
(2004) 09 AHC CK 0101
In the Allahabad High Court
Case No : Civil Revision No. 566 of 2003

Ahmad Husain and Others	Vs	APPELLANT
Smt. Ruab Bano and Others		RESPONDENT

Date of Decision : 17-09-2004

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 11
Uttar Pradesh Muslim Waqfs Act, 1960 — Section 29(8)

Citation : (2005) 1 AWC 200

Hon'ble Judges : Sunil Ambwani, J

Bench : Single Bench

Advocate : K.G. Srivastava, for the Appellant;

Final Decision : Dismissed

Judgement

Sunil Ambwani, J.—Heard Sri K.G. Srivastava for the applicant.

2. This civil revision u/s 76 of the Waqf Act of 1960 has been filed along with a delay condonation application under Sections 5 and 14 of the Limitation Act, 1963 for condonation of delay in filing the revision against the order dated 30.11.1998 passed by 1st Additional Civil Judge (Senior Division), Bijnor in Original Suit No. 475 of 1989 between Masjid Patwarian and Ors. v. Ruab Bano and Ors. by which the trial court decided the issue No. 3 and held that the suit is barred by principle of res-judicata, and the order dated 11.2.2003 in Miscellaneous Civil Appeal No. 54 of 2003 decided and dismissed by the District Judge. Bijnor on merits affirming the findings of the trial court, that the suit is barred by res-judicata as well as on the ground that the appeal even otherwise was not maintainable as revision under the Waqf Act lies before the High Court.

3. The brief facts giving rise to this Civil Revision are that a Case No. 164 of 1979 was filed as Azam Ali and Ors. v. U. P. Sunni Central Waqf Board, Lucknow for a declaration that the Masjid and the land in plot Nos. 102 and 103 of village Aurangabad Pargana Kiratpur is the dedicated waqf property of Shia sect of

Muslims, and that the applicant is the Mutwalli, as well as injunction against the defendants, in the court of Additional Civil Judge, Bijnor/Tribunal under the U.P. Muslim Waqf Act, 1960. The plaintiff alleged that the land in plot Nos. 102 and 103 belongs to Shia Muslims and that they are managing the same. The Masjid was founded by Yusuf Saheb and was managed by him as mutwalli. After Yusuf Saheb his family members were mutwallis and that the Masjid was dedicated as Waqf, and was registered as waqf property with the Shia Waqf Board. U.P. Lucknow. The defendants belonging to Sunni sect are interfering and are claiming the Masjid and land belonging to Sunni Muslims.

4. The suit was contested by defendants pleading that the Sunni Masjid is situated at plot No. 102. In Khasra No. 103 there is Abadi as shown in 1273 fasli. The plaintiff had no concern with the disputed Masjid and land. There are three mosques in village Abdula, Palta and Aurangabad, out of which two Masjids including Masjid Patwarian, belong to Sunni Muslims. The third Masjid is of Shia Muslims. Ibne Hassan defendant is carrying out the management of the Masjids for the last 15 years. A suit was filed in the Munsifs court at Bijnor and was dismissed on 9.10.1979. Before this a compromise was reached between the parties on 30.11.1946 in which the disputed Masjid was found to be belonging to Sunni community.

