
(2014) 01 RAJ CK 0033

In the Rajasthan High Court

Case No : Civil Revision Petition No. 400 of 2001

Devki Nandan Pathak and Others

APPELLANT

Vs

Jumma Khan and Another

RESPONDENT

Date of Decision : 30-01-2014

Acts Referred:

Citation : AIR 2014 Raj 70 : (2014) 2 CDR 803 : (2014) 2 RLW 1569 : (2015) 1 WLN 509 : (2014) 2 WLN 509

Hon'ble Judges : Bela M. Trivedi, J

Bench : Single Bench

Advocate : Parag Rastogi, Advocate for the Appellant; B.B. Ojha, Advocate for the Respondent

Final Decision : Allowed

Judgement

Bela M. Trivedi, J.—The present revision petition has been filed by the petitioners-defendants u/s 83(9) of the Wakf Act, 1995 (hereinafter referred to as "the said Act"), challenging the judgment and order dated 22/02/2001 passed by the Presiding Officer, Rajasthan Wakf Tribunal, Jaipur (hereinafter referred to as the Tribunal) in case No. 15 of 1999, whereby the Tribunal has allowed the application filed by the respondent applicant, granting the permanent injunction in respect of the property in question and declaring the sale deed dated 31/01/1997 executed in favour of the petitioner Nos. 1 to 4 by the petitioner No. 5 as null and void. The facts in nutshell giving rise to the present revision petition are that the respondent No. 1-applicant had filed the application being case No. 15/1999 u/s 83 of the said Act seeking relief of permanent injunction against the petitioners-non-applicants before the Tribunal for restraining them from taking forcible possession of the property situated at Masjid Kodiyawali, Barpada, Hindaun City, District Karauli (hereinafter referred to as the suit premises), and from putting up any construction thereon, and causing any obstruction to the persons offering Namaj at the suit premises, and in the alternative seeking declaration that the registered sale deed dated 31/1/1997

executed by the petitioner No. 5 in favour of the petitioner Nos. 1 to 4 was null and void. It was alleged inter alia in the said application that the suit property was the wakf property as registered with the Rajasthan Wakf Board and was being used as part of the Masjid where the people used to offer Namaj, and the students used to study; that on 3/5/1998, the petitioners-non-applicants suddenly tried to take forcible possession of the suit premises and put up construction thereon. It was further alleged that on the enquiry made by the respondent-applicant, it was found that the petitioner No. 5 had executed a registered sale deed in favour of the petitioner Nos. 1 to 4 on 31/01/1997 in respect of the part of the property of the said Masjid, and therefore, the application was filed. It was also alleged that the applicant was the Muttavali of the said Masjid and was also offering Namaj there, and therefore he had right to file the application. The said application was resisted by the petitioners-non-applicants by filing their reply contending inter alia that the suit property was not registered as the wakf property with the Rajasthan Wakf Board, and that the petitioner Nos. 1 to 4 had become the owners of the suit premises by virtue of the sale deed dated 31/01/1997. It was also contended that the respondent applicant did not have the authority to file the suit, and that the Tribunal did not have the jurisdiction to decide the dispute involved in the suit. The Tribunal, after appreciating the evidence led by both the parties, allowed the said application/case vide the judgment and order dated 22/02/2001. Being aggrieved by the same, the present revision petition has been filed.

2. The learned counsel for the petitioners vehemently submitted that the Tribunal had exceeded its jurisdiction while entertaining the application filed u/s 83 of the said Act, under which any mutawalli or any other person aggrieved by the order made under the said Act or the Rules could make the application before the Tribunal. According to Mr. Rastogi, there being no order passed by any authority under the said Act, and the respondent being not the Muttavali the application filed by him u/s 83 was not maintainable. Placing heavy reliance on the provisions contained in Sections 6 and 7 of the said Act, he submitted that the dispute raised in the application being not the dispute covered under Sections 6 or 7, the Tribunal had no jurisdiction to entertain and decide the same. According to Mr. Rastogi as per the provisions contained in Section 32 of the said Act, it was for the wakf board only to take necessary action to institute or defend the suits or the proceedings relating to the wakfs and not by the person, who is not the mutawalli. Mr. Rastogi has relied upon the decision of Apex Court in case of Ramesh Gobindram (dead) through Lrs. Vs. Sugra Humayun Mirza Wakf, and, in case of Tamil Nadu Wakf Board Vs. Hathija Ammal (Dead) by Lrs. etc. etc., in support of his submissions.

