
(2001) 01 BOM CK 0004
In the Bombay High Court
Case No : S.A. No. 37 of 1984

Marawthwada Wakf Board

APPELLANT

Vs

Rajaram Ramjivan Manthri and Others

RESPONDENT

Date of Decision : 15-01-2001

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 115
Waqf Act, 1995 — Section 6

Citation : AIR 2002 Bom 144 : (2002) 1 ALLMR 211 : (2001) 3 MhLj 73

Hon'ble Judges : S. Radhakrishnan, J

Bench : Single Bench

Advocate : K.G. Kader, for the Appellant; P.R. Deshmukh, S.V. Chandole and P.B. Varale, AGP, for the Respondent

Final Decision : Dismissed

Judgement

S. Radhakrishnan, J.—The brief background of the second appeal is that the respondent No. 1 namely Rajaram Ramjivan Manthri claims that he had purchased property being suit house situated at Manwath Tq. Pathri Dist. Parbhani from one Amirkhan by a registered sale deed dated 4-9-1961 for Rs. 6,000/- . The said Amir Khan had purchased the said property from one Jamalbi widow of Sharfuddin by registered sale-deed dated 11-1-1940.

2. The appellant herein namely Marawthwada Wakf Board had issued a notification dated 5-9-1974 wherein at Sr. No. 19 in addition to the Masjid Chowk and graveyard, a house along with 3 shops which were purchased by the respondent No. 1, were included as Wakf property.

3. The respondent No. 1, who had purchased the said property from said Amir Khan on 4-9-1961 and has been continuously in possession of the said house property and shops, aggrieved by the said Government Gazette Notification threatening his title to his property, filed Regular Civil Suit No. 145/1975 before the Court of Civil Judge, Senior Division Bench. Parbhani, seeking a declaration that he is the owner of the said suit house situated at Manwath Tq. Pathri Dist.

Parbhani. The learned trial Judge, after recording evidence came to the conclusion that the plaintiff was not entitled to relief claimed therein in the sense that the plaintiff had failed to prove his claim and the suit was dismissed.

4. Aggrieved thereby the respondent No. 1 herein had preferred Regular Civil Appeal No. 133/1977 before the Court of Assistant Judge, Parbhani. The lower appellate Court by a detailed Judgment considering all the issues came to the conclusion that the respondent No. 1 ought to be declared an exclusive owner of suit house situated at Manwath Tq. Pathri Dist. Parbhani.

5. Marawthwada Wakf Board, being aggrieved thereby, filed this second appeal and the second appeal was admitted by this Court raising the following substantial questions of law :

"(1) Whether Exhibit 54, extract from the Wakf Register established that the suit property was dedicated to the mosque known as Mahiboob Ganj of Manwath under the will executed by the deceased Sharfuddin, the then owner of the suit property on 8 Behman 1348 Fasli.

(2) Whether the suit property was rightly entered in the Wakf Register after compliance with rules framed under the Hyderabad Endowment Regulations.

(3) Whether the entry in the Wakf Register made in 1349 Fasli had become final under the provisions of the Hyderabad Endowment Regulations."

6. The learned counsel Shri Kader strongly contended that the suit property is a Wakf property especially in view of Exhibit 54 which is an extract of Muntakhab Wakf of endowed property by Tahsil, and if it is a Wakf property, the respondent No. 1 cannot claim any title over the same.

7. At the outset, there is no dispute with regard to the factual position in the sense that the suit property was purchased by Amir Khan s/o Abdul Kader from Jamalbi widow of Sharfuddin by registered sale deed dated 11-1-1940. Similarly, there is no dispute that the said Amir Khan had sold the suit property for a sum of Rs. 6,000/- by a registered sale deed on 4-9-1961 to the respondent No. 1 herein. It is also an admitted position that from 4-9-1961, the respondent No. 1 is in possession of the suit property and that the respondent No. 1 has spent huge amount and has reconstructed house which was in a dilapidated condition.

