
(1978) 11 AP CK 0003
In the Andhra Pradesh High Court
Case No : C.C.C.A. No. 109 of 1976

Rasia Begum

APPELLANT

Vs

The Administrator, A.P. Wakf Board by its Secretary.
Hyderabad

RESPONDENT

Date of Decision : 16-11-1978

Acts Referred:

Citation : (1978) 11 AP CK 0003

Hon'ble Judges : Muktadar, J

Bench : Single Bench

Advocate : Syed Saddatulla Hussaine, for the Appellant; Nasser Ahmed Khan, for the Respondent

Judgement

Mr. Muktadar, J.—The defendant in O.S. No. 78/67 on the file of the Third Additional Judge, City Civil Court, Secunderabad, has preferred this appeal against the Judgment and decree dated 30-3-19/6 passed by the third Additional Judge decreeing the suit. The Aadhra Pradesh Wakf Board through its Secretary had filed the suit for possession of premises known as Khankha bearing Municipal No. 17-8-422 forming part of the Wakf property of a mosque known as Fatheullahbeg Mosque situated at Chaoni Nader Ali Beg, near Yakutpura Railway Station on the ground that the suit property was part of the Wakf property which is in illegal possession of the defendant since 1946, and, therefore, she should be ejected. To be more precise, in paragraph 5 of the plaint, it is alleged:

"The plaintiff Board on enquiry came to know that the defendant has illegally occupied the plaint schedule property in 1946 and is residing therein. Due to the illegal occupation of the defendant over the plaint schedule property, which is a Khankha under the above-mentioned Wakf property the purposes of Wakf cannot be served"

In paragraph 8 of the plaint, it is alleged:

"The cause of action for the suit arose in the year 1946, when the defendant

illegally occupied the plaint Schedule property and also on 26-7-1967, when the plaintiff Board gave notice to the defendant"".

The Wakf Board, therefore, prayed that the defendant be ejected from the suit property and possession thereof be given to the Wakf Board. The plea taken up by the defendant in her written statement was that the suit property was not Wakf property because it was not registered as Wakf property. She also pleaded title in herself and stated that the Wakf Board had taken advantage of the extension of the period of limitation under the Public Wakfs (Extension of Limitation) Act, 1959, (herein-after referred to as the Act), and instituted the suit, but the said suit is barred by limitation.

2. On the basis of these pleadings, the trial Court framed the following issues :-

"1. Whether the plaint schedule property is a Wakf property ?

2. Whether the defendant acquired title to the suit property by virtue of a judgment of 1338 F. of 4th June, City Civil Court ?

3. Whether the defendant has illegally occupied the plaint schedule property in the year 1946 and is residing thereby letting out its portions to various persons?

4. Whether the plaintiff is entitled to claim mesne profits at the rate of Rs. 60/- per month ?

5. Whether the suit is property assessed and the Court fee paid is incorrect ?

6. Whether the other occupants of the suit schedule property are the necessary parties ?

7. Whether the suit is within limitation ?

8. To what relief ?

3. The trial Court found all the issues in favour of the plaintiff and against the defendant and ultimately decreed the suit. Hence this appeal,

4. Mr. Sadatullah Hussaine, the learned advocate for the appellant very reasonably conceded that except Issue No. 7 which deals with limitation, he does not wish to lay stress on the findings of the trial Court on the other issues. He contends that having regard to the provisions of S. 3 of the Act the time to file a suit by the Wakf Board was extended upto 31st day of December, 1970 only when a person who was entitled to institute a suit of the description referred to in Art. 142 or Art. 144 of the Indian Limitation Act, 1908 for possession or when he was dispossessed at any time between 14th August, 1947 and 7th May 1954. If such person referred to above was dispossessed before 14th August 1947 or after 7th May 1954, then, he was not entitled to the benefit conferred under S. 3 of the Act. He also submitted that the same principle applied where such possession had become adverse during the relevant periods mentioned above. In other words, if the possession of the defendant "has become adverse" sometime during 14-8-47 and 7-5-1954, then, the suit filed by the Wakf Board by

31-12-1970, would still be within time.

