

(2015) 02 MAD CK 0265

In the Madras High Court

Case No : W.A. Nos. 292, 349/2012, C.R.P.(NPD) No. 2484/2012 and M.P. Nos. 1, 1, 1 of 2012

M. Sirajuddin Sayeed

APPELLANT

Vs

Tamil Nadu Wakf Board and Others

RESPONDENT

Date of Decision : 18-02-2015

Acts Referred:

Constitution of India, 1950 — Article 227
Limitation Act, 1963 — Section 14
Waqf Act, 1995 — Section 83, 89

Citation : (2015) 02 MAD CK 0265

Hon'ble Judges : P.R. Shivakumar, J.; V. Ramasubramanian, J.

Bench : Division Bench

Advocate : T. Velumani, for the Appellant; V. Lakshminarayanan, Advocates for the Respondent

Final Decision : Disposed off

Judgement

V. Ramasubramanian, J.

1. Two persons by name Anburaja and Ashraf Ali joined together and filed a suit in O.S.No. 119 of 2006 on the file of the Principal Sub Court cum Wakf Tribunal, against (1) Sirajuddin Sayeed, (2) Nagendiran and (3) the Chairman of the Tamil Nadu Wakf Board, praying for a decree of declaration that the first plaintiff was entitled to enjoy peaceful possession of the property described in schedule "A" to the plaint, for a permanent injunction restraining the defendants 1 and 2 from interfering with the peaceful possession of Schedule "A" property by the first plaintiff, for a declaration that the properties described in Schedules "A" and "B" came within the control of the Tamil Nadu Wakf Board and for a permanent injunction restraining the defendants 1 and 2 from disposing of Schedule "B" properties to third parties in an unlawful manner.

2. After trial, the Principal Sub Court, Villupuram passed a judgment and decree dated 12.04.2009, holding that it had no jurisdiction to issue a declaration that

the suit "A" and "B" schedule properties belonged to the Wakf Board. Nevertheless the trial court also recorded a finding as though the properties are not wakf properties.

3. Aggrieved not by the ultimate result but by the finding with regard to ownership of the properties, a wakf known as Siruvadi Mosque Wakf represented by its Muthavalli has come up with a Civil Revision Petition in C.R.P.(NPD) No. 2484/2012, under Article 227 of the Constitution of India.

4. In the meantime, a person claiming to be a person interested, filed an application before the Tamil Nadu Wakf Board and secured an order dated 03.11.2009 registering the properties as that of a wakf. Challenging the said order, Sirajuddin Sayeed, who claimed the properties to be his own and who was the first defendant in O.S.No. 119/2006, filed a writ petition on the file of this court in W.P.No. 262/2010.

5. Similarly, as against an order of the District Registrar dated 11.07.2011, permitting registration of the alienations made by Sirajuddin Sayeed, the Siruvadi Mosque Wakf came up with a writ petition in W.P.No. 16916/2011.

6. The writ petitions W.P.Nos. 262/2010 and 16916/2011 were taken up together by a learned judge. By a common order dated 20.12.2011, the learned Judge dismissed W.P.No. 262/2010 on the ground that as against the registration of the properties as that of the wakf by the Tamil Nadu Wakf Board, the aggrieved person should only go before the Wakf Tribunal. Insofar as the other writ petition is concerned, the learned Judge allowed W.P.No. 16916/2011.

7. Therefore aggrieved by the dismissal of his own writ petition challenging the registration of the properties as that of the wakf and the order passed in the other writ petition filed by the Siruvadi Mosque Wakf, Sirajuddin Sayeed has come up with two writ appeals, namely W.A.Nos. 292/2012 and 349/2012.

8. Since the Civil Revision Petition arose out of a suit, which also concerned the question as to whether the properties are wakf properties or not, the civil revision petition was tagged along with the writ appeals and it was taken up together with the writ appeals.

9. We have heard Mr.T.Velumani, learned counsel for the appellants in the appeals, Mrs.Ajimath Begam, learned counsel appearing for the wakf, Mr.V.Lakshminarayanan, learned counsel appearing for Tamil Nadu Wakf Board, Mr. Ravichandran, learned Additional Government Pleader appearing for the District Adminsitration and Mr.R.Krishnarajan, learned counsel appearing for the respondents 3 to 5 in W.A.No. 349/2012.

10. Insofar as the civil revision petition arising out of the dismissal of the suit is concerned, as we have pointed out earlier, a third party has come up with a revision, not actually aggrieved by the end result of the suit but aggrieved by the finding recorded. The two persons, who went before the Wakf Tribunal and filed a suit in O.S.No. 119/2006, are today not interested in prosecuting their claim.

According to both the rival parties who are before us, those plaintiffs are not in possession of the properties. They did not claim any right of ownership. Since they are today not in possession of the properties also since they have not appeared before this court after service of notice, we can deal with the civil revision petition.

11. It is to be pointed out that M.Sirajudin Sayeed who was the second defendant in the suit and who opposed the suit has actually succeeded in having the suit dismissed. But since he has set up a title against the wakf, he is interested in retaining the finding rendered in the suit though the ultimate outcome is in his favour.

12. However the wakf as well as the Wakf Board have an objection to the retention of the benefit of the finding given by the Tribunal on two fundamental grounds, namely (a) that the suit was filed without complying with the mandate of Section 89 of the Wakf Act, 1995 and (b) that in any case as per the Act it was only the Wakf Board which has jurisdiction to declare the property to be a wakf property. Hence the revision is only on a very limited ground as to whether the finding can be sustained or not?

13. As we have pointed out earlier, there is a dispute as between Sirajuddin Sayeed and the Siruvadi Mosque Wakf. This dispute is of a larger nature, which can now be resolved only by the Wakf Tribunal in a suit filed under Section 83, as against the order of the Wakf Board dated 03.11.2009. It is in that suit all the issues have to be thrashed out by the parties. Once it is conceded that the appropriate forum for Sirajuddin Sayeed to challenge the order of the Wakf Board dated 03.11.2009 is the Wakf Tribunal, then the order passed by the learned Judge in the writ petition cannot be found fault with.

14. There is only one hitch. The limitation for filing a suit under Section 83 is three years and the order of the Wakf Board is dated 03.11.2009. However, Sirajuddin Sayeed came up with a writ petition immediately after the order of the Wakf Board and the matter has been pending before this court for the past five years. Therefore Sirajuddin Syed, is certainly entitled to the benefit of Section 14 of the Limitation Act, 1963, when he challenges the order of the Wakf Board dated 03.11.2009 before the Tribunal.

15. In view of the above, the writ appeals and the civil revision petition are disposed of to the following effect:

(i) It is open to Sirajuddin Sayeed to file an appropriate proceeding before the appropriate Wakf Tribunal as against the order of the Wakf Board dated 03.11.2009. If he initiates such a proceeding within a period of four weeks from the date of receipt of a copy of this order, the Wakf Tribunal shall invoke Section 14 of the Limitation Act, 1963;

(ii) Independent of the findings and the result in O.S.No. 119/2006, it is open to the Wakf Tribunal to deal with all issues, for which it has jurisdiction under the

Wakf Act, 1995; and

(iii) The property in question shall not be alienated, till the Tribunal disposes of the matter one way or other.

There will be no order as to cost in the writ appeals and the civil revision petition. Consequently, all the connected miscellaneous petitions are closed.