8. Shri Kader, learned counsel for the appellant, pointed out that the respondent No. 1 could not have filed the suit for declaration of his title and challenging the aforesaid gazette notification dated 5-9-1974 in view of Section 6 of the Wakf Act, 1954, that is say that on two counts u/s 6 of the Wakf Act, 1956, the respondent No. 1 could not have filed the above suit inasmuch as Section 6(1) contemplates that such a suit could be filed only by the Board i.e. Wakf Board or the Mutawalli of the Wakf or any person interested therein i.e. any person interested in the said wakf. The other aspect of the objection is that even if such a suit were to be filed as mentioned above by the persons, the said suit ought to be filed within one year from the date of gazette Notification. Shri Kader

contended that the plaintiff in fact is not a Board and is not the Mutawalli of the Wakf and also is not a person interested in the Wakf. As such the suit ex facie was not maintainable. Similarly, Shri Kader also contended that the suit was lodged beyond the period of expiry of one year. The gazette notification is dated 5-9-1974, but the suit was filed on 3-10-1975 i.e. beyond the period of one year.

9. The main thrust of Shri Kader's argument is that the suit property is a Wakf property in view of the extract of Muntakhab. Shri Kader had referred to the said Exhibit 54 which mentions the name of the Wakf as Mr. Mohd. Sharfuddin s/o Sonaji Panmerchant r/o Manwath the entry in the Exhibit 54 shows that after observing all legal formalities as per the will deed of Mohd. Sharifuddin r/o Manwath, the said property was entered in the Wakf register. One copy of the same with the maps of mosque, shops, house and land was sent to the Collector for entries in Wakf register. Therefore, Shri Kader contended that once this entry is made, the Muntakhab Wakf of endowed property is a sufficient proof of the property to be treated as a Wakf property.

10. Shri Kader also contended that once if it is a Wakf property and dedicated as a property, the same will always continue as a Wakf property, it can never be reverted as a private property or sold. Therefore. Shri Kadar, learned counsel, states that once Shri Mohd. Sharfuddin, by his will deed, had created this Wakf, subsequently his widow Jamalbi could not have sold this property to Mr. Amir Khan, who in turn could not have sold it to the respondent No. 1. To put in other words, Jamalbi, the widow of Sharfuddin, had no title or interest in the said property once by the will deed the said property was converted into Wakf by Mohd. Sharfuddin, she could not have sold the same and all other subsequent purchasers also could not have got any title to the same.

11. Shri Kader, therefore, contended that the learned trial Judge was right in dismissing the suit holding the said property to be a wakf property and that the respondent No. 1 had no title to the same. Shri Kader, the learned counsel, submitted that the entry in the Muntakhab is an exclusive piece of evidence and there is no need to produce any other document that it was a wakf property. Once the said extract was produced it was sufficient proof enough to establish the same to be a wakf property.

12. Shri Kader, learned counsel for the appellant, relied on a judgment of the Karnataka High Court in Anjuman-E-Islamia, Kollegal Vs. Sakeenabi and Others, to contend that no suit could be filed by any person other than Board or Mutawalli of Wakf or any person interested in Wakf. Shri Kader contended that admittedly the respondent No. 1 does not fall under any of the aforesaid three categories and as such the said claim Under u/s 6 of the Wakf Act, 1954 is ex facie not maintainable as has been held by the Karnataka High Court.

13. Shri Kader the learned counsel for appellant, also relied upon a Judgment of the Apex Court in Board of Muslim Wakfs, Rajasthan Vs. Radha Kishan and Others, in support of his contention that only three categories of persons can file

a suit u/s 6 of the Wakf Act, 1954, that is to say, the Wakf Board of Mutawalli of the Wakf or any person interested in the Wakf. The Hon"ble Supreme Court has interpreted the word "therein" in the expression "any person interested therein" to mean a person interested in the Wakfs which are listed. Therefore, Shri Kader the learned counsel contends that as the plaintiff herein namely the respondent No. 1, who is neither the Board nor Mutawalli of the Wakf nor person interested in the Wakf, had no authority whatsoever to file the suit u/s 6 of the Wakf Act. 1954 challenging the notification issued by the Government of Maharashtra for the purpose of deletion of the entry as aforesaid. In fact, it is relevant to note that the aforesaid Judgment of the Apex Court arose from the judgment of Rajasthan High Court reported in Radhakishan and Another Vs. State of Rajasthan and Others, . The Hon"ble Supreme Court concurs with the Rajasthan High Court as regards the interpretation of Section 6(1) of the said Act to say that only the Board. Mutawalli or any person interested in the Wakf as defined may institute a suit in Civil Court of competent Jurisdiction and that he can file such a suit within one year from the date of publication of the list of Wakf.

