

(2005) 06 SHI CK 0016

In the High Court Of Himachal Pradesh

Case No : Regular Second Appeal No. 265 of 2005

Ashok Kumar and Others

APPELLANT

Vs

Smt. Sona khan and Others

RESPONDENT

Date of Decision : 21-06-2005

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 10
Waqf Act, 1995 — Section 83, 85

Citation : (2005) 2 ShimLC 264

Hon'ble Judges : V.M. Jain, J

Bench : Single Bench

Advocate : Suneet Goel and Ankush D. Sood, for the Appellant; Bhupender Gupta and Neeraj Gupta, in RSA Nos. 265, 266, 269 and 270 of 2005, for the Respondent

Judgement

V.M. Jain, J.—This order shall dispose of the above-mentioned appeals, as common question of law and facts are involved in these appeals.

2. The two suits were filed, one by Smt. Nirmala Devi and the other by Smt. Indira Devi. Both the suits were dismissed by the trial Court on 26.9.2001 by two separate judgments. Aggrieved against the same, Smt. Nirmala Devi and Smt. Indira Devi had filed appeals. Wakf Ismailia, who was Defendant No. 8 in both the suits, also filed appeals against the judgments passed by the trial Court vide which the suits filed by Smt. Nirmala Devi and Smt. Indira Devi were dismissed. The learned Additional District Judge dismissed all the four appeals vide two separate judgments, by consolidating the appeals filed by the Plaintiff and Defendant No. 8 in both the suits separately. Aggrieved against the same, the present four appeals have been filed in this Court, two by the Plaintiffs, namely, Smt. Nirmala Devi and the legal representatives of Smt. Indira Devi and the other two appeals by Defendant No. 8, Wakf Ismailia, in both the suits.

3. In both the suits various issues had been framed including Issue No. 4-E, to the effect as to whether the Court had no jurisdiction to try the suits as alleged

and the onus of this issue was placed on Defendant No. 8. i.e. Wakf Ismailia. The trial Court while dismissing both the suits had given findings on all the issues except on Issue Nos. 4-E and 4-F (regarding jurisdiction and stay of suit u/s 10 Code of Civil Procedure) since these two issues were treated as preliminary issues and were decided by the trial Court vide orders dated 31.8.2001. When the appeals were decided by the learned Additional District Judge, it was held by the learned Additional District Judge that 1/2 of the suit property was a Wakf property while the remaining 1/2 property was not a Wakf property, and the entire property was still joint. It was further held that since the suit property or atleast a part thereof was a Wakf property, no suit with regard to such a property was maintainable in a civil court, in view of the bar created by Section 85 of the Wakf Act, 1995. The learned Additional District Judge after holding that no suit with regard to Wakf property was maintainable in a civil court, dismissed all the four appeals by two separate judgments, upholding the findings of the trial Court, except setting aside the findings of the trial Court with regard to ownership of the Wakf to the extent of 1/2 share and that of Defendants No. 4 and 5 to the extent of remaining 1/2 share, being uncalled for. In this manner the learned Additional District Judge dismissed the appeals of the Plaintiffs not only on the ground of the jurisdiction of the civil court but also on merits.

4. The learned Counsel appearing for the Plaintiffs-Appellants has submitted before me, that the Plaintiffs in both the suits were claiming ownership by way of adverse possession and the said suit was being resisted not only by the private Defendants but also by Wakf Ismailia, disputing the claim of the Plaintiffs regarding their ownership by adverse possession. Defendant No. 8 Wakf Ismailia was claiming ownership in respect of the entire suit property, even though Defendants No. 4 and 5 were claiming their ownership in respect of 1/2 share in the suit property. Thus the question that would arise for determination in these appeals would be as to whether the Plaintiffs had acquired ownership qua the suit property by way of adverse possession and/or whether Defendants No. 4 and 5 were owners of the suit property to the extent of 1/2 and or whether Defendant No. 8 Wakf Ismailia was the owner of the entire suit property. Section 85 of the Wakf Act, 1995 reads as under:

85. Bar of jurisdiction of Civil Courts. - 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.

5. After referring to the aforesaid provision of Section 85 of the Wakf Act, 1995, the learned Additional District Judge had found that since the suit property or atleast a part of the suit property was a Wakf property no suit with regard to the same was maintainable in a civil court. In this view of the matter, in case the civil court did not have a jurisdiction to entertain and try the present suit, in view of the bar created by Section 85 of the Wakf Act, 1995, the learned Additional District Judge ought to have returned the plaints to the Plaintiffs in both the suits

for presentation to the appropriate authority Section 83 of the Wakf Act, 1995 provides for the constitution of Tribunals for the determination of any dispute, question or other matter relating to a wakf or wakf property under the said Act. It is not disputed before me that the State of Himachal Pradesh has constituted various Tribunals under the provisions of Section 83 of the Wakf Act, 1995, vide notification dated 1.12.2001. In this view of the matter, in my opinion, the learned Additional District Judge ought to have ordered the return of the plaints to the Plaintiffs in both the suits for presentation to the appropriate authority, instead of upholding the judgment of the trial Court. This is especially so when the Plaintiffs were claiming ownership in respect of the entire property and the Wakf Ismailia was also claiming ownership in respect of the entire property to be Wakf property.

6. For the reasons recorded above, all the aforementioned four appeals are disposed of with a direction to the trial Court to return the plaints to the Plaintiffs and/or their legal representative, as the case may be, for presentation to the appropriate authority in accordance with law. It is made clear that in case any such proceedings are instituted by the Plaintiffs and/or their legal representatives, any finding given by the Courts below on the merits of the case shall have no effect on the proceedings before the appropriate authority including the Tribunal.