

(2008) 02 AHC CK 0083
In the Allahabad High Court

Gandhi Ashram Anta Ghar

APPELLANT

Vs

Kr. Abdul Wasi Khan and Others

RESPONDENT

Date of Decision : 26-02-2008

Acts Referred:

Waqf Act, 1995 — Section 3, 83, 85

Citation : (2008) 02 AHC CK 0083

Hon'ble Judges : Krishna Murari, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Krishna Murari, J.—Heard learned Counsel for the applicant and Sri Rahul Sahai appearing for opposite party No. 4.

2. Aggrieved by the order passed by the trial court rejecting the application under Order VII Rule 11 of the Code of Civil Procedure, 1908 (for short the "Code), defendant-applicant has approached this Court.

3. Facts are that the plaintiffs-opposite parties filed a suit for ejectment of defendant and for declaration that suit property is Wakf Alal Aulad and plaintiffs were Mutawalli. Suit was filed on the allegations that suit property is Wakf Alal Aulad and the plaintiffs are the beneficiaries and Kr. Abdul Wasi Khan is at present the Mutwalli of the said wakf. An application under Order VII Rule 11 of the Code was filed that since the property is Wakf property, the suit is barred in view of the provisions of Section 85 of the Wakf Act and the plaint is liable to be rejected. Court below rejected the application.

4. It has been contended by the learned Counsel for the applicant that the application has wrongly and illegally been rejected on the finding that it has been moved at a very belated stage after the issues have been framed and the evidence is going on. It has further been contended that the application under Order VII Rule 11 of the Code can be considered at any stage and delay cannot constitute a ground for rejecting the application.

5. In reply, Sri Rahul Sahai appearing for opposite party No. 4 has submitted that since the suit property was Wakf Alal Aulad and there was no allegation with regard to the property being dedicated for pious, religious or charitable purposes, Wakf Alal Aulad would not be covered under the definition of Wakf defined in Section 3(r) of the Wakf Act. It has further been contended that for consideration of rejection of plaint under Order VII Rule 11 of the Code, plaint allegations alone are to be seen and in the absence of such allegations in the plaint, the application has rightly been rejected.

6. I have considered the arguments advanced by the learned Counsel for the parties and perused the record.

7. Section 3(r) of the Wakf Act, 1995 defines Wakf as under:

3(r). "wakf" means thue permanent dedication by a person professing Islam, of any movable or immovable property for any purpose recognized by the Muslim law as pious, religious or charitable and includes-

(i) a wakf by user but such wakf shall not cease to be a wakf by reason only of the user having ceased irrespective of the period of such cesser,

(ii) "grants", including mashrut-ul-khidmat for any purpose recognized by the Muslim law as pious, religious or charitable; and

(iii) a wakf-alal-aulad to the extent to which the property is dedicated for any purpose recognized by Muslim law as pious, religious or charitable, and "wakf" means any person making such dedication.

8. Section 85 of the Wakf Act creates bar of jurisdiction of civil court in respect of any disputed question and other matter relating to Wakf property or other matter which is liable to be determined by the Tribunal appointed u/s 83 of the Wakf Act. There can be no dispute about the fact that mischief of Section 85 of the Act only come into play in respect of wakf or wakf property and unless it is wakf covered under the definition as contained in the Act the provisions of Section 85 of the Act would not apply. The only allegation as contained in para 1 of the plaint is that property is Wakf Alal Aulad. There is absolutely no details with respect to property being dedicated for any purpose pious, religious or charitable so as to include the wakf-ala-aulad in the definition of wakf. While considering the rejection of the plaint under Order VII Rule 11 of the Code only the plaint allegations are to be seen. In the absence of any such allegations, it cannot be said that suit property is wakf property covered under the definition of Wakf Act and as such mischief of Section 85 of the Act will not come into play and plaint is not liable to be rejected under Order VII Rule 11 of the Code.

9. In this view of the matter, the application under Order VII Rule 11 of the Code moved by the applicant was liable to be rejected and the rejection by the court below on entirely different ground cannot constitute a ground for interference by this Court in the said order.

10. The revision accordingly fails and stands dismissed.