
(1971) 03 AP CK 0018
In the Andhra Pradesh High Court
Case No : Second Appeal No. 26 of 1971

L. Machi Reddy

APPELLANT

Vs

The Wakf Board of Andhra Pradesh

RESPONDENT

Date of Decision : 27-03-1971

Acts Referred:

Limitation Act, 1963 — Article 65, 96

Citation : AIR 1973 AP 73

Hon'ble Judges : Gopal Rao Ekbote, J

Bench : Single Bench

Advocate : V. Venkata Ramana Reddy, for the Appellant; M.S. Khan, for M.A. Baig, for the Respondent

Judgement

Gopal Rao Ekbote, J.—This is an appeal from the judgment of the learned Addl. District Judge of Cuddapah given in a S. No. 122/69 on 4.8.1970 whereby the learned Additional District Judge allowed the appeal and decreed the plaintiff's suit.

2. The facts which gave rise to this appear are that the Wakf Board, Andhra Pradesh instituted the suit for recovery of possession alleging inter alia that the properties covered by Title Deed No. 490 are endowed to Peerlu and as such they constitute Wakf property belonging to the institution of Peerlu (Ashurkhana). It is further alleged that previously one Aggi Dastagiri Sab was the Mutwalli and manager of the said religious institution. The said Dastagiri Sab and his shareholders alienated items 1 and 2 viz., No. Nos. 328/1 and 328/3 of Tappetla village to one Machireddi, Karnam of Tappetla, the 1st defendant, under a sale deed dated 1.2.1943. The said Manager and his co-sharers also sold item 3 i.e., S. No. 453 of Tappetla village to the 2nd defendant under a sale deed dated 16.10.1946. It was alleged that the manager and his share-holders had no authority whatsoever to effect the sale in favour of the defendants. They are therefore illegal and void.

3. The Wakf Board after a proper enquiry declared the suit properties to be Wakf

properties u/s 5 of the wakf Board Act on 26.3.1964. as the defendant did not handover possession to the Wakf Board, the suit out of which the 2nd appeal arises was instituted on 14.8.1967.

4. The defendants contended that the suit was time barred and that they have perfected their title by adverse possession. They also contended that the sales were effected to carry out the repairs of the Peerlu.

5. The trial court, after a proper enquiry, held that the suit properties are Wakf Properties. It however found that the suit was barred by limitation and that the defendants have perfected their titles by adverse possession. The plaintiff's suit therefore for recovery of possession was held to be not maintainable.

6. The Wakf Board carried the matter in appeal to the District Judge. The district Judge allowed the appeal and held that the properties are Wakf properties. He found that the suit was within time because Art. 96 of the Indian Limitation act, applies to the present suit. The learned District Judge did not deal with the question of perfection of title of the defendants by adverse possession.

7. In this appeal, the principle contention of the learned Advocate for the appellant is that the suit is barred by time because in his submission it is art. 144 of the Limitation act that applies to the suit and not article. 96

8. In so far as the argument u/s 3 of the Extension of Limitation Act 29 of 1959 is concerned, it was a common ground that that section would not apply because even according to that section the dispossession or discontinuation of possession must have occurred after 14.8.1947 and before 7th May, 1954. It is only when dispossession or discontinuation of possession occurs between that period that the suit according to that provision can be filed at any time after 14.8.1947 but before 7.5.1954. Since in this case both the transfers were made earlier to 14.8.1947, the section would have no application whatsoever.

9. I have therefore consider whether Art. 96 applies to the present case as is held by the learned District Judge. Two contentions were advanced in order to show that the said Article is not applicable. It was first contended that the Mutwalli cannot be said to be a manager within the meaning of Article 96, I do not think the argument has any force. Art. 96 reads as under.

By the Manager of a Hindu Muslim or TWELVE The date of death, registration

Buddhist religious or charitable endowment or removal of the transferor or

to recover possession of movable or immovable YEARS the date of appointment of the

property comprised in the endowment which plaintiff as manager of the is later.

has been transferred by a previous manager

for a valuable consideration.

10. Even a casual reading of this article would reveal that the transfer must be by a manager of a religious institution and the suit for recovery of possession must have been instituted by the manager of the religious institution. Thus both the questions, which are raised before me, that is, that the mutwalli who transferred the property is not a manager and the Wakf Board which instituted the suit also is not the manager will have to be considered together.

11. Article 96 undoubtedly contemplates a suit by the manager of the endowment. It is, however, plain that the manager postulated by this article is not necessarily a de facto manager. It will also include de jure manager. Thus a suit for recovery of possession may be filed by a person who in law constitutes a manager of even by a person who is in actual possession of the religious institution and who sues for the recovery of the property for the benefit of the institution and not for his personal benefit. Thus even a suit by a committee of management appointed by the Court or the endowments department on the removal or suspension of a previous manager can obviously be considered as a suit by a manager within the meaning of the said article.

