

Punjab Wakf Board, Ambala Cantt.

Vs

Capt. Mehar Singh and Others

Civil Appeal No. 502 of 1971

(CJI A. N. Ray, K. K. Mathew, Syed Fazal Ali, V. R. Krishna Iyer JJ)

13.08.1975

### JUDGMENT

RAY, C.J. -

1. This appeal is by special leave from the judgment dated March 29, 1968 of the Punjab and Haryana High Court.
2. The appellant brought this suit against the respondents for possession of a plot of open land. The land bears plot No. 32. The appellant alleged that plot No. 32 formed part of plot No. 116 and the land was Idgah. Idgah means a place of public worship. The appellant's case was that the land was wakf property and was transferred to the appellant by the Custodian of Jullundur. The respondents were alleged by the appellant to be in unlawful occupation of the plot of land after the partition of India.
3. The trial Court held that the land in dispute was not Idgah and there was no wakf. The suit was dismissed.
4. The Additional District Judge affirmed the decision of the trial Court.
5. The High Court did not admit the appeal.
6. The appellant raised two contentions. First, the Custodian of Punjab (Jullundur) declared the property forming the subject-matter of the suit to be evacuee property under the Administration of Evacuee Property Act, 1950 (hereinafter called the Act). The Custodian transferred the property to the appellant. The property was originally held on trust. When the property was declared to be evacuee property, it retained its characteristics of trust. The declaration by the Custodian amounted to a finding that the property is trust property. Under Section 46 of the Act, the jurisdiction of civil courts is barred to go into the title of the property. Second, on the evidence in the suit, the only conclusion is that the property is wakf.
7. The first contention of the appellant is not supported by pleadings and proof at the trial. The appellant did not plead that there was any anterior wakf of the property prior to declaration of the same by the Custodian to be evacuee property. There is no evidence that the Custodian decided that the property was wakf property. Section 46 of the Act is not attracted.
8. The appellant relied on three documents marked Exhibits P-1, P-2 and P-3 in support of the contention that the property was wakf and the same property was transferred by the Custodian.

9. Exhibit P-1 is a memorandum written by the Assistant Custodian to the Chairman of the appellant Board that the demand and collection registers of Ambala and Patiala districts and one survey register of Patiala district have been sent. There is no reference in Exhibit P-1 that the property in suit is wakf property.

10. Exhibit P-2 is a notification dated February 27, 1961 issued by the Home Secretary. The notification states that in exercise of the powers conferred by Section 55(2) of the Act, the Governor of Punjab is pleased to direct that the powers under Section 11(1) in respect of Muslim evacuee properties in trust for public of a religious or charitable nature in the Punjab State, exercisable by the Government of Punjab shall be exercisable by the Board of Wakfs established under Section 9 of the Muslim Wakfs Act, 1954. There is no intrinsic evidence in Exhibit P-2 to indicate the property in suit is wakf property. The exercise of powers by the Board under the Muslim Wakfs Act in respect of Muslim evacuee properties in trust does not establish and identify the property in suit to be wakf property.

11. Exhibit P-3 is relied upon by the appellant to show that the property is wakf. The word "Idgah" appears in Exhibit P-3. The appellant contends that the property is, therefore, proved to be "Idgah". Exhibit P-3 is described as "Rent Demand and Collection Register". Rule 33 of the Administration of Evacuee Property (Central) Rules, 1950 speaks of record of property to be maintained in form No. 10. Exhibit P-3 is neither in form No. 10 nor is it under Rule 33. Form No. 10 has a specific column No. 5 which speaks of designation of property by name, if any, and type of building for instance residential bungalow, shop, cinema, theatre, mosque, factory, etc. Exhibit P-3 is not of the type contemplated by Rule 33. The suit property cannot become wakf property by the mere use of the word "Idgah" in Exhibit P-3.

12. The appellant relied on the decision in Mazhar Husain v. Rao Bahadur Adiya (AIR 1948 PC 42 : (1948) 1 MLJ 259) in support of the proposition that where there is no evidence that a person ever executed a wakfnama and no direct evidence of any oral dedication by him is available the proper inference from the history of the matter, the dealings with the parties in dispute, the litigation that has affected it and the admissions and assertions made by the predecessors in title of the persons who dispute the wakf can be made about the valid creation of a wakf attaching to the properties.

13. The concurrent findings in the present case are these. There is no evidence that the property in question was used as wakf property. There is no dedication of the property to be wakf property. There is no evidence that the property was determined to be wakf property by the Custodian.

14. There is no merit in this appeal. The appeal is dismissed with costs.

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