5. The trial court after taking the evidence recorded findings that it is not established by the plaintiff that Yusuf Saheb had built the Masjid. The disputed Masjid is under the authority and management of Sunni Muslims. On issue No. 4 it was held that the disputed property was registered vide Registration No. 959 on 15.9.1979 as a waqf with the Shia Waqf Board, U.P. at Lucknow. The defendants had no knowledge of the registration and thus the registration had no effect on them. The Additional Munsif, Bijnor in case No. 91 of 1979 had dismissed the suit on the ground that it had no jurisdiction and that only a Tribunal under the Muslim Waqf Act, 1960, can decide the issue. The suit was dismissed on 5.11.1981. The plaintiff filed a Civil Revision No. 592 of 1981 which was heard and allowed by this Court and that the judgment and order of the Tribunal was set aside. This Court held that the suit/reference was correctly made by the plaintiff u/s 8/71 of the U.P. Muslim Waqf Act, 1960. The waqf was registered as Shia waqf, and that any person aggrieved by an order of the Waqf Board registering the waqf under Sub-section (7) of Section 29 could make an application under Sub-section (8) of Section 29, on which the Board is to refer the dispute to the Tribunal which shall give its decision thereon. The defendants did not take recourse of Section 29 (8), whereas the proceedings were going on for about three and half years. It was found that the defendants i.e. the Sunni Muslims did not avail the proper remedies provided to them under the law. The Tribunal could have gone into the question of trespass over the property but could not have decided about the registration of the Masjid as Shia waqf which was in accordance with the procedure prescribed by law. While setting aside the order of the Tribunal dated 5.9.1991, the suit for injunction was decreed with costs. It is admitted that a SLP was filed before the Supreme Court, which was

dismissed on 1.4.1985. The judgment and order as such become final on the issues between the parties.

6. Instead of approaching the Shia Waqf Board for cancellation of the registration, the applicants-Sunni Muslims, filed an Original Suit No. 475 of 1989 between Masjid Patwarian v. Ruab Bano. On the objection raised by the defendants an issue was framed to decide whether the suit is barred by principle of res judicata.

7. The trial court found that with regard to the same disputed property, the earlier Suit/Reference No. 164 of 1979 was allowed by the Tribunal against which a Civil Revision No. 592 of 1981 was filed u/s 8/71 of the U. P. Muslim Waqfs Act, 1960, and was decided between the parties on 8.4.1983 and that the SLP against the judgment was dismissed. He found that the applicants are same parties namely Sunni Muslims and that since the dispute was between the persons claiming through the same persons and was decided, the present suit by the court of competent jurisdiction, was barred by principle of res judicata. The suit was consequently dismissed on 30.11.1998. The applicants filed a Civil Appeal No. 54 of 2003 with a delay of over five years. The appellate court upheld the findings that the suit is barred by principle of res-judicata and also held that no suit could be filed for declaration in the civil court. Under the U.P. Muslims Waqf Act, 1960, only a reference could be filed before the civil Judge and thereafter the order could be challenged in a revision before the High Court u/s 76 of the U.P. Muslims Waqf Act, 1960.

8. By this revision u/s 76 of the U.P. Muslim Waqfs Act, 1960 the applicants have challenged both the orders, and have also filed an application u/s 5/14 of the Limitation Act for condonation of delay in filing the revision against the order dated 30.11.1998 passed by the trial court in Suit No. 75 of 1989.

9. Sri K. G. Srivastava submits that the applicants had filed a civil appeal by bonafide mistake and were pursuing the reliefs in the wrong court. He submits that a revision lies u/s 76 of the U.P. Waqfs Act, 1960, and that since the appeal was dismissed on the ground that it was not maintainable, the applicants are entitled to the benefit of Section 14 of the Limitation Act. He further submits that the findings of the trial court in Case No. 164 of 1979 decided on 5.11.1991 on facts are in favour of the applicants, in which it was not established by the Sunni Muslims that Yusuf Saheb had built the Masjid. The waqf deed was not filed on record and the dedication was not established. Out of three Masjids in the village two including the disputed Masjid belongs to Sunni Muslims and that there was a compromise on 30.11.1946 between the parties to that effect. These findings, according to Sri Srivastava, were not set aside by this Court in revision No. 592 of 1981 which was allowed on technical grounds namely that the remedy of the applicants was to seek cancellation of the registration and thereafter reference by the Board to the Tribunal under Sub-section (8) of Section 29 of the Act. The Supreme Court had dismissed the SLP without entering into the merits of the matter and thus the principle of res judicata are not applicable.

