

(2009) 03 KL CK 0059

In the High Court Of Kerala

Case No : Writ Petition (C) No. 35052 of 2007 (W)

K. Musthafa

APPELLANT

Vs

Abdul Jabbar K.P., T.P. Muhammed @ Chinnakutty Haji, P.K.
Faisal and Anwar T.P.

RESPONDENT

Date of Decision : 19-03-2009

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 9
Waqf Act, 1995 — Section 85

Citation : (2009) 03 KL CK 0059

Hon'ble Judges : Harun-UI-Rashid, J

Bench : Single Bench

Advocate : C. Khalid, for the Appellant; M. Mohammed Iquabal, for the Respondent

Final Decision : Allowed

Judgement

Harun-UI-Rashid, J.—The plaintiff in O.S. No. 177/2007 on the file of the Munsiff's Court, Parappanangadi is the writ petitioner. The suit was filed for a declaration that the Hussain Madavoor Group in the Chenakkalangadi Sakha is entitled to manage the affairs of the Sakha till the final disposal of the litigation regarding the control and administration of the Society called Kerala Naduvathul Mujahideen and for a consequential injunction restraining the defendants and their supporters from interfering with or obstructing the administration and management of the affairs of the Chenakkalangadi Sakha, its institutions and properties by the Hussain Madavoor Group.

2. Plaintiff is representing Hussain Madavoor Group of members of the Chenakkalangadi Sakha. The Kerala Naduvathul Mujahideen is a Society registered under the Societies Registration Act with its own bye-laws. The primary level of the Society is the Sakha which is to be governed by a managing committee elected from among its members.

3. Ext.B3 is the by-law of Kerala Naduvathul Mujahideen. Clause 3 of the said by-

law stipulates that Society shall establish Mosques, educational institutions, orphanages, hospitals etc. for the purpose of achieving the objections.

4. Paragraph 4 of Ext.P1 plaint states that the Chenakkalangadi Sakha owns and manages a juma masjid, a madrassa, two tenanted shop-rooms, and an unfinished house. In Paragraph 5 states that on 19/7/2007 the warring groups entered into an adhere agreement to carry out the administration of Sakha till the final decision is pronounced in the pending litigations. Agreement was to conduct an election on an adhere arrangement. In paragraph 6 it is stated that in the election conducted on 4th August 2007 19 votes were cast in favour of Hussain Madavoor group and 17 votes in favour of Abdulk Khader Mulavi group. It is further averred that on the basis of the result of the election, Hussain Madavoor group is entitled to manage the Sakha and that the defendants, who belong to the defeated group, have threatened to obstruct the management of the Sakha by the Hussain Madavoor group and therefore the suit was filed for declaration and injunction.

5. Along with the suit the plaintiff filed I.A. No. 1286/2007 for temporary injunction forbidding the respondents and his men from interfering with or obstructing the administration and management of the affairs of the Chenakkalangadi Sakha, its institutions and properties by the elected body, who are the members of Hussain Madavoor group.

6. In the counter affidavit filed by the defendants it is inter alia contended that the suit properties are wakf properties, that the Mosque has become wakf by user and hence a public wakf and therefore any suit with respect to the management of these wakf properties cannot be instituted in an ordinary civil court. It is further contended that the Wakf Tribubal has got jurisdiction to try the suit, in view of the express bar u/s 85 of the Wakf Act. Yet another contention is that the Sakha is not a Society registered under the Societies Act.

7. Going by the averments in the plaint it is seen that the dispute is regarding the administration of a registered society which owns non-wakf properties also. I have recorded sub Clause 3 of the by-law wherein it is stated that to achieve the objects, for which the society is constituted, hospitals, educational institutions, orphanages, mosques etc. shall be established. The Wakf Act confers exclusive jurisdiction to the Wakf Tribunal to adjudicate the questions of wakf and wakf properties only.

