

(2006) 10 KAR CK 0008

In the Karnataka High Court

Case No : Miscellaneous First Appeal No. 4454 of 2001

Abdus Subhan alias Subhansha and Others

APPELLANT

Vs

Karnataka Board of Wakf and Others

RESPONDENT

Date of Decision : 27-10-2006

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 7 Rule 10, Order 7 Rule 10 (1)
Waqf Act, 1995 — Section 2, 85

Citation : (2007) 2 CivCC 567 : (2007) 1 KCCR 459 : (2007) 5 RCR(Civil) 342

Hon'ble Judges : V. Jagannathan, J

Bench : Single Bench

Advocate : Vighneshwar S. Shastri, for the Appellant; Prabhuling K. Navadgi, for Respondent-1 and A.S. Patil, for Respondents-8(A) to 8(E), for the Respondent

Final Decision : Dismissed

Judgement

V. Jagannathan, J.—Heard the learned Counsel for the appellants.

2. The appellants herein were the plaintiffs before the Trial Court in suit. O.S. No. 21 of 1995. It was their case that the suit schedule property was acquired by them from their ancestors and it was not the wakf property. The respondent 1- Wakf Board filed its written statement taking the stand that the subject-matter of the suit properties were wakf properties. After framing of issues, the evidence was also let in and at the stage of arguments, the application, LA. No. 11 was filed by the Wakf Board praying the Trial Court to decide on the question of jurisdiction and following the Wakf Act, 1995, coming into force, the Civil Court had no jurisdiction to try the matter. The said I.A. filed by the Wakf Board came to be allowed and the plaintiffs were directed to take back the plaint. It is this order of the Trial Court which is questioned by the plaintiffs in this appeal.

3. The learned Counsel for the appellants submitted that the suit was filed in the year 1995 and the matter had reached the argument stage and it was at that time, the Trial Court ordered return of plaint having recorded a finding that the it had no jurisdiction to proceed further in the matter in view of the bar u/s 85 of

the Wakf Act, 1995. The contentions put forward by the appellants' Counsel is that first of all, when the matter had reached the argument stage, it was too late for the Trial Court to have ordered return of plaint. Secondly, the Wakf Act, 1995, came into force in the year 1996 and the suit was filed much earlier to that. Therefore, the order of the Trial Court is unsustainable in law.

4. I do not find any merit in the contentions put forward as above, by the learned Counsel for the appellants. The Wakf Act, 1995, which came into force on 1-1-1996 makes it clear that u/s 85 of the Act, no suit or other legal proceeding shall lie in any Civil Court in respect of any dispute, question or other matter relating to any wakf, wakf property or other matter which is required by or under this Act to be determined by a Tribunal. Section 2 of the Act says that this Act shall apply to all wakfs whether created before or after the commencement of this Act. Therefore, when the question before the Trial Court was whether the suit schedule property was a wakf property or not, the said question cannot be gone into by the Trial Court in view of the bar u/s 85 of the Act.

5. So far as the contentions that the matter had reached the arguments stage and it was at that point of time, the Trial Court decided the question of jurisdiction and ordered return of the plaint is concerned, a mere perusal of Order 7, Rule 10 of the Civil Procedure Code, makes it clear that the Court had every power to return the plaint for being presented to the Court in which the suit ought have been instituted. The provisions in Rule 10(1) of the Order 7 reads thus:

Subject to the provisions of Rule 10-A, the plaint shall at any state of the suit be returned to be presented to the Court in which the suit should have been instituted.

(emphasis supplied)

6. It is therefore clear from the expression "at any stage" that the Court had the power to return the plaint at any stage of the proceedings. In my considered view, the provision contained in Order 7, Rule 10(1) is wide enough to cover a case wherein, by virtue of a new legislation, a situation may arise requiring the party to present the case before the Court, which has got jurisdiction over the matter. In the case on hand also, following the Wakf Act, 1995, coming into force on 1st January, 1996, the appropriate Court to decide the issue as to whether the suit properties are the wakf properties or not is the Tribunal constituted under the Wakf Act and not the Civil Court. Therefore, having regard to the wide scope of Order 7, Rule 10(1) of Civil Procedure Code, the Trial Court has rightly ordered that the plaint be returned for being presented in the appropriate Court or the Tribunal.

For the foregoing reasons, I find no merit in this appeal and consequently, the appeal stands dismissed.