

(2016) 03 MAD CK 0176

In the Madras High Court

Case No : C.R.P (PD) No. 4099 of 2014 & M.P. No. 1 of 2014

Dr. Abdul Rahman

APPELLANT

Vs

Mohamed Syed

RESPONDENT

Date of Decision : 29-03-2016

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 7 Rule 11 (d)
Waqf Act, 1995 — Section 83, 85

Citation : (2016) 165 AIC 366 : (2016) 2 MadWN(Civil) 470 : (2016) 4 MLJ 520

Hon'ble Judges : P.R. Shivakumar, J.

Bench : Single Bench

Advocate : N.A. Nissar Ahmed, Advocate, for the Appellant; K.S. Ilangovan for Achari & Antoni Associates, for the Respondent

Final Decision : Allowed

Judgement

P.R. Shivakumar, J.—The defendant in the original suit O.S. No. 72/2013 on the file of the Court of Principal District Judge, Cuddalore, is the petitioner in the present civil revision petition. The above said suit was filed by the respondent herein against the petitioner herein for: (1) a declaration that the sale deed dated 02.07.2009 executed in favour of the defendant in respect of the suit properties and registered as Document No. P. No. 7/2575/2009 in Book No. 1 in the office of the Sub Registrar, Parangipettai as null and void; (2) a direction against the petitioner herein/defendant to deliver vacant possession of the suit properties to the respondent/plaintiff; (3) a further direction directing the petitioner herein/defendant to pay past mesne profits for three years prior to the filing of the suit and future mesne profits from the date of filing of the suit till delivery of possession and (4) cost.

2. The revision petitioner/defendant filed an application under Order 7, Rule 11 CPC praying for the rejection of the plaint on the ground that the Civil Court has no jurisdiction and the respondent/plaintiff should have approached the Competent Authority under the Wakf Act, 1995, as there is a bar for entertaining

a civil suit in a Civil Court. The said application was resisted by the respondent herein/plaintiff, based on the contention that the revision petitioner/defendant, being a trespasser, filed the said application for rejection of the plaint in order to drag on the proceedings and squat on the Trust property as long as possible and that there is no provision of law barring such a suit in a civil court and that therefore, the petition seeking rejection of the plaint should be dismissed as not maintainable.

3. The learned trial Judge, after hearing both sides, by an order dated 17.07.2014, sustained the objection raised by the respondent herein/plaintiff, rejected the contention of the revision petitioner herein/defendant and dismissed the said application I.A. No. 102/2014 filed under Order 7, Rule 11 CPC. The said order is challenged in the present revision.

4. The respondent has entered appearance and is represented by a counsel. The arguments advanced by Mr. N.A. Nissar Ahmed, learned counsel for the revision petitioner and by Mr. K.S. Ilangovan, arguing for M/s. Achari & Antoni Associates, the counsel on record for the respondent were heard. Certified copy of the impugned order, grounds of revision and copies of other documents produced in the form of typed set of papers were also perused.

5. This court paid its anxious considerations to the above said submissions and to the above mentioned documents.

6. It is not in dispute that Yusuf Sahib Trust and Charities, Parangipettai, Chidambaram Taluk, Cuddalore District is a wakf and the respondent herein/plaintiff Janab Mohamed Syed has filed the above said suit in the capacity of Trustee (Mutawalli) of the above said Trust (wakf). Of course the petitioner/defendant is also a wakf represented by its Chairman Dr.Abdul Rahman. The plaint contains an averment to the effect that the suit properties had been notified as wakf properties belonging to Yusuf Sahib Trust of which Mohamed Syed Maraikayar was the Mutawalli; that the wakf had been created for educational purposes, besides religious activities; that a sale agreement came to be entered into between Mohamed Syed Maraikayar, Mutawalli of Yusuf Sahib Trust and Charities and the revision petitioner/defendant for sale of the suit properties of Dr.Abdul Rahman Trust represented by its Chairman Dr.Abdul Rahman on 02.08.2007, subject to certain conditions regarding induction of the above said Mohamed Syed Maraikayar, the Mutawalli of Yusuf Sahib Trust and Charities, as one of the Directors of the revision petitioner/defendant Trust; that as per the agreement, without even getting the permission of the Wakf Board, a sale deed came to be executed on 20.07.2009 in favour of the revision petitioner herein/defendant and that since the permission of the Wakf Board was not obtained in the sale of the wakf property, the sale was null and void and it would not have conferred valid title on the revision petitioner/defendant. Based on the said contention, the above said prayers for declaration, delivery of possession and mesne profits came to be made.

7. The factual matrix as found in the plaint averments has not been denied or disputed by the revision petitioner/defendant. On the other hand, the revision petitioner/defendant questioned the very competence of the civil court to entertain the suit and prayed for the rejection of the plaint on the ground that the suit in the civil court is barred by the provisions of the Wakf Act, 1995. Though the revision petitioner/defendant, in the supporting affidavit, has not specifically referred to a particular provision of the Wakf Act, a clear averment has been made to the effect that the suit in the civil court is barred by the provisions of the Wakf Act. The learned trial Judge, while considering the application, did not advert to the provisions of the Wakf Act to find out whether such a suit in a civil court is barred by any of the provisions of the Wakf Act. Section 83 of the Wakf Act, 1995 contemplates the constitution of Wakf Tribunals for determination of any dispute, question or other matter relating to a wakf or wakf property. For the sake of convenience, Section 83 is reproduced herein. The relevant portions are highlighted.

