.

Held, that the plaintiff has laid the foundation of the case on the plea that the land in dispute was owned by the proprietors of Shamlat Katti Khel and the same was orally gifted to his father Mangal Sain by the proprietors with a promise that they will not take back the land from him and he will always remain in possession. So it was incumbent upon the petitioner-plaintiff to establish that the suit property was donated by the proprietors of Shamlat Patti Khel to Mangal Sain the father of the plaintiff.

(Para 11)

Further held, that it is settled principle of law that once a wakf always a wakf. The property which has been found as a wakf always retain its character as a wakf. mere leasing out of such property in any manner will not nullify the original character of the property. Reference can be made to case Sayyed Ali v. Andhra Pradesh Wakf Board, Hyderabad, 1999(2)RCR(Civil)32.

(Para 16)

Keshav Partap Singh, Advocate, *for the petitioner.*

DARSHAN SINGH, J.

(1) The present revision petition has been preferred against the

judgment dated 16.11.2015, passed by the learned Additional District Judge, Palwal (exercising the powers of the Tribunal under Section 83 of Wakf Act, 1995).

(2) The petitioner-plaintiff has filed the suit for declaration that the suit property is not the wakf property. In the consequential relief, he sought a decree for permanent injunction restraining the defendants from dispossessing the plaintiff from the suit land measuring 1 Kanal 4 Marla detailed and described in para No.1 of the plaint within the revenue estate of Palwal, illegally and from raising any unauthorized construction on any part thereon and from alienating the same in any manner. In the alternative relief, the petitioner-plaintiff has sought the decree for possession with mandatory injunction in case the defendants are found to be in possession of the suit property.

(3) As per the case of the petitioner-plaintiff Shamlat Patti Khel was owner in possession of the land measuring 1 Kanal 4 Marla detailed and described in para No.1 of the plaint situated within the revenue estate of Palwal. Before consolidation an area measuring 0-5 Biswa was shown as Banjar Kadeem and remaining 0-5 Biswa was shown as Kabristan (graveyard) in old Khasra No.4952, which has now been converted to Khasra No.400/1 (1 Kanal 4 Marla). The land measuring 5 Biswa was in possession of Mangal Sain, the father of the plaintiff, bawaja panditai. It was donated to him by way of oral gift by the proprietors of Shamlat Patti Khel and as such the name of his father was entered in the revenue record. It was agreed that proprietors of the Shamlat Patti Khel will not take back the said land from Mangal Sain, the father of the plaintiff and he will remain in possession of the land for ever being Pandit. Mangal Sain has died. After his death the plaintiff, his son, is owner in possession of the land in dispute and defendants have got no right, title or interest therein. There is other Kabristan in the area of Palwal city and is being used by the Muslims for burial purpose. The plaintiff is in possession of approximately 200 square yards area. Defendant No.1 claims the suit property to be as Kabristan, whereas defendants No.2 to 6 are claiming that the same is owned by them by virtue of oral or written purchase from the unauthorized persons. The notification declaring the suit property as wakf property is null and void. The suit property is not wakf property and it does not vest in the Wakf Board. The proprietor of Shamlat Patti Khel had never withdrawn the property from Mangal Sain nor they have transferred the land in dispute in any manner. Defendant No.1 has got recorded the entries in his name in the Jamabandies and Khasra

Girdawaries illegally and in collusion with the revenue authorities. The said change in the revenue record is illegal and does not affect the rights of the plaintiff. He is still owner in possession of the suit land. Hence the suit.

(4) Defendant No.1 contested the suit on the grounds *inter alia* that the suit property is a wakf property. It has vested in the Wakf Board vide notification dated 11.04.1987. Before leasing out the said property to defendants No.2 to 6, the same was used as Kabristan by the Muslim community. In future also the suit property will be used as Kabristan. The other averments in the plaint regarding oral gift by the proprietors of Shamlat Patti Khel to Mangal Sain, the father of the plaintiff and that the plaintiff being in possession of the land in dispute, have been controverted.

(5) Defendants No.2 to 6 are claiming themselves to be the tenant in possession over the suit property under respondent No.1 Wakf Board on the basis of allotment/lease.

(6) From the pleadings of the parties, the following issues are framed:-

1. Whether the property in dispute is not wakf property?
OPD
2. Whether the plaintiff is entitled to relief of permanent injunction as prayed for? OPP
3. Whether the suit of the plaintiff is not maintainable?
OPD
4. Whether the suit of the plaintiff is barred by the provisions of the Limitation Act? OPD
5. Whether the suit of the plaintiff is barred by the provisions of res judicata? OPD
6. Whether the Court has got no jurisdiction to try the presentsuit? OPD
7. Whether the suit of the plaintiff has not been properly valued for the purpose of court fee and jurisdiction? OPD
8. Relief

(7) On appreciating the evidence on record and contentions raised by learned counsel for the parties, the learned Additional District Judge dismissed the suit with cost. Aggrieved with the aforesaid

impugned judgment and decree dated 16.11.2015, the present revision petition has been preferred by the petitioner-plaintiff.

(8) I have heard learned counsel for the petitioner and gone through the paper-book carefully.

