
(2009) 11 CHH CK 0044

In the Chhattisgarh High Court

Case No : Writ Petition (227) No. 5717 of 2009

Chhattisgarh State Wakf Board

APPELLANT

Vs

Rafique Ahmed Khan and Others

RESPONDENT

Date of Decision : 23-11-2009

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 16 Rule 1, Order 8 Rule 1A, 151
Constitution of India, 1950 — Article 227

Citation : (2010) 1 MPJR 62

Hon'ble Judges : Dhirendra Mishra, J

Bench : Division Bench

Judgement

Dhirendra Mishra, J.

This petition under Article 227 of the Constitution of India is directed against the order dated 16th September, 2009 passed in Case No. 4-A/07, whereby the Chhattisgarh Wakf Tribunal, Raipur has rejected the petitioner/defendant No. 1's application under Order 8 Rule 1A read with Section 151 of the CPC for permission to take the documents as per list on record, and the application under Order 16 Rule 1 read with Section 151 of CPC for permission to examine additional witnesses.

Mr. G.S. Agrawal, learned Sr. Advocate with Mr. K.R. Nair, Advocate, for the petitioner/defendant No. 1, submitted that respondent No. 1/plaintiff filed a suit in the year 1990 for declaration that the suit properties notified in the official Gazette dated 25.8.1989 are his predecessors' personal properties and not Wakf Alal Aulad. The petitioner in its written statement denied the allegations of the plaintiff and submitted that the notification was published after due survey and after affording an opportunity of hearing to the persons, who were in possession at the time of survey. The matter was transferred to M.P. Wakf Tribunal after coming into force of the Wakf Act, 1995. After formation of the State of Chhattisgarh, the Chhattisgarh Wakf Tribunal started functioning in the year 2007. The petitioner was directed by the Chhattisgarh Wakf Tribunal to appear on

10.10.2007 before it. Respondent No. 3 was subsequently added as defendant No. 3 and it was proceeded ex-parte before the Tribunal. The civil revision preferred by respondent No. 3 was allowed by the High Court on 29.7.2009 and respondent No. 3 was permitted to take part in the proceedings before the Tribunal. Respondent No. 3 filed its written statement on 17.8.2009 and the matter was fixed for framing of additional issues.

In the meanwhile, the petitioner sent requisition to the M.P. Wakf Tribunal and in response thereof, some documents were received from the M.P. Wakf Tribunal and only thereafter, the said documents were sought to be filed before the Chhattisgarh Wakf Tribunal. The petitioner also filed an application for permission to examine some important witnesses after discovery of documents. However, both the applications have been rejected by the Tribunal.

It was further argued that all the documents, proposed to be filed, are public documents and they form part of official record of a statutory body created under the Wakf Act, 1995. The Tribunal has rejected the application only on the ground that the High Court has directed to conclude the trial within three months. The documents, proposed to be filed, are important documents and are necessary for just resolution of the dispute between the parties and they demolish the very foundation of the plaintiff's pleadings in the plaint. The subject matter of the property relates to the property described at S1. No. 130 of the Gazette Notification notified as Wakf property, whereas respondent No. 1 has prayed for declaration that the said property is not the Wakf property, but it is his personal property. Thus, the controversy involved in the suit relates to the interests of Muslim Community at large. In these circumstances, the Court below ought to have allowed both the applications and permitted the petitioner to examine the witnesses, mentioned in the application, after taking the documents, as per list with the application, on record.

It was further argued that it is settled law that the documents may be filed at any stage, particularly when authenticity of the same is undoubted as rules of procedure under the C.P.C. are meant for assisting the parties and not to punish them.

Reliance is placed on the judgment in the matter of *Buchibai Vs. Nagpur University*, 1946 NLJ 406 and *Quameruddin Vs. State of M.P.*, 1987 II MPWN (245).

