
(2013) 01 AP CK 0025

In the Andhra Pradesh High Court

Case No : Writ Petition No. 30792 of 2012

Mir Hussain Ali Khan

APPELLANT

Vs

State of Andhra Pradesh

RESPONDENT

Date of Decision : 02-01-2013

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 11
Evidence Act, 1872 — Section 115, 41, 42, 43
Registration Act, 1908 — Section 17(f)
Stamp Act, 1899 — Section 33, 35
Urban Land (Ceiling and Regulation) Act, 1976 — Section 6

Citation : AIR 2013 AP 187 : (2013) 2 ALD 773 : (2013) 3 ALT 413 : (2013) ALT(Rev) 235

Hon'ble Judges : C.V. Nagarjuna Reddy, J

Bench : Single Bench

Advocate : K. Raghuveer Reddy, for the Appellant; Mir Masood Khan, for the Respondent

Final Decision : Allowed

Judgement

C.V. Nagarjuna Reddy, J.—This Writ Petition is filed for a Mandamus to declare the action of respondent No. 5 in not receiving and registering the documents in respect of Acs. 5-13 guntas of land in Survey No. 373/1 and Acs. 1-05 guntas of land in Survey No. 373/3 total admeasuring Acs. 6-18 guntas situated at Moula Ali Village, Malkajgiri Mandal, Ranga Reddy District (hereinafter referred to as "the subject property"), as illegal and arbitrary. The petitioner sought for declaration that notification issued u/s 22-A of the Registration Act, 1908 (for short "the Act"), in so far as it relates to the abovementioned property is concerned, as illegal and arbitrary. I have heard Mr. K. Raghuveer Reddy, learned Counsel for the petitioner, and Mr. Mir Masood Khan, learned Standing Counsel for A.P. State Wakf Board, appearing for respondent No. 6, besides the learned Assistant Government Pleader for Revenue representing respondent Nos. 1 to 5, at length.

2. The petitioner claims to be one of the descendants of late Nawab Najmud Dowla Bhadur and his son Nawab Hussain Nawaz Jung. It is the pleaded case of the petitioner that the aforesaid property was declared as a private property and the matruka property of the said Nawab Najmud Dowla Bhadur and not a wakf property by the competent civil Court vide Judgment and Decree, dated 12-01-1979, in OS. No. 11 of 1971 and that the said judgment was affirmed by a Division Bench of this Court vide Common Judgment, dated 29-08-1983, in CCCA. Nos. 115 of 1976, 129 of 1997 and 38 of 1980. When the petitioner approached respondent No. 5 for registration of sale deed executed in respect of the said property, respondent No. 5 refused to receive the same by informing the petitioner that the same is included in the list furnished by the Deputy Inspector General-II of Registration & Stamps, Hyderabad, and communicated to the District Registrar on 11-11-2009, showing the said property as belonging to Respondent No. 6. When the petitioner approached respondent No. 2 for issuance of No Objection Certificate (NOC), the latter has called for a report from the Revenue Divisional Officer, Chevella, who submitted his report on 07-03-2011, stating that the petitioner is entitled for NOC for 10,000 square yards and recommended for NOC in respect of the land in Survey Nos. 373/1 and 373/3 of Moula Ali Village, Malkajgiri Mandal, Ranga Reddy District. Upon receipt of the said report, respondent No. 2 has issued letter No. E1/5897/2009, dated 02-04-2011, to respondent No. 6 with a request to verify the connected wakf records and offer specific remarks as to the interests of the Wakf Board over the subject property. The grievance of the petitioner is that respondent No. 2 has not proceeded further with the issue of NOC evidently on the ground that respondent No. 6 has not submitted any remarks. Since the stalemate regarding the registration of the subject property continued, the petitioner filed this Writ Petition.

3. At the outset, it needs to be mentioned that even though the petitioner has prayed for setting aside the purported notification issued u/s 22-A of the Act, it is agreed among the learned Counsel for the parties that no such notification was issued. Indeed, the learned Standing Counsel for respondent No. 6- Wakf Board has submitted that on the facts of this case, he is not pressing on the provisions of Section 22-A of the Act. On an earlier occasion, when the learned Counsel for the petitioner sought to place reliance on the Judgment in OS. No. 11 of 1971 as confirmed in CCCA No. 38 of 1980, respondent No. 6 has filed WPMP. No. 50951 of 2012 for a direction to the writ petitioner to furnish copies of pleadings, Judgment in Original Suit, grounds and Judgment of First Appeal and grounds and Judgment of Second Appeal. During the hearing of the said application, the learned Standing Counsel for respondent No. 6 vehemently argued that unless the authenticated copies of the Judgment and the material in support thereof are filed, respondent No. 6 will not be in a position to meet the case of the petitioner which is solely rested on the said judgments. This Court, by a detailed Order, dated 28-12-2012, dismissed the said application as a piece of vexatious litigation with costs of Rs. 10,000/-.

4. Today at the hearing, the learned Standing Counsel for the A.P. State Wakf Board submitted that respondent No. 6 has paid the costs and advanced his contentions.