5. On the other hand, the learned advocate appearing for the Wakf Board brings to my notice a letter of clarification No. nil dated 24-7-65 from Madras State Wakf Board to Sr. S. N. Naqavi, Deputy Secretary in relation to the clarification sought in regard to S. 3 of the Act, and the said letter of clarification reads as follows:-

"Subject: - The Muslim Wakf Act, 1954 and the Public Wakfs (Extension of Limitation) Act, 1959 to No. 29/59 clause 3, clarification requested

Reference: -Reference is requested to section of Act 29/59 dated 1-9-59 which reads as hereunder:

Clause 3:- Where a person entitled to institute a suit of the description referred to in Article 142 or Article 144 of the First Schedule to the Indian Limitation Act, 1908, for possession of any immovable property forming part of a Public Wakf, or any interest thereon has been dispossessed or has discontinued the interest possession, at any time After the 14th day of August, 1947 and before the 7th day of May 1954, or as the case may be, possession of the defendant in such a suit has become adverse to such person at any time during the said period, then, notwithstanding any thing contained in the said Act, the period of limitation in respect of such a suit shall extend upto the 15th day of August, 1967",

In this clause, the words "the possession of the defendant in such a suit has become adverse to such person at any time during the said period" is significant. The possession of the defendant can become adverse to that of the plaintiff only when the defendant has been in possession for the prescribed period of 12 years. Then only the defendant can be said to have perfected his title by adverse possession Therefore, for possession to become adverse, the period of 12 years should elapse. As the date prescribed in the aforesaid clause, 10th August 1947 is the earliest date for the possession to become adverse, a period of 12 years prior to that i.e., 14th August, 1935 should be the starting point for such adverse possession. But if the date of possession itself is between 14th August 1947 and 7th May, 1954 should be the starting point for the possession to become adverse, then the alienations made prior to 14th August, 1947 cannot be questioned by the Wakf Board.

6. The Board considers that for the possession to become adverse between the aforesaid date 14th August 1947 and 7th May 1954 adverse possession should start 12 years prior to 14-8-47 i.e., 14-8-1935. If this interpretation is accepted, the Board can file suits for alienations made after 14-8-1935. Though the Wakf Act came into force in 1954 itself, the Board was constituted only in 1958 and in the first five-years of functioning it was at its infant stage and had to consolidate its position. So it is only after 1964, that the Board can take action against illegal alienation, made prior to its coming into force. Therefore, it is just and reasonable that the interpretation put by the Board for the words "the possession of the defendant becomes adverse during that period" may be

instituted to recover the properties wrongly alienated by the Mutawallies and other incharge of Wakf propel ties, it is requested that this question be considered for a decision given at your earliest convenience as to whether 14-8-1935 can be considered to be the starting point for such adverse possession.

7. In the light of the above clarification, the learned advocate contends that in order that the defendant should get the benefit of adverse possession, his possession should become adverse by completion of 12 years on 14-8-1947 or before 7-5-1954 i.e., his adverse possession should start on 14-8-1935 in order that it should become adverse by 14-8-47. Therefore, although the adverse possession of the defendant had started before 14-8-47, nevertheless, only when such adverse possession had worked out the required period of 12 years by 14-8-47, or before 7-5 54, S. 3 would be attracted, and the Wakf Board would still be entitled a suit by 31-12-1970, and that suit would still be within time.

8. In order to appreciate the respective contentions advanced by the learned advocates, it is necesaary to read S.3 of the Act which is as follows:-

"Where a person entitled to institute a suit of the description referred to in Art, 142 or Art. 144 of the First Schedule to the Indian Limitation Act, 1908, for possession of any immovable property forming part of a public wakf or any interest therein has been dispossessed or has discontinued the possession, at any time after the 14th day of August, 1947, and before the 7th day of May 1954, or, as the case may be, the possession of the defendant in such a suit has become adverse to such person at any time during the said period, then notwithstanding anything contained in the said Act, the period of Limitation in respect of such a suit shall extend up to the 31st day of December, 1970".

