

(2014) 02 AP CK 0107

In the Andhra Pradesh High Court

Case No : C.R.P. Nos. 2037 and 2384 of 2012

Ravala Madhava Reddy

APPELLANT

Vs

Andhra Pradesh State Wakf Board
 Syed Ameen Vs
Andhra Pradesh State Wakf Board and Mrs. Sabera Bee

RESPONDENT

Date of Decision : 25-02-2014

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 11

Citation : (2014) 6 ALD 411 : (2014) 6 ALD(Cri) 411 : (2014) 5 ALT 386

Hon'ble Judges : M.S. Ramachandra Rao, J

Bench : Single Bench

Advocate : P. Gangi Rami Reddy Defendant Nos. 9 and 10, Advocate for the Appellant; MAK. Mukheed, Sri A.M. Qureshi and Sri Mir Masood Khan, Advocate for the Respondent

Judgement

M.S. Ramachandra Rao, J.—As the issues in all these Revisions are interconnected, they are being disposed of by this common order.

The facts leading to the filing of these Revisions are as under:

2. There is an extent of Acs.2.21 gts in Sy. No. 356 of Choutuppal Village and Mandal, Nalgonda District. There is a Dargah by name Dargah Hazrath Syed Abbas (for short "the Dargah") situated at Lakkaram Village, Ramannapet Taluk, Nalgonda District. The Muthawallis of the said Dargah were Lal Mohammed and Mohammed Imam. Khaja Moinuddin is the brother of Lal Mohammed.

3. Jahangeer Bee is the wife of Lal Mohammed and his sons are Mohammed Sadiq, Mohammed Thahar and Mohammed Saleem. One Zaheda Begum is the niece of Lal Mohammed.

4. Khaja Moinuddin's wife is Sabera Bee and his children are Mohammed Baba, Mohammed Sarwar, Hussain Bee, Shanna Begum, Ghousia Begum and Aasiya Begum.

5. An extent of Acs.1.00 in Sy. No. 356 of Choutuppal Village and Mandal, Nalgonda District was sold by the wife and children of Khaja Moinuddin to Syed Ameen and Syed Rasool under a registered sale deed dt.03.06.1994.

6. Lal Mohammed gifted Ac.1.00 in Sy. No. 356 of Choutuppal Village and Mandal, Nalgonda District to his niece Zaheda Begum under a registered Gift Deed dt.16.10.1984.

O.S.NO. 43/1987

7. Zaheda Begum filed OS. No. 43 of 1987 against Lal Mohammed, Andhra Pradesh Wakf Board (for short, "the Wakf Board") and three others on the file of the Sub-Ordinate Judge, Bhongir for declaration of her title and for a perpetual injunction restraining the defendants therein from interfering with her peaceful possession and enjoyment of the extent of Ac.1.00 of land in Sy. No. 356 which had been gifted to her under the registered Gift Deed dt.16.10.1984 by Lal Mohammed. She alleged that this property was gifted to her by Lal Mohammed (who was 4th defendant in that suit); that she was put in possession and enjoyment of the same by him; that she got a lay-out sanctioned vide letter JO.61/85 dt.11.10.1985 by the Panchayati Samithi, Choutuppal and prepared thirty-five plots out of the gifted land; that Lal Mohammed was asserting that he is the owner of extent of Acs.2.21 gts in Sy. No. 356 even after gifting Ac.1.00 gts therein to her and was trying to encroach over the land gifted to her by him; that defendant Nos. 1 to 3 therein also were trying to dispossess her stating that the gifted property is only a grave yard; that all the defendants including the Wakf Board were trying to dispossess her from the said property and on 04.10.1987 they attempted to dispossess her by denying her ownership of this land.

8. The defendant Nos. 1 to 3 therein filed a written statement denying the said gift by Lal Mohammed to Zaheda Begum and contended that the land gifted to her is not patta land but was Inam land attached to the above Dargah and was a grave yard exclusively used by people of Muslim community and under the control of the Wakf Board.