5. The petitioner's case is that respondent No. 6 filed OS. No. 11 of 1971 in the Court of the learned Additional Chief Judge, City Civil Court, Secunderabad, for declaration of title, recovery of possession of the subject property and award of mesne profits and that the said suit was dismissed by the civil Court on the strength of detailed reasoning. It is the further case of the petitioner that the said Judgment has been upheld in a batch of CCCAs and in particular CCCA. No. 38 of 1980, which arose out of the Judgment in OS. No. 11 of 1971. Since the entire case of the petitioner is based on the said judgments, it is pertinent to refer to the relevant portions of the Judgment in OS. No. 11 of 1971. In the said suit, as many as 10 issues were framed. Issue No. 1 is whether the suit property is wakf property and issue No. 2 is whether the suit property is a Matruka property in which defendant Nos. 2 to 8 and defendant Nos. 14 to 16 are entitled for shares. Both the parties have adduced evidence in extenso. After a detailed consideration of the evidence on record, the trial Court in Paragraph 51 of its Judgment held as under:

The upshot of the above discussion is that the suit property is not wakf property; the wasiyathnama and Touliyathnama relied upon did not indicate that it was endowed for the maintenance of Ashoorkhana and there is no credible evidence suggesting that any religious ceremonies were performed at the alleged Ashoorkhana in the suit property: nor is there any proof to show that the property by user became a wakf. The evidence points out clearly that Najmud Dowla was the owner of the property and after his life time it continued to be a matruka in the hands of his son Hussain Nawaz Jung and his descendants.

Issue No. 1 is therefore, answered against the plaintiff. So far as issue No. 2 is concerned, my answer is that not only the defendants 2 to 8 and defendants 14 to 16, but also defendants 3 to 5 (who undoubtedly are the descendants of Hussain Nawaz Jung) also are entitled for shares.

There is no record to show who else are the owner descendents of Nawaz Hussain Nawaz Jung. All those who are the descendants of Hussain Nawaz Jung will get shares as per the Mohammadan Law in the suit property since it is a matruka.

6. The said Judgment in OS. No. 11 of 1971 was confirmed by Common Judgment and Decree, dated 29-08-1983, in CCCA. Nos. 115 of 1976, 129 of 1997 and 38 of 1980. It is not disputed that CCCA. No. 38 of 1980 was filed against Judgment and Decree, dated 12-01-1979, in OS. No. 11 of 1971. With the dismissal of the CCCA by the Division Bench of this Court, the Judgment in OS. No. 11 of 1971 has attained finality.

7. The learned Standing Counsel appearing for the A.P. State Wakf Board has not disputed the above facts. It is also not the pleaded case of respondent No. 6 that

the petitioner is not a descendant of Najmud Dowla or that the property in respect of which the sale deed is sought to be presented by the petitioner for registration is not part of the suit schedule property in OS. No. 11 of 1971. He has, however, advanced the following contentions;

1. that the petitioner has not substantiated his title;
2. that any Judgment is subject to Article 136 of the Limitation Act, 1963, and that the Judgment in OS. No. 11 of 1971 cannot be executed after expiry of 12 years;
3. that u/s 17 (f) of the Registration Act, 1908, which was inserted by amendment Act 4 of 1999, the judgment ought to have been registered and that as the same was not registered, the same is not enforceable.
4. that the Judgment needs to be impounded under Sections 33 and 35 of the Indian Stamp Act, 1899.;
5. that under the provisions of Section 11 CPC and Sections 41 to 43 and 115 of the Indian Evidence Act, 1872, the petitioner is not entitled to seek the relief as sought for in this Writ Petition and;
6. that as per the dictum taken cognizance of by the civil Court in OS. No. 11 of 1971, the beneficiaries under the wakf Act only take the usufruct that if they try to sell the property, they will be treated as kafirs (enemies) and that the petitioner not having declared the property u/s 6 of the Urban Land Ceiling Act is estopped from approbating and reprobating.
8. In support of his submissions, the learned Standing Counsel has relied upon the following Judgments:

