
(1998) 04 PAT CK 0011
In the Patna High Court
Case No : S.A. No. 3 of 1997

Md. Roorul @ Md. Nurool

APPELLANT

Vs

Md. Farooque and others

RESPONDENT

Date of Decision : 10-04-1998

Acts Referred:

Citation : (1998) 2 PLJR 218

Hon'ble Judges : R.N. Sahay, J

Bench : Single Bench

Advocate : Gajendra Kumar Jha, for the Appellant; Indu Shekhar Pd. Sinha and Shashi Nath Jha for the Respondent Nos. 1 to 4, for the Respondent

Final Decision : Dismissed

Judgement

R.N. Sahay, J.—The suit giving rise to this second appeal was brought by Md. Saddique (Respondent No. 5) as plaintiff for partition by metes and bounds of 1/4 share of the plaintiff in the suit properties. The property in suit originally belonged to Mangal Momin, who executed a registered deed of Bai Moqasa dated 6.5.1921 in favour of his, wife Mosamat Munia and put her in actual possession thereof. Most. Munia actually remained in possession of the suit land and dealt with the same as and when occasion arose. She died issueless leaving behind her brother Den Mohammad, who inherited the properties left by her and came in actual possession thereof. Den Mohammad died leaving behind four sons, namely, Abdul Rashid, Mohd. Salim, Mohd. Usman and Abdul Aziz. After the death of Den Mohammad, his four sons jointly inherited the suit properties, and came in joint possession thereof.

2. Two written statements were filed, one by defendant, 1st party, son of Den Mohammad. It was submitted that the suit was not maintainable. The plaintiff has no cause of action for the suit. These defendants substantially supported the case of the plaintiff. According to defendants 1st party Most. Munia had not died Issueless. She had been left by five daughters. The husband of Most. Munia also established Mosque and appointed his wife Most. Munia as its first Motawalli, who

is turn appointed her daughter Tasliman as its Motawalli and Most. Tasliman appointed Jamila as its Motawalli. Most. Munia left behind three daughters who inherited the properties left by her. The properties which are in possession of Mosque is managed by the Managing Committee and the appellant (defendant No. 1) Md. Nurool claims to be present Motawalli.

3. Defendants-2nd party (respondent Nos. 1 to 4) filed separate written statement alleging therein that the suit is not maintainable. Their case was that the land mentioned in Schedule-1 of the plaint is not exclusive property of Mangal Momin. Schedule-1 land belonged to Mangal Momin and his brother Babuji Momin. Mangal Momin had transferred some of the lands to Most. Munia by a registered deed dated 6.5.1921. Through the same document, he also created a Wakf in respect of 5 bighas 2 kathas and 17 dhurs of land appertaining to S.P. No. 2359, 2358, 2362, 2363, 2364, 2365, and 6172 to 6178 and appointed Most. Munia as its first Motawalli. The controversy in the present case is only with respect to this land. From the case of the defendants, last Motawalli was Bibi Jamila, who managed the Wakf property throughout her life but she could not appoint her successor. After her death, according to customs prevalent in the Muslims, the general public constituted a Managing Committee for the management of Wakf property. The Committee has also been registered with Bihar Suba Sunni Wakf Board, Patna. It is alleged that defendant No. 1 (the appellant) who was also an office bearer of the Managing Committee, fraudulently and surreptitiously withdrew the consideration money payable to the Wakf by falsely declaring himself as the Secretary of the Managing Committee for which he was also prosecuted.

4. Learned Munsif accepted the case of defendant 2nd party that the disputed property was Wakf property. Learned Munsif held that the Wakf created by Mangal Momin was purely private Wakf and the general public or the Wakf Board has nothing to do with its management. It is a case of family Wakf. Learned Munsif, however, held that the formation of Managing Committee represented by defendant-2nd party is not in accordance with law. Wakf Board has no right to accord its approval to the Managing Committee of the wakf property. Learned Munsif accepted that 5 bighas 2 kathas and 17 dhurs of land in respect of which Wakf was created by Mangal Momin could not be partitioned. A suggestion was made by the plaintiff's lawyer that some body should be made responsible for the management of the Mosque and some person should be appointed to manage the 5 bighas 2 kathas and 17 dhurs Wakf property. Learned Munsif accepted this suggestion and held that the person responsible for the maintenance of the Mosque would be entitled to get 5 bighas, 2 kathas and 17 dhurs of land. Learned Munsif, however, did not decide as to in whose share these lands would be allotted. The decree is also silent on this point. The suit was-decreed and 1/4 share of the property was allotted to the plaintiff. The plaintiff did not appeal against the decree.

Defendants-2nd party preferred appeal against the finding of the trial court.

5. The court of appeal below set aside that part of the decree of the trial court whereby the defendant No. 3 (appellant) was given right to manage the Wakf property. The defendants-2nd party were divested with the right to manage the Wakf property. The court of appeal below on consideration of material evidence observed "The defendant first party has further asserted that since the line of Mutawalli stopped after the death of Jamila, so, the Muslim community formed a managing committee which came in possession over the aforesaid lands measuring 5 Bighas 2 kathas 17 dhurs and with the usufruct of these lands, the Managing Committee began to maintain and manage the mosques. They have also asserted that Bihar Sunni Wakf Board has also recognized the Managing Committee and allowed them to manage the mosques with the usufruct of these lands.... Besides the oral evidence, defendant second party has placed reliance on Ext-A series which are the correspondence in between Bihar State Sunni Wakf Board and the Managing Committee of Mangal Momin Wakf Estate. Since the plaintiff has got no right, title and interest in the wakf property referred to above, so he has no right to challenge the possession of the Managing Committee (defendant second party) of the aforesaid land and the possession of the Managing Committee cannot be disturbed." Learned appellate court further says "...It is only when the property is lying vacant and there is no wakf but in the present case, I find that after the death of Jamila Khatun, the Managing Committee i.e. defendant second party took the management of the mosques by entering into the possession of 5 Bighas 2 kathas 17 Dhurs land plot numbers have been also referred to above and the defendant second party has been managing the mosques by utilising the usufruct of the wakf land consisting of several plots, of which the total area is 5 Bighas 2 Kathas 17 Dhurs. So the members of defendant second party are Mutawalli and they cannot be removed in this suit at the instance of the plaintiff."

6. The appellate court, therefore, has given a clear finding that the wakf property has been managed by the Managing Committee represented by defendants-2nd party and the Managing Committee was also recognised by the Bihar Sunni Wakf Board. There is finding that the Committee has been managing the property since 1963 and no body challenged the right of the Committee to manage the same.

7. In my view, the judgment of the court of appeal below is just and proper and does not call for interference in second appeal. This appeal is accordingly dismissed. It is, however, made clear that this order will not prevent the aggrieved party, if so advised, to move appropriate forum for declaration of right to manage the Wakf property since it is private Wakf.

No costs.