

(2007) 04 AP CK 0105

In the Andhra Pradesh High Court

Case No : Second Appeal No. 270 of 1995

Andhra Pradesh State Wakf Board

APPELLANT

Vs

Mavuru Sundaramma and Manager, Raya Fabrics A.P.C.O.

RESPONDENT

Date of Decision : 30-04-2007

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 100

Citation : (2007) 5 ALD 267 : (2007) 6 ALT 365

Hon'ble Judges : M. Venkateswara Reddy, J;B. Prakash Rao, J

Bench : Division Bench

Advocate : Subhani S.M, for the Appellant; D. Ramalinga Swamy, in S.A. No. 270 of 1995 and Sai Gangadhar Chamarthy, in S.A. No. 273 of 1995, for the Respondent

Final Decision : Dismissed

Judgement

B. Prakash Rao, J.—As both these appeals raise common questions of law they were heard jointly and are being disposed of by a common judgment.

2. Brief facts, which are necessary for disposal of these two matters are that the appellant is the A.P. State Wakf Board, which inter alia seeks to assail the judgments and decrees of both the courts below dismissing the suit filed by it for the relief of declaration of title and possession with regard to the suit schedule properties, which are involved in both the matters. Both the courts below on appraisal of the entire evidence and the material on record and having found that the appellant-plaintiff had failed to establish its title upheld the title and possession to that of the respondents and dismissed the suit.

3. Having regard to the concurrent findings, as arrived at by both the courts below especially in regard to the factual aspect as to the title and possession, this Court would not venture to go into any of these aspects in exercise of powers u/s 100 of CPC. However, having regard to the specific plea raised on behalf of the appellant herein ,to the effect that admittedly the suit properties

having been notified u/s 4 of the Wakf Act, after conducting a regular survey, such a notification is conclusive one, as long as no suit is being filed by the Wakf Board and such entries, as contemplated under proviso 6(1) of the Wakf Act, within the period prescribed there under, respondents cannot assail the title and it is not open for them to assail the same.

4. The learned Standing Counsel appearing for the Wakf Board, Mr. S.M. Subhani, sought to place reliance on the decisions reported in Sayyed Ali and Others Vs. Andhra Pradesh Wakf Board Hyderabad and Others, , Karnataka Wakf Board Vs. State of Karnataka and Another, and Lincai Gamango and Others Vs. Dayanidhi Jena and Others, .

5. In Sayyed Ali v. Andhra Pradesh Wakf Board, Hyderabad, (supra-1) the only question involved in the said decision was as to the definition of the Wakf and its character preserving the proceedings under Andhra Pradesh (A.A) Inams (Abolition and Conversion into Ryotwari) Act 1956 and therefore, observing that the finding given by the authorities under the said Act viz., Inams Act would not operate as res judicata in a subsequent suit filed by the Wakf Board u/s 6 of the Wakf Act for deciding the character of wakf property. Further there is neither consideration nor any principles laid down in regard to the scope of Section 6(1) of the Wakf Act, or any bar created therein. Hence, the said decision has no application to the facts of the case.

6. In the second decision in Karnataka Wakf Board v. State of Karnataka (supra-2), considering the very same proviso u/s 6, the Supreme Court held that since the suit of that case was filed prior to insertion of Explanation to Section 6(1) by Act 69 of 1984 and therefore, the inhibition provided under proviso to Section 6 regarding period of limitation was not applicable to plaintiffs, therefore, suit filed after one year of declaration of Wakf property, but within period provided under law of limitation not barred. Having regard to the same, this decision also would not in any way come to the rescue of the appellant.

7. The other decision cited across the bar reported in Lincai Gamango v. Dayanidhi Jena (supra-3), again the said provisions viz., proviso to Section 6(1) has no consideration. There, the Supreme Court while considering the principles of adverse possession held that the question of acquisition of right and title by adverse possession by non-tribal over the property belonging to the tribal does not arise under Orissa Scheduled Areas Transfer of Immovable Property (by Scheduled Tribes) Regulations, 1956. Hence, either way the said decision would not in any way help the appellant.

