

(2013) 07 SC CK 0114

In the Supreme Court Of India

Case No : Civil Appeal No"s. 6124-6125 of 2013 (Arising out of SLP (Civil) No"s. 9787-9788 of 2011)

Akkode Jumayath Palli Paripalana Committee

APPELLANT

Vs

P.V. Ibrahim Haji and Others

RESPONDENT

Date of Decision : 23-07-2013

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 9
Waqf Act, 1995 — Section 83, 83(9)

Citation : (2013) 9 AD 341 : AIR 2013 SC 3530 : (2013) AIRSCW 4729 : (2013) 4 AKR 56 : (2013) 6 ALD 1 : (2013) 6 ALLMR 423 : (2013) 5 ALT 10 : (2013) 5 AWC 4684 : (2013) 5 CHN 85 : (2013) 3 JLJR 493 : (2013) 13 JT 596 : (2013) 3 KHC 386 : (2013) 3 KLT 521 : (2013) 5

Hon'ble Judges : K.S. Panicker Radhakrishnan, J;A.K. Sikri, J

Bench : Division Bench

Advocate : K. Rajeev, for the Appellant; P.V. Dinesh, Bineesh K., Sunil K. Tripathi and Shantanu, for the Respondent

Final Decision : Dismissed

Judgement

K.S. Panicker Radhakrishnan, J.—Leave granted.

2. The question that arises for consideration in this appeal is whether the Wakf Tribunal has got jurisdiction to entertain a suit for injunction restraining the Defendants from interfering with the administration, management and peaceful enjoyment of the Mosque and madrasa run by it and all the assets attached to the Mosque.

3. Appellant, a society registered under the Societies Registration Act stated to be formed for the management and administration of wakf property including a Mosque situated therein, filed a suit for an injunction before the Court of Munsiff, Manjeri, which was transferred to the Court of Wakf Tribunal, Kozhikode and numbered as O.S. No. 53 of 2003. The suit was contested by the Respondents on merits and ultimately it was decreed by the Wakf Tribunal on 28.09.2004 and the

Plaintiff was given a decree for a perpetual injunction restraining the Defendants/ Respondents and their men from interfering in any manner in the administration, management and peaceful possession and enjoyment of the Mosque, namely, Akkode Jumayath Palli, the madrasa run by it and all the assets attached to the Mosque.

4. The Respondents herein filed Civil Revision Petition as CRP No. 1362 of 2004 u/s 83(9) of the Wakf Act before the Kerala High Court. The High Court vide its judgment dated 10.11.2010 set aside the judgment and decree passed by the Wakf Tribunal holding that a suit for injunction is not maintainable before a Wakf Tribunal placing reliance on the judgment of this Court in Ramesh Gobindram (dead) through Lrs. Vs. Sugra Humayun Mirza Wakf, The Court also granted permission to the Appellant to take back the plaint for presenting before the appropriate court. Later the Appellant preferred a Review Petition which was also dismissed by the High court on 04.02.2011. The legality of the orders is under challenge in this appeal.

5. We are of the view that the High Court has committed an error in holding that the reliefs sought for by the Appellants in the suit could not be claimed before the Wakf Tribunal in view of the judgment of this Court in Ramesh Gobindram (Dead) Through L.Rs. (supra). In Ramesh Gobindram (Dead) Through L.Rs. (supra) the question that arose for consideration before this Court was whether the Wakf Tribunal constituted u/s 83 of the Wakf Act was competent to entertain and adjudicate upon disputes regarding eviction of the Appellants who were occupying different items which were admittedly wakf properties. The Wakf Tribunal answered the question of jurisdiction in affirmative and decreed the suit which was affirmed by the High Court. This Court, after examining the various provisions of the Wakf Act and Section 9 of the CPC held in paras 34 and 35 of the judgment as follows:

34. The crucial question that shall have to be answered in every case where a plea regarding exclusion of the jurisdiction of the civil court is raised is whether the Tribunal is under the Act or the Rules required to deal with the matter sought to be brought before a civil court. If it is not, the jurisdiction of the civil court is not excluded. But if the Tribunal is required to decide the matter the jurisdiction of the civil court would stand excluded.

35. In the cases at hand, the Act does not provide for any proceedings before the Tribunal for determination of a dispute concerning the eviction of a tenant in occupation of a wakf property or the rights and obligations of the lessor and the lessees of such property. A suit seeking eviction of the tenants from what is admittedly wakf property could, therefore, be filed only before the civil court and not before the Tribunal.

6. This Court allowed the appeals and the orders passed by the Wakf Tribunal were set aside and the suit filed by the Respondents for eviction of the Appellants before the Tribunal was held not maintainable. The ratio laid down in

the above-mentioned judgment later came up for consideration before this Court in Board of Wakf, West Bengal Vs. Anis Fatma Begum and Another, and the judgment in Ramesh Gobindram (Dead) Through L.Rs. (supra) was held distinguishable. That was a case where the dispute related to the Wakf Estate which was created by registered deed of Wakf dated 22.09.1936. The question raised was with regard to the demarcation of the Wakf property, which this Court held is a matter which fell under the purview of the Wakf Act. The judgment of the Calcutta High Court which held otherwise was set aside and this Court held that the Wakf Tribunal has jurisdiction to decide those disputes.

7. We are of the view that the dispute that arises for consideration in this case is with regard to the management and peaceful enjoyment of the Mosque and madrassa and the assets which relate to Wakf. Nature of the relief clearly shows that the Wakf Tribunal has got jurisdiction to decide those disputes. We, therefore, find no error in the Wakf Tribunal entertaining O.S. No. 53 of 2003 filed by the Appellant and the High Court has committed an error in holding otherwise. Consequently the impugned order passed by the High Court is set aside and the matter is remitted to the High Court to consider the revision on merits. The appeals are disposed of as above, with no order as to costs.