On the other hand, Mr. Manindra Shrivastava, learned Sr. Advocate with Mr. Harsh Wardhan, Advocate appearing for the respondent No. 1, would argue that the suit is pending since 1990, for almost 19 years. The petitioner/ defendant No. 1 has filed its written statement in the year 1992 and issues were framed on 11.10.1995. The plaint was, subsequently, amended on 27.5.2008 on account of subsequent events and consequential amendment in the written statement was also permitted on 30th May, 2008. The parties were afforded ample opportunities to produce documents and the petitioner availing the opportunities, filed

documents from time to time. The petitioner has amended its written statement in the year 2008 and also filed documents on 8.6.2009 and 15.6.2009. In the meanwhile, respondent No. 3 was added as a party and it was allowed to file written statement by order of this Court dated 29.7.2009 and there is a direction to expeditiously decide the suit within a period of three months.

It is further submitted that respondent No. 1/plaintiff is an old and infirm person, his statement has been recorded on commission; the plaintiff has already closed his evidence and the matter is fixed for evidence of defendants. In these circumstances, the application for permission to file 51 additional documents, after 19 years of filing of the suit, has rightly been rejected as the petitioner has not been able to establish that he was prevented from filing the aforesaid documents at earlier stages by sufficient cause. There is no illegality, infirmity or jurisdictional error in passing the impugned order warranting interference and the petition deserves to be dismissed.

I have heard learned counsel for the parties, gone through their pleadings and also perused the documents available on record, including the impugned order.

From pleadings of the petition, return filed by respondent No. 1 and rejoinder thereto, it is not in dispute that the documents, which the petitioner proposes to file in support of its written statement, are relevant for adjudication of the controversy between the parties. It is not in dispute that the plaintiff has closed his evidence and thereafter, on the basis of written statement filed by the newly added defendant No. 3, issues have been framed in the year 2008, and the suit is at the stage of evidence of the defendants. The contention of the petitioner/defendant No. 1 before the Chhattisgarh Wakf Tribunal was that the matter was pending before the M.P. Wakf Tribunal; Chhattisgarh Wakf Tribunal became functional only in the year 2007; the petitioner received notice of the aforesaid case in the year 2007 and thereafter, it could trace the documents from the file of the case, which was with the M.P. Wakf Tribunal, and as soon as the documents were discovered, the same were filed with an application under Order 8 Rule 1A read with Section 151 of CPC before the Chhattisgarh Wakf Tribunal.

Sub-rule (3) of Rule 1A of Order 8 envisages that a document which ought to be produced in Court by the defendant under this rule, but, is not so produced shall not, without the leave of the Court, be received in evidence on his behalf at the hearing of the suit. Thus, a discretion has been vested with the Court to receive documentary evidence at any stage, if good cause is shown to its satisfaction. The discretion vested with the Court should be exercised to further justice as all the rules of procedure being meant for administration of justice and too technical a view should not be taken. Where relevancy of the document for the purposes of adjudication of the controversy is not disputed and the only objection to its admission is delay in filing, in such circumstances, the discretion should be exercised liberally.

In the matters of Quameruddin (supra), learned Single Judge of the M.P. High

Court considering the above aspect held that where the document, which has been permitted to be filed, is official record, admission of the same at the belated stage is justified. It has been further observed that the rules of procedure are only meant to assist the parties and not to punish them.

Similarly, in the matter of Buchibai (supra) also, the documents were, undoubtedly, produced at a very late stage after 61 out of 63 witnesses were examined by the plaintiff, and it has been observed that where the documents are official record of undoubted authenticity, which may assist the Court to rightly decide the issue before it, the same should be permitted to be filed.

In the instant case, the documents proposed to be filed by the petitioner are the documents from the official record of M.P. Wakf Tribunal. They are relevant for proper adjudication of the controversy between the parties; the suit is still at the stage of defendants' evidence, in these circumstances, the trial Court should have allowed the application of defendant No. 1 and permitted it to file documents as per list and should have permitted the defendant No. 1 to examine the witnesses as proposed in the application, by imposing appropriate cost upon defendant No. 1. The rejection of the aforesaid applications may cause grave injustice to defendant No. 1.

In the result, the impugned order is set aside. Both the applications preferred by the petitioner/defendant No. 1 under Order 8 Rule 1A read with Section 151, and under Order 16 Rule 1 read with Section 151 of the C.P.C. are allowed, subject to payment of cost of Rs. 10,000/- by the next date of hearing, payable to the respondent No. 1/plaintiff.

The petition is, accordingly, allowed.

The parties are directed to remain present before the Tribunal on 7th December. 2009.