8. On behalf of the respondents, they sought to place reliance on the decisions reported in Board of Board of Muslim Wakfs, Rajasthan Vs. Radha Kishan and Others, , wherein considering the very same proviso u/s 6(1) of the Wakf Act, it was categorically held that the failure of a stranger to the Wakf to file a suit within a period of Limitation, does not make the list of Wakfs binding on him, therefore, the said proviso is not applicable to a stranger to the Wakf, though

interested in the Wakf property.

9. In another decision reported in Punjab Wakf Board V. Gram Panchayat Alias Gram Sabha AIR 2000 SC 3488 once again the said proviso has come up for consideration before the Apex Court, wherein the notification declaring some property viz., grave-yard as Wakf, dispute between Panchayat, a third party and Wakf, on the allegation that the said property belongs to Panchayat and used by members of all communities and hence not Wakf property, it was held that Proviso to Section 6(1) of Wakf Act does not apply, as dispute was not between Wakf and Mutawalli but with stranger i.e., Panchayat.

10. In yet another decision reported in Abdul Rais and Others Vs. Madhya Pradesh Wakf Board and Others, , considering the very same proviso, the Apex Court remanded the matter since the principles laid down by it in the earlier decisions reported in Punjab Wakf Board Vs. Gram Panchayat @ Gram Sabha, , Sayyed Ali and Others Vs. Andhra Pradesh Wakf Board Hyderabad and Others, , Board of Muslim Wakfs, Rajasthan Vs. Radha Kishan and Others, , were not considered.

11. In Sirajul Haq Khan and Others Vs. The Sunni Central Board of Waqf, U.P. and Others, , considering the expression any person interested in a waqf under Uttar Pradesh Muslim Wakf Act, the Supreme Court held as under:

When the Central Board assumes jurisdiction over any waqf under the Act it proceeds to do so on the decision of three points by the Commissioner of Waqfs. It assumes that the property is a waqf, that it is either a Sunni or a Shia waqf, and that it is not a waqf which falls within the exceptions mentioned in Section 2. The literal construction of the expression "any person interested in a waqf would render a pail of the sub-section wholly meaningless and ineffective. The legislature has definitely contemplated that the decision of the Commissioner of the Waqfs that a particular transaction is a waqf can be challenged by persons who do not accept the correctness of the said decision, and it is this class of persons who are obviously intended to be covered by the words "any person interested in a waqf. "Therefore the expression "any person interested in a waqf must mean "any person interested in what is held to be a waqf. It is only persons who are interested in a transaction which is held to be a waqf who would sue for a declaration that the decision of the Commissioner of the Waqfs in that behalf is wrong, and that the transaction in fact is not a waqf under the Act. Thus, persons whose case is that the properties in suit do not constitute a waqf under the Act but are held, by them as proprietors and that the notification issued by the Sunni Central Board of Waqf in respect of the said properties is wholly void and who claim a declaration and injunction against the Board are obviously interested in the suit properties and so the suit instituted by them would be governed by Section 5(2).

12. Having regard to the aforesaid principles laid down by the Supreme Court in the above said decisions, it quite clear that the proviso to aforesaid Section 6 of

the Wakf Act, and the bar created thereunder, much less, the period of limitation, as prescribed there under, would in any way apply to the third parties who are in no way concerned with the Wakf.

13. Admittedly, the respondents herein are the third parties, who are absolutely, no way connected with the Wakf or the institute in any capacity. Therefore, the bar created thereunder would not come in their way nor the entries, as notified u/s 4(1) of the Wakf Act, are reliable. Be that as it may, the appellant has to establish his title in the present case. Both the Courts below on appreciation of the entire material on record held that the respondents have to establish their title vis-a-vis that of the appellant herein.

14. For the foregoing reasons, we find no merits in both the appeals and accordingly, both the Second Appeals are dismissed. No order as to costs.