

(1974) 07 MAD CK 0032
In the Madras High Court
Case No : Appl. No. 558 of 1969

A.S.M. Abdul Jabbar Sahib and another	APPELLANT
Vs	
Mohammad Murtuza Hussain and others	RESPONDENT

Date of Decision : 09-07-1974

Acts Referred:

Waqf Act, 1954 — Section 55(2)

Citation : (1974) 07 MAD CK 0032

Hon'ble Judges : Ramaprasada Rao, J;Maharajan, J

Bench : Division Bench

Advocate : M. Srinivasan, for the Appellant; Md. Yahiya, M.A. Sattar Sayeed and S.I. Samiullah, for the Respondent

Judgement

Ramaprasada Rao, J.—The plaintiffs in O.S. No. 86 of 1968 on the file of the Subordinate Judge of Chingleput are the appellants. They filed the suit (a) for removal of the first defendant from the Trusteeship of the Turakken Chatram Trust situate in Red Hills, (b) for settling a scheme for proper administration of the affairs of the Trust, (c) to appoint a Commissioner to manage the Trust (d) to direct the first defendant, who according to them was mismanaging the affairs of the Chatram, to deliver possession of the Wakf properties and hand over charge of the same to the Committee of members to be appointed by the Court and (e) for costs. The plaintiff alleged several acts of mismanagement on the part of the first defendant and ultimately pleads that the first defendant is a person who is liable to be removed from his office as Muthawalli of the Chatram under the provisions of the Wakf Act, 1954. Prior to the institution of the suit the plaintiffs claim that they have filed a petition before the second defendant, Special Officer for Wakfs, Madras for sanction to institute the proceedings against the first defendant. This permission was sought under S.55(2) of the Wakf Act, 1954. The Special Officer, in a very considered order, dismissed the petition. He has very lucidly pointed out by comparing the reliefs asked for by the petitioners with the subjects which could be dealt with by the Wakf Board and finally opined that the petitioners, if they are aggrieved, can approach the Wakf Board or the Special

Officer as the case may be instead of moving the Civil Court for obtaining those reliefs. The Special Officer observed as follows:--

The petitioners have sought the following reliefs:--

- (1) He has requested the removal of the Muthawalli.
- (2) He has requested that a scheme may be settled.
- (3) He has requested that a Committee may be appointed to manage the trust.
- (4) He has requested that the Muthawalli should be asked to deliver possession of the Wakf properties and to hand over charge to the committee to be formed by the Court.
- (5) The Wakf Board can remove a Muthawalli under S. 43 of the Wakf Act. The Wakf Board can also settle scheme of Management for Wakfs under S. 15(2) (d) of the Wakf Act, 1954

Under S. 43(2) of the Act, the Board can appoint any person or committee to act as the Muthawalli of the Wakf property. The handing over of charge by a superseded committee or a Muthawalli who has been removed is only incidental and the Wakf Board can give directions in this behalf. Thus, all the reliefs which the petitioner in this case seeks, can be granted by the Wakf Board itself. There is, therefore no need to give permission to the petitioners to file a suit in a Civil Court. They can approach the Special Officer for Wakfs, and file a petition under the Wakf Act for the reliefs which they are seeking. The petition is, therefore, dismissed.

In spite of such an explanatory and judicial order made by the Special Officer, the plaintiffs, rushed to Court and sought for the reliefs enumerated already. In the written statement the second defendant took up the position that the Civil Court had no jurisdiction to entertain this action and the suit has to be dismissed in limine on that ground.

We are not setting forth in detail the allegations made in the plaint which reflects upon the alleged misconduct of the first defendant as it is not necessary for the purpose of disposing of this appeal. On the pleadings, however, the following issues were framed :

- (1) Is the Suit maintainable ?
- (2) Is not the suit barred by provisions of Wakf Act, 1954?
- (3) Has this Court jurisdiction to try the suit ?
- (4) Are the plaintiffs interested persons in the Wakf and they competent to file this suit ?
- (5) Is the income of the Wakf properties as shown in paragraph 5 correct ?
- (6) Has the first defendant mismanaged or neglected the Wakf as alleged by the

plaintiffs ?

(7) Is the first defendant unfit to be the trustee ?

(8) Has the first defendant received money as alleged in paragraphs 7, 8, 9 and 10 of the plaint and has he given away or parted with property or enriched himself as alleged ?

(9) Has the first defendant misused powers as trustee for his personal gains as alleged ?

(10) Has the first defendant rendered himself liable to be removed ?

(11) To what relief, are the plaintiffs entitled ?

On issues 1 to 3 the learned Judge found that the suit was not maintainable and under the provisions of the Wakf Act, Civil Court, in the circumstances stated did not have jurisdiction to entertain the suit. But in the end he observed that the Court has no jurisdiction to try the suit and therefore it found all the issues against the plaintiffs and in favour of the defendants. It is as against this, the present appeal has been filed.

2. We may at once state that what the learned Subordinate Judge meant by all the issues in paragraph 12 of his judgment in issues 1 to 3 which he was answering and not the other issues which had a bearing on the merits of the complaint made by the plaintiffs against the first defendant. The other question is whether the suit is maintainable. It is common ground that when the plaintiffs sought for permission to institute this action, the Special Officer who was then functioning for the Board did not accord permission. We have already excerpted the reasons given by the Special Officer which prompted him to refuse consent. The Special Officer was right in not having accorded such sanction for the reason that the very purpose of S. 55(2) of the Wakf Act would be thwarted if he accords such permission to institute civil actions, for the legislature wanted to avoid such contemporaneous or concurrent litigation in a civil Court and vested the power of disposal of such matters in a statutory body known as the Wakf Board or the Special Officer in the absence of such a Wakf Board. It would be a travesty, if knowing that the reliefs asked for by an aggrieved person could be granted by the Board, the Board sanctions or gives the consent for the institution of a suit for obtaining the very same reliefs in a Civil Court. It is this that has been done by the Special Officer in this case. By refusing to give consent in writing for the institution of the suit, the plaintiffs were prevented from approaching the Civil Court. But, on the other hand, when they were specifically informed that they could have recourse to the special provisions of the Wakf Act for obtaining the reliefs they were seeking for, they persisted and filed the action. The Special Officer has catalogued the various sections of the Wakf Act which could give the reliefs asked for by the plaintiff in the civil suit. Under S. 43 of the Wakf Act the Board can remove a Muthawalli. It is this which the petitioners seek in prayer (a) of the plaint. Equally the Wakf Board can certainly settle a scheme

under S. 15(2) (d) of the Wakf Act and this is what plaintiffs want in prayer (b) of the suit. The Board can under S. 43(2) of the Wakf Act appoint any person or committee to Act as Mutawalli. It is this very relief which the plaintiffs want in prayer (c) of the plaint. Prayers (d) and (e) in the plaint are ancillary to the main reliefs asked for. If, therefore the Legislature has constituted a special Tribunal for the grant of such reliefs and excludes the jurisdiction of Courts to deal with such reliefs unless otherwise permitted by the Tribunal to do so, then it cannot be said that such a suit laid in the teeth of an order refusing such permission to institute such an action will be maintainable in a Civil Court. The condition precedent, which enables the Court to take on file a suit in which the reliefs which could be granted by the Wakf Board are asked for, is that a consent in writing by the Wakf Board itself should be given. Otherwise, the suit becomes one which is not maintainable in the eye of law and if it is sought to be bypassed by a litigant be in acisin of the matter and grant the relief thereon. The lower court was right therefore in having dismissed the suit as being not maintainable. The appeal therefore fails and is dismissed. There will be no order as to costs in this appeal.