9. Lal Mohammed/D-4 therein remained ex parte and did not file any written statement.

10. The Wakf Board (D-5 in the suit O.S. No. 43/1987) engaged a counsel Sri K. Ravinder Reddy and filed a written statement contending that the land in Sy. No. 356 relates to the Wakf Board and was endowed by the Government to the Dargah for its upkeep and maintenance and not in favour of Muthawallis of the Dargah; that there is no question of Gift of this Wakf land to any individual without permission or consent of the Wakf Board in view of the provisions of the Wakf Act, 1954; that the Gift Deed in favour of Zaheda Begum by Lal Mohammed is valid and he had no authority to execute it; Zaheda Begum had no possession or title over the land; and Lal Mohammed or his legal heirs were never appointed as Muthawallis of the said Dargah.

11. The Sub-Ordinate Judge framed the following issues:

1. Whether the plaintiff is the owner and possessor of the suit land by virtue of the registered Gift deed dated 16-10-1984 executed by defendant No. 4?
2. Whether the plaintiff is entitled to be decreed as owner and possessor of the suit land?
3. Whether the plaintiff is entitled for the perpetual injunction as prayed for?
4. Whether the suit land is Inam land attached to the Dargah of "Azrath Syed Abbas Rahmathullah Alhey" as alleged by Defendants 1 to 3?
5. Whether the subject matter of the OS. No. 202 of 1987 on the file of District Munsiff, Ramannapet and the subject matter of this suit is one and the same?
6. Whether the suit is not properly valued and the court fee paid is not sufficient?
7. Whether the Plaintiff is not the daughter of the def-4 as alleged by defendant No. 5?

8. To what relief?

12. Zaheda Begum examined her husband as PW.1 and marked Exs.A.1 to A.9. The Wakf Board and the other defendants, including Lal Mohammed, did not examine any witnesses or mark any documents.

13. By judgment and decree dt.09.02.1990, the Sub-Ordinate Judge, Bhongir, decreed OS. No. 43 of 1987. He held:

9. I have gone through the statement of PW1. Though it is stated in the written statement of defendants that the suit property is Wakf property but defendant no. 5 which is the Wakf board did not choose to examine any witnesses or filed any documents to show that the suit survey no. 356 is Wakf property. In other words the plaintiff has filed documentary evidence to show that the suit survey No. 356 belongs to Sri Lal Mohammed and the said Lal Mohammed has gifted away Ac.1.00 gts of land out of survey No. 356 through a registered gift deed dated 16-10-1984 which is marked as Ex.A.2. It is seen that as per the written statement filed by the defendants 1 & 2 herein in OS. No. 202/87 it is alleged that the donor of the plaintiff by name Sri Lal Mohammed got his name recorded as pattedar illegally without the knowledge of the A.P. Wakf Board that means the name of the donor of the plaintiff is recorded as pattedar in the revenue records, if it is so nothing prevented the Wakf Board or the defendants 1 and 2 herein to get the name of Sri Lal Mohammed, who is the donor of the plaintiff, removed from the revenue records as pattedar. Until and unless the defendants 1 to 5 produce the documents to rebut the documents filed by the plaintiff to show that the suit land of Ac.1.00 gts is Wakf property I hold that the statement of PW.1 remains unchallenged and the documents produced by the plaintiff should and must be believed unless they are disproved by the defendants. In the absence of any documentary and oral evidence

produced by the defendants, I hold that the gift deed was executed by Lal Mohammed and since Lal Mohammed's name is shown as pattedar in the revenue records in respect of survey No. 356, it cannot be said the Lal Mohammed has no right to gift away the suit property to the plaintiff. As such I hold that the plaintiff has proved the gift deed. Hence I answer this issue in favour of the plaintiff and against the defendants....

Issue No. 4: Since the defendant No. 5 did not chose to examine any witnesses and produced any documents to show that the suit survey No. 356 is Inam land. As such I hold that the suit land is not the Inam land. Hence, I answer this issue accordingly.

(emphasis supplied)

14. Thus it was held that that suit sy. no. 356 is not Wakf property or Inam land. This judgement became final as no appeal was preferred against it by the Wakf Board.