(9) Learned counsel for the petitioner contended that the suit property was given to Mangal Sain, the father of the plaintiff by virtue of oral gift by the proprietors of Shamlat Patti Kehl with promise that they will never take back the land from his father and they will remain in possession thereof. He contended that the suit property had never vested in respondent No.1 Wakf Board. It was never used as Kabristan. The notification dated 11.04.1987 is null and void and is liable to be set aside as the suit land was never declared as wakf property nor there exist any grave over the suit land. He further contended that from the documentary evidence placed on record it is established that the petitioner-plaintiff and prior to him, his father was in possession of the suit property as a result of oral gift. The revenue entries have been changed without following the due procedure of law. Hence, these revenue entries are illegal and cannot be taken into consideration in favour of the respondents. Thus, he contended that the petitioner-plaintiff is owner in possession of the suit property and the Wakf Tribunal has wrongly dismissed the suit.

(10) I have duly considered the aforesaid contentions.

(11) It is settled principle of law that the plaintiff has to stand on its own legs. He cannot take the benefit of weakness in case of defendants. The plaintiff has laid the foundation of the case on the plea that the land in dispute was owned by the proprietors of Shamlat Patti Khel and the same was orally gifted to his father Mangal Sain by the proprietors with a promise that they will not take back the land from him and he will always remain in possession. So, it was incumbent upon the petitioner-plaintiff to establish that the suit property was donated by the proprietors of Shamlat Patti Khel to Mangal Sain the father of the plaintiff. The petitioner-plaintiff has only produced in evidence the copy of the Khasra Girdawari Ex.P5 for the year 1963-1965 and Khasra Girdawari Ex.P6 for the year 1965-69 showing the Mangal Sain the father of the plaintiff to be in possession of the land measuring 5 Biswa out of the total land. But the petitioner has not led any evidence to establish as to how these entries came to be recorded in favour of Mangal Sain the father of the plaintiff. If there would have been any oral gift by the proprietors of Shamlat Patti Khel, there must have been entered a mutation in favour of the father of the

plaintiff, but no such mutation has been brought on record. The name of the father of the plaintiff does not figure in the Jamabandi for the year 1957-58 Ex.P8 and then in the Jamabandi Ex.P15 for the year 1974-75. Thus, some entries in the revenue record without any foundation in favour of father of the petitioner-plaintiff will not establish the plea raised by the petitioner- plaintiff that the land in dispute was donated to his father by the proprietors of Shamlat Patti Khel. Had there been any such oral gift, the entries thereof must have been recorded in the revenue record.

(12) The plaintiff while appearing in the witness box has stated in the cross-examination that he had last seen the gift deed when the present suit was filed. On one hand, the plaintiff has pleaded in the plaint that there was oral gift in favour of his father, whereas in the cross- examination he has taken the stand that he has seen the gift deed when the present suit was filed, which shows a clear cut contradiction in the stand of the petitioner-plaintiff with respect to the mode of gift.

(13) In the copy of Jamabandi for the year 1957-58 Ex.P8 and 1974-75 Ex.P15 Makbuja Malkan have been shown to be in possession of the suit land.

(14) The suit property has vested in the Punjab Wakf Board vide notification dated 11.04.1987 Ex.D6. Plaintiff Kallu has stepped into the witness box as PW1. He has admitted in the cross-examination that after the year 1972, the Wakf Board has been recorded as owner of the suit property in the revenue record. He has further admitted that Punjab Wakf Board has been leasing out the land in question after the year 1973 continuously which proves that at least since the year 1973 the plaintiff is not in possession of any part of the suit land. The notification declaring the suit property as the Wakf property has been issued on 11.04.1987 and much prior to that plaintiff was out of the possession of the suit property. So, obviously he had no locus standi to challenge the notification dated 11.04.1987 and seeking the declaration that the suit property is not the Wakf Board.

(15) As the plaintiff-petitioner is not proved to be in possession of the suit property, so he is not entitled for the relief of injunction. The plaintiff has also sought the relief of possession, in case it is found that he is out of possession. For claiming that relief of possession, the plaintiff was required to establish his title to the suit property but the plaintiff has not been able to establish that the suit property was ever orally gifted to his father Mangal Sain, rather the revenue record and

notification dated 11.04.1987 shows the same to be wakf property.

(16) It is settled principle of law that once a wakf always a wakf. The property which has been found as a wakf always retain its character as a wakf. Mere leasing out of such property in any manner will not nullify the original character of the property. Reference can be made to case *Sayyed Ali versus Andhra Pradesh Wakf Board, Hyderabad*¹.

(17) The suit of the plaintiff is also barred by the limitation as the notification declaring the suit property as wakf property has been issued on 11.04.1987 and the present suit has been filed on 11.09.2013, which should have been filed within three years from the date of the notification. Moreover, the plaintiff is also out of possession as he has admitted that the suit land has been lease out by the Wakf Board since the year 1973.

(18) Thus, keeping in view my aforesaid discussion, the petitioner-plaintiff is not entitled for the relief of declaration, injunction and possession as prayed for in the suit and I do not find any illegality in the findings recorded by the learned Tribunal.

(19) Consequently, the present revision petition being without any merits is hereby dismissed.

Sumati Jund

¹ 1999 (2) RCR (Civil) 32