14. The Rajasthan High Court in the aforesaid judgment -- Radhakishan and Another Vs. State of Rajasthan and Others, , has observed as under at page 7 :

"The purpose of Section 6 is to confine the dispute between the Wakf Board, the mutawalli and a person interested in the wakf. In other words, if there is a dispute whether a particular property is a wakf property or not, or whether a wakf is a Shia wakf or a Sunni wakf then the Board or the mutawalli of the wakf or a person interested in the wakf as defined in Section 3 may institute suit in a Civil Court of competent jurisdiction for the decision of the question. They can file such a suit within one year of the date of the publication of the list of wakfs and if no such suit is filed, the list would be final and conclusive between them.

The very object of the Wakf Act is to provide for better administration and supervision of wakfs and the Board has been given powers of superintendence over all wakfs which vest in the Board. This provision seems to have been made in order to avoid prolongation of triangular disputes between the Wakf Board, the mutawalli and a person interested in the wakf who would be a person of the same community. It could never have been the intention of the legislature to cast a cloud on the right, title or interest of persons who are not Muslims. That is, if a person who is non-Muslim whether he be a Christian, a Hindu, a Sikh, a Parsi or of any other religious denomination and if he is in possession of a certain property his right, title and interest cannot be put in jeopardy simply because that property is included in the list published under Sub-section (2) of Section 5.

The Legislature could not have meant that he should be driven to file a suit in a Civil Court for declaration of his title simply because the property in his possession is included in the list. Similarly, the legislature could not have meant to curtail the period of limitation available to him under the Limitation Act and to provide that he must file a suit within a year or the list would be final and conclusive against him. In our opinion, Sub-section (4) makes the list final and

conclusive only between the Wakf Board, the mutawalli and the person interested in the wakf as defined in Section 3 and to no other person."

18. The Hon"ble Supreme Court was in full agreement with the above reasoning of the High Court. The Hon"ble Supreme Court, in para 39, has very categorically held that it follows where a stranger who is a non-Muslim and is in possession of a certain property, his right, title and interest therein cannot be put in Jeopardy merely because the property is included in the list. In fact, such a person is not required to file a suit for a declaration of his title within a period of one year and that the special rule of limitation as laid down in Section 6(1) will not be applicable to him. The Hon"ble Supreme Court in para 39 has held as under at page 299:

"39. It follows that where a stranger who is a non-Muslim and is in possession of a certain property his right, title and interest therein cannot be put in jeopardy merely because the property is included in the list. Such a person is not required to file a suit for a declaration of his title within a period of one year. The special rule of limitation laid down in proviso to Sub-section (1) of Section 6 is not applicable to him. In other words, the list published by the Board of Wakfs under Sub-section (2) of Section 5 can be challenged by him by filing a suit for declaration of title even after the expiry of the period of one year. If the necessity of filing such suit arises."

16. Shri Kader, the learned counsel for appellant, contended that the lower appellate Court had committed a serious error in declaring the respondent No. 1 as an exclusive owner of the said suit house. Shri Kader contends that the impugned judgment of the lower appellate Court whereby the appeal was allowed is patently perverse and that this Court ought to set aside the same exercising the jurisdiction u/s 100 of the Code of Civil Procedure, 1908 by way of the second appeal.

17. Shri P. R. Deshmukh, the learned Senior Counsel on behalf of respondent No. 1, has strongly contended that the lower appellate Court has rightly considered all the material on record and the evidence in record and had rightly allowed the appeal whereby the respondent No. 1's suit was decreed. Shri Deshmukh has also contended that it is not a case as if the lower appellate Court had allowed the appeal without any evidence on record or that the same was perverse.

18. Shri Deshmukh, on the aspect of bar u/s 6(1) r/w Sub-clause (4) of Wakf Act, 1954 contended that the respondent No. 1 has not filed the suit u/s 6 of the Wakf Act inasmuch as he does not fall under any of the three categories stated therein, but that does not mean once a notification is published by the Government of Maharashtra declaring the property to be a Wakf property, even though respondent No. 1 may not be under any of the three categories will not have a right to file such a suit. In that behalf, Shri Deshmukh has strongly placed reliance on the view expressed by the Rajasthan High Court, which was approved by the Hon"ble Supreme Court In Board of Muslim Wakfs, Rajasthan Vs. Radha

Kishan and Others, . The Rajasthan High Court in clear terms has stated that it could never have been the Intention of the legislature to cast a cloud on the right, title or interest of persons who are not Muslims. The Rajasthan High Court has further stated that if a person who is non-Muslim, whether he be a Christian, a Hindu, a Sikh, a Parsi or of any other religious denomination and if he is in possession of a certain property, his right, title and interest, cannot be put in jeopardy simply because that property is included in the list published u/s 5(2). He also further relied on the observation of the Rajasthan High Court holding that the Legislature could not have meant that he should be driven to file a suit in a Civil Court for a declaration of his title simply because the property in his possession is included in the list.