3. However, the learned counsel Mr. B.B. Ojha for the respondent-applicant relying upon the decision of the Apex Court in case of Akkode Jumayath Palli Paripalana Committee Vs. P.V. Ibrahim Haji and Others, , submitted that the dispute relating to wakf property has to be adjudicated by the Wakf Tribunal only, and the Civil Court has no jurisdiction to decide such dispute. According to him,

even though the respondent-applicant is not treated as the mutawalli, he was the person interested in the wakf as per the definition in Section 3(k) of the said Act, and therefore had the right to file the application before the Tribunal.

4. As stated hereinabove, the respondent-applicant had filed the application before the Tribunal u/s 83 of the said Act seeking permanent injunction in respect of the suit premises and in the alternative seeking declaration with regard to the sale deed dated 31/01/1997 executed by the petitioner No. 5 in favour of the petitioner Nos. 1 to 4. At this juncture, it would be beneficial to reproduce the relevant part of Section 83 of the said Act, which reads as under:

83. Constitution of Tribunals, etc.

(1).....

(2) Any mutawalli person interested in a wakf or any other person aggrieved by an order made under this Act, or rules made thereunder, may make an application within the time specified in this Act or where no such time has been specified, within such time as may be prescribed, to the Tribunal for the determination of any dispute, question or other matter relating to the wakf.

5. From the bare reading of the said provision, it clearly transpires that the mutawalli person interested in a wakf or any other person aggrieved by an order made under the Act or the Rules made thereunder, could make an application before the Tribunal for the determination of the dispute, question or other matter relating to the wakf. So far as facts of the present case are concerned, it appears that there was no order passed the Act which was under challenge before the Tribunal, nor the respondent-applicant was not the mutawalli as contemplated in Section 3(i) of the said Act. There is nothing on record to suggest that on the date of filing the application, the suit premises was wakf and the respondent was appointed as the mutawalli either verbally or any deed or instrument by which the wakf was created in respect of the property in question. There being no order made by any authority under the said Act, he could not be said to be the person aggrieved also as contemplated in Section 83(2) of the said Act. Under the circumstances, the application or the case itself filed by the respondent-applicant before the Tribunal u/s 83(2) of the said Act was not maintainable in the eye of law.

6. Further, the respondent-applicant had filed the application seeking permanent injunction and in the alternative seeking declaration in respect of the suit premises to the effect that the sale deed dated 31/01/1997 executed by the petitioner No. 5 in favour of the petitioner Nos. 1 to 4 be declared as null and void. As rightly submitted by the learned counsel Mr. Rastogi for the petitioner, the said dispute being not the dispute covered u/s 6 or Section 7 or under any other provision of the Act, the Tribunal had no jurisdiction to decide the same. As held by the Apex Court in case of Bhanwar Lal and Another Vs. Rajasthan Board of Muslim Wakf and Others, , insofar as the relief of cancellation of sale deed is

concerned, it is to be tried by the Civil Court for the reason that it is not covered by Section 6 or 7 of the Act, whereby the jurisdiction is conferred upon the Tribunal to decide such an issue. In view of the said legal position, the application/suit filed by the respondent seeking cancellation of the sale deed at the instance of the respondent in respect of the suit premises was not maintainable before the Tribunal, nor the Tribunal had the jurisdiction to entertain the same.

7. It is also pertinent to note that though the respondent had prayed for the declaration in respect of the sale deed executed by the petitioner No. 5 in favour of the petitioner Nos. 1 to 4, the Tribunal, without framing any issue in that regard and recording any finding on such issue, has set aside the said sale deed, which was a registered sale deed executed by the petitioner No. 5 in favour of the petitioner Nos. 1 to 4, declaring it to be null and void. Such an order passed by the Tribunal being ex facie arbitrary, illegal and without jurisdiction, deserves to be set aside. In that view of the matter, the impugned order dated 22/02/2001 is set aside. The revision petition is allowed accordingly.