Board of Wakf, West Bengal Vs. Anis Fatma Begum and Another,

State of Orissa Vs. Ram Chandra Dev and Mohan Prasad Singh Deo,

Jai Singh Vs. Union of India and Others,

Sayyed Ali and Others Vs. Andhra Pradesh Wakf Board Hyderabad and Others,

Nawab Zain Yar Jung and Others Vs. The Director of Endowments and Another,

G. Srinivas Vs. Govt. of A.P. and Others,

Mohd. Abdul Azeem Zakee and Others Vs. Government of Andhra Pradesh and Others,

Tamil Nadu Wakf Board Vs. Hathija Ammal (Dead) by Lrs. etc. etc.,

State of Bihar Vs. Radha Krishna Singh and Others,

Ahmed Ali Khan Bahadur (died) and Another Vs. Banguluru Veeralla and Others,

9. I have carefully considered the submissions of the learned Standing Counsel

for respondent No. 6 and I find no merit in any one of his submissions. The fundamental fact viz., that the property in question was the subject matter of OS. No. 11 of 1971 is not in dispute. Respondent No. 6- Wakf Board, which filed the said suit for declaration of title, recovery of possession and mesne profits has conclusively lost the suit and it has suffered the finding that the said property does not belong to it. This Judgment is affirmed in CCCA. 38 of 1980 by the Division Bench. The learned Standing Counsel placed reliance on Section 11 of the Civil Procedure Code, 1908 (CPC). I am unable to comprehend as to how the provisions of Section 11 CPC come into play in this case. Section 11 CPC, which incorporated the doctrine of resjudicata bars a subsequent suit in respect of a subject matter, which was directly and substantially in issue in a former suit between the same parties, or between the parties under whom they or any of them claim, litigating under the same title in a Court competent to try such a subsequent suit. The present Writ Petition is filed by the party, who succeeded in the previous suit and the relief claimed in this Writ Petition is based on the judgment in the previous litigation. Therefore, Section 11 CPC has no application at all to the present Writ Petition. On the contrary, the petitioner is entitled to claim the relief in the present suit based on the judgment in the previous suit.

10. With regard to the provisions of Sections 41 to 43 and 115 of the Indian Evidence Act, 1872, I am equally at a loss to know as to how these provisions come to the rescue of the petitioner. Making an elaborate discussion of these provisions, a Division Bench of this Court in Ahmed Ali Khan Bahadur (9 supra) held that estoppel by Judgment traceable to Section 115 of the Indian Evidence Act, 1872, applies to the parties to the Judgment and not to a third party unless the Judgment is in rem. It is an admitted fact that the petitioner is a party to the Judgments in the suit and the appeal as discussed above. Hence, being a party to the said Judgment, respondent No. 6 is estopped from pleading that the said Judgment does not bind it. The said Judgment being a Judgment in personam binds both the parties to the suit including respondent No. 6. Respondent No. 4- Tahsildar, Malkajgiri Mandal, in his counter-affidavit, inter alia stated as under:

I respectfully submit that as per Khasra Pahani for the year 1954-55, the land in Survey No. 373/1 and 373/3 admeasuring Acs. 5-13 guntas and Ac. 1-15 guntas respectively stands Patta in the name of Sri. Nawab Hussain Nawab Jung. In the Sesala Pahani for the year 1955-56 to 1957-58, the name of Smt. Mahmud Uinnisa Begum is recorded as Pattedar for the same lands and same entries continued in the pahani for the year 1958-59 in the pahani for the year 1970-71 the names of Meer Ali Khan, Meer Waheed Ali Khan and Meer Hussain Ali Khan are recorded as Pattedars against the said lands by deleting the name of Syed Askari Hussain Jafri and Smt. Khaja Begum Jafari as per the Court Decree and Judgment in OS. No. 11 of 1971 in File No. A1/6831/71. As per the pahani for the year 2006-2007, the names of Meer Asad Ali Khan, Meer Mohammed Ali Khan and Meer Hussain Ali Khan and recorded as Pattedars. On verification of Notification No. 6A, Dated 09-02-1989, furnished by the Chief Executive Officer, Wakf Board, it is evident that the Survey No. 373 of Malkajgiri Village is not

notified as a Wakf Land.

11. From the above reproduced stand taken by respondent No. 4, it is quite evident that the Judgment and Decree in OS. No. 11 of 1971 was given effect to by mutating the names of the parties in the revenue record and the same was, accordingly, acted upon. Therefore, the contention of the learned Standing Counsel for respondent No. 6 that Article 136 of the Limitation Act, 1963, bars relief is wholly fallacious. As a matter of fact, the petitioner is not seeking execution of the Judgment. At the cost of repetition, it may be observed that the petitioner is only relying upon the Judgment, which declared that the property in question does not belong to respondent No. 6.

12. The contention that u/s 17 (f) of the Act, the judgment requires to be registered is preposterous to say the least. The said provision was inserted on 01-04-1999 under Act 4 of 1999 and it is not the case of the learned Counsel for the A.P. State Wakf Board that the same is given retrospective operation. As the Judgment of the civil suit as confirmed in appeal was rendered much prior to the insertion of the said provision, the same does not apply to it. At any rate, the learned Counsel failed to substantiate that the ingredients of Section 17 (f) of the Act are attracted to the Judgment of the Civil Court and that of this Court. All the judgments cited by the learned Standing Counsel for the A.P. State Wakf Board have been carefully perused and on the facts of this case, none of those judgments have any application to the case on hand.

13. For the abovementioned reasons, I am of the opinion that in view of the declaration by the competent civil Court as confirmed by a Division Bench of this Court that the property in question does not belong to respondent No. 6; that the said property is matruka property of the ancestors of the petitioner and that the same is not a wakf property, which fact is also admitted by respondent No. 4 in his counter-affidavit, a Mandamus shall issue to respondent No. 5 to register the sale deed that may be presented by the petitioner in respect of Acs. 6-18 guntas of land of Moula Ali Village, Malkajgiri Mandal, Ranga Reddy District, subject to his complying with the provisions of the Indian Stamp Act, 1899 and the Registration Act, 1908.

14. The Writ Petition is, accordingly, allowed with costs of Rs. 25,000/- against respondent No. 6. As a sequel, WPMP. No. 39273 of 2012 is disposed of.