"83. Constitution of Tribunals, etc.- (1) [(1)The State Government shall, by notification in the Official Gazette, constitute as many Tribunals as it may think fit, for the determination of any dispute, question or other matter relating to a waqf or waqf property, eviction of a tenant or determination of rights and obligations of the lessor and the lessee of such property, under this Act and define the local limits and jurisdiction of such Tribunals;]

(2) Any mutawalli person interested in a Waqf 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 Waqf.

(3) Where any application made under sub-section (1) relates to any Waqf property which falls within the territorial limits of the jurisdiction of two or more 45 Tribunals, such application may be made to the Tribunal within the local limits of whose jurisdiction of the mutawalli or any one of the mutawallis of the Waqf actually and voluntarily resides, carries on business or personally works for gain, and where any such application is made to the Tribunal aforesaid, the other Tribunal or Tribunals having jurisdiction shall not entertain any application for the determination of such dispute, question or other matter: Provided that the State Government may, if it is of opinion that it is expedient in the interest of the Waqf or any other person interested in the Waqf or the Waqf property to transfer such application to any other Tribunal having jurisdiction for the determination of the dispute, question or other matter relating to such Waqf or Waqf property, transfer such application to any other Tribunal having jurisdiction, and, on such transfer, the Tribunal to which the application is so transferred shall deal with the application from the stage which was reached before the Tribunal from which the application has been so transferred, except where the tribunal is of opinion that it is necessary in the interests of justice to deal with the application afresh.

(4) [Every Tribunal shall consist of?

(a) one person, who shall be a member of the State Judicial Service holding a rank, not below that of a District, Sessions or Civil Judge, Class I, who shall be the Chairman;

(b) one person, who shall be an officer from the State Civil Services equivalent in rank to that of the Additional District Magistrate, Member;

(c) one person having knowledge of Muslim law and jurisprudence, Member; and the appointment of every such person shall be made either by name or by designation.]

(4A) [The terms and conditions of appointment including the salaries and allowances payable to the Chairman and other members other than persons appointed as ex officio members shall be such as may be prescribed.]

(5) The Tribunal shall be deemed to be a civil court and shall have the same powers as may be exercised by a civil court under the Code of Civil Procedure, 1908 (5 of 1908), while trying a suit, or executing a decree or order.

(6) Notwithstanding any thing contained in the code of Civil Procedure, 1908 (5 of 1908), the Tribunal shall follow such procedure as may be prescribed.

(7) The decision of the Tribunal shall be final and binding upon the parties to the application and it shall have the force of a decree made by a civil court.

(8) The execution of any decision of the Tribunal shall be made by the civil court to which such decision is sent for execution in accordance with the provisions of the Code of Civil Procedure, 1908 (5 of 1908).

(9) No appeal shall lie against any decision or order whether interim or otherwise, given or made by the Tribunal:

Provided that a High court may, on its own motion or on the application of the Board or any person aggrieved, call for and examine the records relating to any dispute, question or other matter which has been determined by the Tribunal for the purpose of satisfying it self as to the correctness, legality or propriety of such determination and may confirm, reverse or modify such determination or pass such order as it may think fit.

A reading of Section 83 will make it clear that the Tribunals contemplated under the said provision are conferred with jurisdiction to determine any dispute, question or other matter relating to a wakf or wakf property.

8. Section 85 bars the jurisdiction of the Civil courts, Revenue court and other authorities in respect of any dispute, question or other matter relating to any wakf or wakf property, which is required to be determined by a Tribunal. Section 85 is reproduced here under:

85. Bar of jurisdiction of civil courts.- No suit or other legal proceeding shall lie in

any [civil court, revenue court and any other authority] in respect of any dispute, question or other matter relating to any Waqf, Waqf property or other matter which is required by or under this Act to be determined by a Tribunal. A conjoint reading of Sections 83 and 85 will make it clear that any dispute regarding a wakf property has to be determined by the Wakf Tribunal and the jurisdiction of Civil Court, Revenue Court and other authorities in respect of the said dispute is barred by Section 85 of the Wakf Act, 1995.

9. It is not in dispute that a Tribunal has been constituted and it has jurisdiction over the matter in issue. As such, this court does have no hesitation in coming to the conclusion that the suit filed by the respondent herein in the Civil court is one barred by Section 85 of the Wakf Act, 1995 and accordingly, it falls under the mischief of Order 7, Rule 11 (d) of CPC. The learned trial Judge, without adverting to the said provisions of law and without properly considering the issue raised in the application, simply came to the conclusion that the question of jurisdiction was a mixed question of law and fact and it can be decided only after evidence, both oral and documentary, could be adduced. The said finding of the trial court is quite infirm, erroneous and discrepant, which requires interference by this court in this revision. For all the reasons stated above, this court comes to the conclusion that the revision is bound to be allowed and the impugned order of the trial court deserves to be set aside.

10. In the result, the civil revision petition is allowed. The order of the trial court dated 17.07.2014 made in I.A. No. 102/2014 in O.S. No. 72 of 2013 dismissing the said interlocutory application is hereby set aside. I.A. No. 102/2014 is allowed. The plaint in O.S. No. 72 of 2013 shall stand rejected as barred by a statutory provision. However, there shall be no order as to cost. Consequently, the connected miscellaneous petition is closed.