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Punjab Wakf Board v. Raj Rani (SC) : Law Finder Doc Id # 720028

SUPREME COURT OF INDIA

Before :- M.Y. Eqbal and C. Nagappan, JJ.

Civil Appeal No. 295 of 2005. D/d. 18.11.2015.

Punjab Wakf Board - Appellant
Versus
Raj Rani (Dead) through Lrs. - Respondents

For the Appellant :- Imtiaz Ahmed, Amra Moosavi and Equity Lex Associates, Advocate.

For the Respondents :- RR ex-parte.

Wakf Act, 1954, Section 5 Evidence Act, 1872 Section 81 Wakf property - Suit property was declared as Wakf Property by issue of a notification - In the absence of such challenge, the Court shall have to draw presumption with regard to the genuineness of the Notification, as provided under Section 81 of the Evidence Act.

[Para 14]

ORDER

We have heard learned counsel for the appellant.

2. In spite of service of notice, the defendant-respondents have not appeared. It appears that after the death of the original defendant during the pendency of the appeal in this Court, notices were issued to her legal representatives but no one appeared. Notices were also issued by substituted service by publication in the newspapers but no one turned up.

3. From the perusal of the impugned judgment passed by the High Court, it reveals that before the High Court also, none appeared for the respondent.

4. The appellant has assailed the impugned judgment of the High Court dismissing the second appeal and upholding the judgment passed by the first Appellate Court who reversed the judgment passed by the Trial Court.

5. The facts of the case lie in a narrow compass.

6. The plaintiff-appellant filed suit for possession of the suit property from the original defendant. The plaintiff's case was that the suit property was dedicated in the name of Mosque and is a Wakf property. The defendant was in possession of a portion of the property consisting of two rooms since last three years from the date of institution of suit. In spite of notice, the defendant did not vacate the suit premises. Hence the appellant filed the suit for recovery of possession. The defendant-respondent appeared before the Trial Court and took a defence by filing a statement that the defendant is in possession of the disputed property for the last 20 (twenty) years having been allotted by the District Rent and Managing Officer on a fixed price.

7. Before the Trial Court, both parties led evidence. The plaintiff-appellant filed Notification issued by the Government of India declaring the property as a Wakf property, which was marked as Exhibit P-2. The plaintiff also filed Survey Register, marked as Exhibit P-3 and a site plan marked as Exhibit P-1. On the other hand, no documentary evidence was adduced from the side of defendant-respondent except

the evidence of the defendant and two other witnesses who have deposed about the possession of the defendant over the suit property.

8. The Trial Court decreed the suit by recording the following findings :-

"She has not brought any documentary evidence in order to show that the house in dispute has been purchased by her. Thus defendant has utterly failed to prove that she purchased the property in dispute from the custodian because no sufficient evidence has been brought on record by the defendant to prove that the property in dispute has been purchased by her. On the other hand it is fully established from cogent, reliable and satisfactory evidence led by the plaintiff which is also supported from documentary evidence that the property in dispute vests in the Punjab Wakf Board. Hence this issue is decided in favour of the plaintiff and against the defendant."

9. Aggrieved by the said judgment and decree the defendant-respondent filed First Appeal numbered as Civil Appeal No. 127 of 1976 which was finally heard by the Additional District Judge, Patiala. It is worth to mention here that before the First Appellate Court, the defendant assailed the finding of the Trial Court asserting that the suit property is not a wakf property. The defendant did not assail the finding of the Trial Court negating the case of the defendant regarding purchase of the property.

10. Notwithstanding the fact that the defendant did not challenge the genuineness of the Notification issued by publication in the Gazette declaring the property as Wakf property, the first Appellate Court, after referring some of the provisions of the Wakf Act came to the conclusion that mere production of Gazette Notification Exhibit P-2, the plaintiff cannot succeed to establish that the property in dispute is a Wakf property. Consequently, the finding recorded by the Trial Court was reversed and the decree was set aside.

11. The appellant filed Second Appeal before the High court of Punjab and Haryana which was numbered as Second Appeal No. 1453 of 1981. The High Court, without following the procedure provided under Section [100](#) of the Civil Procedure Code recorded a finding that in the absence of any evidence of dedication or user of the property as Wakf property, Notification could not be held to be conclusive.

12. By taking that view, the Second Appeal was dismissed.

13. We have heard learned counsel appearing for the appellant and perused the records.

14. Admittedly, no one challenged the genuineness of the Notification whereby the suit property was declared as Wakf property at any stage of the proceeding. In the absence of such challenge, the Court shall have to draw presumption with regard to the genuineness of the Notification, as provided under Section [81](#) of the Evidence Act. Moreover, neither the first Appellate Court nor the High Court has considered and noticed the provisions of Section [5](#) of the Wakf Act, 1995 (Section 5 of the Old Wakf Act, 1954).

15. For these reasons, the judgment and order passed by the first Appellate Court and the High Court cannot be sustained in law.

16. Hence this appeal is allowed, the impugned judgment and order passed by the High Court and the First Appellate Court are set aside and that of the Trial Court is restored.

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