12. Likewise as long as the Mutwalli and his co-sharers acknowledge that they are the mutwallis of the religious institution, I fail to see how they cannot be characterised as manager of the religious institution. It may perhaps have been a different thing if the mutwalli had repudiated the Mutwalliship but so such case is pleaded in this case. I have therefore no hesitation in holding that the Mutwalli and his co-sharers who transferred the property to the defendants are managers within the meaning of article 96 of the Limitation Act.

13. In so far as the capacity of the Board to institute the present suit as manager is concerned, Section 15 of the wakfs Act makes it abundantly plain that subject to any rules that may be made under the said Act, the general superintendence of all Wakfs in a State shall vest in the Board established for the state; and it shall be the duty of the Board so to exercise its powers under the said Act as to ensure that the Wakfs under its superintendence are properly maintained, controlled and administered and the income thereof is duly applied to the objects and for the purposes of which such wakfs were created or intended. Thus, a very wide power is given to the Board not only to supervise the functioning of these wakfs but to see that they are properly maintained, controlled and administered. The Board is specifically charged with the duty to see that the income of the wakfs is duly applied to the objects and for the purposes for which the wakfs were created or intended. A part from this general power which section 15 (1) confers on the Board, clauses (h) and (I) of sub-section (2) of that Section specifically empower the board to take measures for the recovery of lost properties of any wakf and to institute and defend suits and proceedings in a court of law relating to wakfs.

14. What must necessarily follow therefore, is that the Wakf Board having

supervisory powers and having special duties to perform is not only entitled to file the suit for recovery of the property lost to the Wakf board but also can manage and administer the property or see that the properties are properly managed and administered and its income applied to the objects and for the purposes for which the wakfs were created or intended. Keeping in view these statutory functions and the powers of supervision of the Wakfs Board over the wakfs. I do not experience any difficulty in holding that the Wakf board is a manager within the meaning of article 96 of the Limitation act.

15. A glance at the antecedents of Article 96 would immediately reveal that even under the law as it stood prior to the enactment in 1929 of article 134-B of the Limitation Act, of 1908, corresponding to the present art. 96, a suit by the manager of a Muslim religious or charitable endowment for recovery of possession of immovable property alienated by a previous manager was governed by a twelve years period of limitation running from the date of the termination of the tenure of office of the alienating manager. Article 134-B gave legislative effect to this view which is followed by Article 96.

16. It is true that the Mutwalli who transferred the property has not been removed nor has he resigned. He is still alive. That does not, however, make Article 96 inapplicable in my judgment. It is now fairly settled that it is not necessary for the applicability of article 96 that the transferor should have been the immediate predecessor of the plaintiff in the office of manager. Likewise, although Article 96 says that the period of 12 years would commence from the date of death, resignation or removal of the transferor but it also says that the limitation can be commenced also from the date of appointment of the plaintiff as manager of the endowment, which ever is later. It is not therefore in all cases necessary that the previous Mutwalli must have been either removed or he must have resigned or he must have died. Even from the date of the appointment of the plaintiff as a manager of the endowment, the limitation would commence. If one remembers that the statutory position of the Wakf Board is of a supervisory character, then it will not be hard to realise that a Mutwalli who transfer the property may continue in the office but such a transfer can be invalidated or possession transferred in pursuance of such transfer can be recovered by Wakf Board without waiting for the resignation, death , or removal of the Mutwalli. When the period necessarily commences after the death, resignation or removal of the old Mutwalli who transferred the property during his lifetime under the first part, the suit can be brought by the Wakf Board within the specified time to invalidate the sale and recover possession under the second part of the Article. When supervisory powers are exercised by the Board u/s 15 of the Wakfs Act, it only means that to the extent of the transfer as illegal and void. I, therefore agree with the view taken by the first appellate court that it is article 96 which would not doubted that since the Wakf Board was constituted for the first time on 4.3.1961, the suit instituted on 14.8.1967 would be still within time.

17. The argument relating to adverse possession and perfection of title by the

defendants holds no water. It is now plainly settled that the possession of the alienee becomes adverse to the religious institution only from the date of the termination of the tenure of office of the alienating manager. This view was based on the ground that the alienation of property belonging to a Hindu, Muslim etc., endowment by the manager was good (when it was not set aside in proper proceedings taken for the purpose) so long as the alienating manager held office, and the possession of the alienee became unlawful only on the cessation of the transferring manager's term of office. This view has been expressed in several Privy Council decisions and has been adopted in more than one case even by the Madras High court. What is therefore plain is that during the lifetime of the Mutwalli who transferred the property the transferee's adverse possession cannot be said to have even commenced. There is therefore no question of perfection of their title by computing the statutory period of adverse possession. It is because of this obvious legal possession perhaps no arguments were advanced before the lower appellate Court, and I do not feel any difficulty in rejecting the same.

18. For the reasons stated above, the second appeal fails and is dismissed with costs. No leave.

19. Appeal dismissed.