9. Thus it is clear that where a person who was entitled to institute a suit of the description referred to in Art. 142 or Art. 144 of the First Schedule of the Indian Limitation Act, 1908, for possession of any immoveable property forming part of Public Wakf on the basis of dispossession or discontinued possession which occurred at any time after 11-8-47 and before 7-5-54, or possession of the defendant in such a suit has become adverse to such person at any time during the said period, then, the suit would still be considered to be within time even though it is filed after a period of 12 years. In other words, under the Indian Limitation Act, 1908. where the suit was filed on the basis of dispossession, Art, 142 was applicable, and where the suit was filed on the basis of title and dispossession, Art. 144 was applicable. However, what S.3 of the Act provides is, that in case of illegal dispossessions of the Mutawalli or the Wakf Board, during the period 14-8-47 and 7-5-54, where the Mutawalli or Wakf Board could not file a suit in confirmity with the provisions of Art. 142 or Art. 144 as the case might be, nevertheless, the Mutawalli or Wakf Board could still file the suit after the period of 12 years of dispossession, provided the suit is filed before 31st December 1970. The same period was applicable to a case where the possession of the defendant had become adverse to such person or the Wakf Board. The

learned advocate for the Wakf Board strenuously contended on the basis of the letter clarifying the meaning of the words "has become adverse" that in using the said phrase, the Legislature intended that a possession would become adverse only when such defendant was in adverse possession for 12 years culminating by 14-8-47 or before 7-5-54, then only it could be said that the possession of such "defendant has become adverse". If this interpretation is accepted, it would mean in order that the possession of such defendant should have become adverse, the adverse possession should commence on 14-3-35 and should be completed by 14-8-47, or should commence on 7-5-42 and be completed by 7-5-54. I cannot accede to this interpretation put forth by the learned advocate for the Wakf Board because having regard to the words used by the Legislature in S.3 of the Act, the only interpretation which could be placed upon the words "has become adverse" is that the adverse possession of such defendant should have started during 14-8-47 and 7-5 54, and not "should have completed" during the said, period. Once the period of adverse possession is completed, the defendant acquires title to the property, and no suit for possession could be decreed. Possession "becoming advers" is different from completion of the period of adverse possession. If the Legislature had intended that such defendant must have completed his period of adverse possession as provided in Col.3 of Art. 144 of the Indian Limitation Act, 1908, it could have said so in clear terms to that effect. Therefore, to my mind, possession becoming adverse cannot under any circumstances be equated with completion of the period of adverse possession. What emerges from the above discussion is that where the Mutawalli, or the Muslim Wakf Board has been illegally dispossessed from immovable wakf property after 14-8-47 and before 7-5-54 and such possession of such defendant has started to become adverse, then, instead of filing a suit within the period of limitation provided under Art. 142 or Art. 144 of the Indian Limitation Act, 1908 (now Art. 64 or 65 of the Indian Limitation Act, 1963) as the case might be, the Mutawalli or the Muslim Wakf Board could still file the suit before 31st December 1970. But if such dispossession had taken place, or such possession had started to become adverse before 14-8-47 or after 7-5-54, then, S.3 of the Act would not be applicable to such a case, but the suit should be filed according to Art. 142 or Art. 144 of the old Limitation Act of 1908 or Art. 64 or Art. 65 of the new Limitation Act of 1963. My interpretation is reinforced by the statement of objects and reasons for the passing of the Act. It is mentioned therein: -

" Under the law, as it stands at present, the title of the true owners would be extinguished, if the properties are in adverse possession for twelve years or more. It is therefore, proposed to extend the period of limitation upto 15th August 1967, in respect of suits for the recovery of possession of any immovable property forming part of a public wakf in any case where the dispossession has taken place at any time between 15th August 1947 (the date of partition) and 7th May 1954 (the date from which power to declare any property as evacuee property under the Administration of Evacuee Property Act, 1950, ceased). This would enable the Wakf Boards constituted under the Wakf Act and other

interested persons to institute such suits".

Keeping this interpretation of S.3 of the Act and applying it to the case, the Muslim Wakf Board has in categorical terms admitted in paragraphs 5 and 8 of its plaint that the defendant had illegally occupied the suit property in 1946 i.e., before 14-8-47, and this particular period is beyond the two dates mentioned in S.3 of the Act. I am therefore, of the opinion that the suit as framed by the Muslim Wakf Board is beyond limitation and is liable to be dismissed, and is hereby dismissed. Having regard to the circumstances of the case, there will be no order as to costs.