10. According to Sri Srivastava, the original suit filed by the applicants should have been treated as a reference to the Tribunal and that both the courts below have erred in law in holding that the suit is barred by principles of res-judicata. Both the sects are claiming Masjid and the property in plot Nos. 102 and 103 as waqf belonging to their sects.

11. The U.P. Muslim Waqfs Act, 1960 prevalent at the relevant time, is a self contained Code providing for all the disputes relating to waqf and waqf properties. Section 69A of the Act places a bar on suits for the reliefs which may be obtained by proceedings u/s 49B or Section 57A. Section 49B gives powers to the Waqf Board to recover possession of the property entered in the register of the waqf maintained u/s 30 and transferred without previous sanction of the Board and Section 57A provides for recovery of the possession of waqf property from unauthorized occupants. Section 70 of the Act provides for the constitution of Tribunal and that u/s 71 any dispute, question or matter which may under the Act be referred to a Tribunal, having jurisdiction over the area in which the property to which such dispute, question or matter relates is situate. Section 72 provides for the procedure before the Tribunal which is the same as provided in the Code of Civil Procedure, and that the provisions under the Evidence Act, 1872, shall be deemed to apply in all respects to the adjudication of dispute by the Tribunal. The orders are revisable by the High Court u/s 76 of the Act.

12. The Civil Judge. Bijnor acting as Tribunal, decided the matter between the persons belonging to the sects, and dismissed the suit filed by Sunni Muslims. A revision under the proviso to Section 76 was allowed and while rejecting the claim of Sunni Muslims, it was held that the Masjid and the property was registered as waqf property of the Shia Central Board u/s 29 (7) of the Act. The Waqf Board was required to make an enquiry before the registration with regard to genuineness and applicability of the applicant and the correctness of the particulars. The registration raised a presumption about the genuineness and validity of the waqf and was binding on all the persons except those who raised their claims under Sub-section (8) of Section 29 of the Act and in such cases the matter was to be referred to the Tribunal u/s 71 of the Act. The Sunni Muslims had not taken recourse to the provisions of the Act and thus the order directing registration of the waqf was conclusive. This finding was binding upon the parties and all the persons claiming through them.

13. Instead of filing objection under Sub-section (8) of Section 29 of the Act, the Sunni Muslims again filed a suit for declaration. The issues raised in the suit were as such barred by the principles of res-judicata, and the suit was barred by Section 69A of the U.P. Muslims Waqf Act, 1960.

14. The principles of res-judicata are by way of estoppel to give finality to the dispute between the parties, if the same issues were raised and decided by the court of competent jurisdiction. In the present case, the parties have claimed through persons belonging to same sets. There is identity of claim to the property and that between the parties the same issue was decided in a revision

arising out of a suit between the parties, by this Court as long ago as on 8.4.1983. Thereafter instead of taking recourse to the provisions of U.P. Muslims Waqf Act, 1960, in accordance with the Judgment and order of this Court, the applicants filed another suit which was definitely barred by principle of res-judicata as the procedure provided under the U. P. Muslims Waqf Act, 1960 was not followed.

15. The applicants were fully aware of their rights and the provisions of the Act. In the application for condonation of delay u/s 5/14 of the Limitation Act, it is pleaded in the affidavit of Sri Maqbool Hussain that the applicants were diligently pursuing the proceeding in wrong court. They filed appeal before the District Judge under wrong legal advice which was dismissed on 11.2.2003 as not maintainable. I do not find that the plea is bona fide inasmuch as the parties were very well aware of their rights. Firstly, the suit was not maintainable and that thereafter the appeal was dismissed on merits. A passing reference was made regarding the proper forum. These observations cannot be carried any further, and no benefit can be derived from such remarks. This revision as such purported to be u/s 76 is wholly misconceived. The rights were settled between the parties in the year 1983. These could be agitated further only u/s 29 (8) of the Act of 1960. It is even otherwise just, expedient and prudent and not to revive the conflict of interest after about twenty one years.

16. The civil revision is dismissed in limine, with no order as to costs.