8. Learned Counsel for the petitioner submitted that since the administration of the Sakha deals with non-wakf properties also, Wakf Tribunal has no jurisdiction in the matter and the suit is maintainable in law. The plaintiff proceeded on the basis that the Sakha owns and manages not only the Mosque but other assets, madrassa, shop-rooms, juma masjid and another unfinished building. The court below held that the civil court has jurisdiction to try the suit. Ext.P7 is the order. The Lower Appellate Court reversed the findings and held by Ext.P8 judgment that the Wakf Tribunal alone has jurisdiction. The petitioner seeks to quash

Ext.P8 order and to restore Ext.P7 order. The plaintiff Sakha is a unit of Kerala Naduvathul Mujahideen, a Society registered under the Societies Registration Act. The Sakha is governed by its own by-laws. The Sakha is the primary level of the Society. Sakha consists of members and the administration of the Sakha is vested on the elected committee. To achieve the objects of the Society is found to establish several institutions including Mosque. The Mosque admittedly a public wakf, which is only one of the institutions under the management and administration of the Sakha as the case may be. Any suit with respect to the management of the wakf cannot be instituted in an ordinary civil court and the Wakf Tribunal alone has got jurisdiction to try a suit. There is express bar u/s 85 of the Wakf Act.

9. The plaint averment does not state about the institutions run by the Sakha as wakf properties. Even according to the defendants, only one of the institutions run by the Sakha is a wakf property. I cannot agree with the contention of the respondents. On the basis of the pleadings, it is seen that the Society is found for achieving several objects and the administration of several institutions other than wakf properties and therefore, the dispute regarding the administration of the Society or its Sakha is a matter lies outside the jurisdiction of the Wakf Tribunal. The plaint averments recited that the elected body is prevented from administering the affairs of the Sakha by the defendants and that they apprehended that the defendants are likely to obstruct the management of the sakha and its properties. The averments indicate the dispute over the administration of the Sakha which is not regarding the administration of wakf and wakf properties. If the relief asked for is in the nature of a claim which arises out of the Wakf Act or in all its provisions, it would be barred u/s 85 of the Wakf Act.

10. The Apex Court in Sanwarmal Kejriwal Vs. Vishwa Co-operative Housing Society Ltd. and others, and Raizada Topandas and Another Vs. Gorakhram Gokalchand, held that jurisdiction is to be determined on the basis of averments made in the plaint and not on the basis of the defence taken by the adverse party, but if the averments on the basis of which court assumed jurisdiction, are not established before the court, the court will dismiss the suit on the ground of failure to prove the jurisdiction, that the jurisdiction of the court in which the action is originated must be determined on the averments in the plaint and that if the defendant succeeds in proving the fact which will take away jurisdiction of the trial court, the court trying the case would dismiss the suit on the ground that the plaintiff had failed to prove the jurisdictional fact. On the basis of the same, the trial court held that the said court has jurisdiction to entertain the suit. For the reasons stated above, I hold that the Munsiff's Court, Parappanangadi had jurisdiction to entertain the suit subject to the condition that if the averments on the basis of which the court assumed jurisdiction, are not established before the court, the court will dismiss the suit on the ground of failure to prove the jurisdiction.

11. The election was conducted on 4/8/2007 and it is submitted that the committee took charge. The decision taken by the Appellate Court on the basis of the decisions reported in Pookoya Haji Vs. Cheriya Koya, and Madana Masjid v. Kerala Jama Ath Islami Hind 2007 (3) KLT 800 is not correct. The bar u/s 85 of the Wakf Act is confined to the questions to be decided by the Tribunal and with respect to other matters the jurisdiction of the civil court is not barred. Section 9 of the C.P.C. states that the civil court shall have jurisdiction to try all the suits of a civil nature except the suits of which their cognizance either expressly or impliedly barred. The finding of the Appellate Court that the subject matter of the suit confers jurisdiction on the Wakf Tribunal and that there is express bar u/s 85 of the Wakf Act for the civil court to entertain the suit is illegal and the finding is against the pleadings and the law. The decision of controversies raised in the suit had been required adjudication. It is a matter to be done by the Wakf Tribunal. (Sahebgouda v. Ogeppa AIR 2003 SC 2743

12. The trial court discussed the materials on record and held that the petitioner, being an elected body in accordance with Ext.A1 has got absolute right to manage the affairs of the Sakha. The finding of the trial court that the petitioner has established a prima facie case and therefore entitled for the relief is to be sustained. In the result, Ext.P8 is quashed and Ext.P7 is restored.

Writ Petition is allowed.