19. The Hon"ble Supreme Court in the aforesaid judgment of the Board of Muslim Wakf Board, Rajasthan, has concurred with the above reasoning of the Rajasthan High Court fully and has observed further in unequivocal terms as under at page 299 :

"39. It follows that where a stranger who is a non-Muslim and is in possession of a certain property his right, title and interest therein cannot be put in Jeopardy merely because the property is, included in the list. Such a person is not required to file a suit for a declaration of his title within a period of one year. The special rule of limitation laid down in proviso to Sub-section (1) of Section 6 is not applicable to him. In other words, the list published by the Board of Wakfs under Sub-section (2) of Section 5 can be challenged by him by filing a suit for declaration of title even after the expiry of the period of one year. If the necessity of filing such suit arises."

Therefore, from the above, it is extremely clear that the respondent No. 1, who is a non-Muslim, being a Hindu, could not file a suit u/s 6 of the Wakf Act, 1954, but he cannot be barred from filing a suit especially in view of the fact that his right, title and interest have been jeopardised in view of the notification issued by the Government of Maharashtra aforesaid.

20. Therefore, I do not find any substance in the submissions of learned counsel for the appellant that the respondent No. 1 could not have filed such a suit at all. The respondent No. 1 is fully entitled to file such a suit.

21. Shri Deshmukh, the learned Senior Counsel appearing for the respondent No. 1 also brought to my notice that Exhibit 54 being the extract of the Muntakhab wherein, there is an entry that the name of Wakf as Mr. Sharfuddin s/o Sonaji Panmerchant and that the said wakf was created as per the will deed of Mohd. Sharif. Shri Deshmukh contended that neither the will deed of Mr. Mohd. Sharif is produced nor any document pertaining thereto. Even the original wakfnama whereby the Wakf was created was not produced except the above Exhibit 54. Shri Deshmukh has brought to my notice an order passed by the Department of Religious Affairs of Nizam State dated 9-9-1350 Fasli (i.e. 1941 A.D.). The said order was produced before the trial Court as Exhibit 71. It appears that the

aforesaid Amir Khan had objected to the aforesaid entry at Exhibit 54 and as such a detailed enquiry was conducted by the Department of Religious Affairs, Nizam State. In the aforesaid order being Exhibit 71, it is clearly observed that doubts were created with regard to registration of the said property as wakf as a result of some conspiracy. After detailed investigation, the concerned Residential Superintendent has held as under :

"In this way the proceedings of wakf has taken place in pursuance of some conspiracy. Therefore, the Land Survey No. 380 and house No. 13 are held to be deleted from the wakf register. The file of the District is closed and now in this file no further proceeding is required. The proceedings of District level deserve to be stopped."

It is an admitted position that till date, this order passed by the Department of Religious Affairs, Nizam State dated 9-9-1350 Fasli in case No. File/I/54D has not been set aside. Therefore, Shri Deshmukh submitted that the overwhelming evidence, on the contrary, establishes that the property was never a wakf property and was only erroneously entered in the Muntakhab which was also rectified as far back in 1941 A.D. as aforesaid. On the contrary, the appellant herein did not produce any record whatsoever excepting the aforesaid extract of Muntakhab which itself has been set aside and rectified by the aforesaid order.

22. Shri Deshmukh, the learned Senior Counsel, took me through the detailed reasoning of the lower appellate Court categorically holding that the said property was not a wakf property and that the same was wrongly included in the Muntakhab. Shri Deshmukh, therefore, contended that in view of the aforesaid clear evidence, the lower appellate Court was right in holding that it was not a wakf property and decreed the suit in favour of the plaintiff.

23. Shri Deshmukh also contended that there is no substantial question of law involved in this second appeal excepting to say that whether the property concerned is a wakf property or not, which obviously cannot be a substantial question of law.

24. In view of the clear evidence on record and as has been rightly appreciated by the lower appellate Court by giving a clear finding to the effect that it is not a wakf property this Court, sitting in a second appeal, cannot sit in judgment over the said finding, unless the same is perverse based on no evidence.

25. I also do not find any substantial question of law involved in this second appeal. Therefore, the second appeal stands dismissed. However, there will be no order as to costs.