O.S.NO. 15/1991

15. Subequently, OS. No. 15 of 1991 was filed by the legal heirs of Khaja Moinuddin against the legal representatives of Lal Mohammed and also Zaheda Begum and several others for partition and separate possession of the extent of Acs.2.21 gts in Sy. No. 356 alleging that it is the Matruka property of Lal Mohammed and Khaja Moinuddin. The suit was not pressed against the legal heirs of Lal Mohammed. On 29.03.1993, the said suit was decreed pursuant to a compromise between the parties thereto. In the said compromise (i) the legal representatives of Khaja Moinuddin were held entitled to an extent of Ac.1.00 gts to the west of the land of Acs.2.21 gts in Sy. No. 356 (ii) an extent of Ac.0.21 gts is covered by road and (iii) the remaining extent of Ac.1.00 gts was given to Zaheda Begum (D-27 therein) on the ground that Lal Mohammed had previously gifted this land to her.

The Gazette Publications

16. While this was going on, the State Government published on 15.2.1990 a list of Wakf properties in Nalgonda District which had been surveyed u/s 4(3) of the Wakf Act, 1954 in exercise of its power u/s 5(2) of the said Act. In the said Gazette at pg.184, Sl. No. 14260, the Dargah at Lakkaram Village was mentioned. Instead of mentioning Sy. No. 356 of Choutuppal village as property belonging to the said Dargah, Sy. No. 856 was mentioned erroneously without indicating the name of the village. Thereafter, an errata notification was issued and published in the A.P.Gazette on 13.1.2000 correcting Sy. No. 856 as Sy. No. 356 of Choutuppal Village.

Pleadings IN O.S.79/1999 (O.S156/2000)

17. OS. No. 79 of 1999 was filed by Syed Ameen and Syed Rasool, against the legal heirs of Lal Mohammed (referred to supra) on the file of the Junior Civil

Judge, Ramannapet seeking a perpetual injunction. They contended that they had purchased an extent of Ac.1.00 in Sy. No. 356 under the sale deed dt.03.06.1994 from the legal heirs of Khaja Moinuddin, i.e., the brother of Lal Mohammed by paying a sum of Rs. 80,000/- and the defendants had made an attempt to dispossess them on 26.08.1999.

18. The legal heirs of Lal Mohammed filed written statement contending that the extent of property in the possession of the plaintiffs is a Wakf property attached to the above Dargah and they had deliberately not impleaded the Wakf Board as a party defendant; that the legal heirs of Khaja Moinuddin had no authority to sell the property to the plaintiffs herein; that plaintiffs were none other than nephews of Lal Mohammed and Lal Mohammed was the Muthawalli of the said Dargah; and that an extent of Acs.2.21 gts in Sy. No. 356 was attached to the said Dargah.

Pleadings IN O.S.4/2000

19. The Wakf Board filed OS. No. 4 of 2000 on the file of the Andhra Pradesh State Wakf Tribunal, Hyderabad (for short, "the Tribunal") contending that the entire extent of Acs.2.21 gts in Sy. No. 356 is Wakf property attached to the Dargah; that a Survey Commissioner had been appointed to survey the lands attached to the Durga; that a Gazette dt.15.02.1990 had been published indicating the properties of the said Dargah but on account of a printing mistake Sy. No. 856 was printed instead of Sy. No. 356; that this was corrected by issuing the errata on 13.1.2000; that the legal heirs of Khaja Moinuddin had no right to sell the property to Syed Ameen and Syed Rasool under the sale deed dt.03.06.1994; that the legal heirs of Khaja Moinuddin along with Syed Ameen and Syed Rasool had executed two registered agreements of sale dt.29.12.1999 and one registered agreement of sale dt.30.12.1999 in favour of defendant Nos. 11 to 13 therein and these documents (sale deed dt.3.6.1994 and agreements of sale dt.29.12.1999 and 30.12.1999) be cancelled by declaring them as null and void and not binding on the Wakf Board. They also sought a perpetual injunction restraining the legal heirs of Khaja Moinuddin, Syed Ameen and Syed Rasool and the purchasers from utilising the said documents and also to restrain them from interfering with the alleged peaceful possession and enjoyment of the plaintiff Wakf Board over the property.

20. A written statement was filed by D-1 to 13 (Legal heirs of Khaja Moinuddin and purchasers from them) contending that the land in Sy. No. 356 is private property and that the judgment and decree in OS. No. 43 of 1987 filed by Zaheda Begum against the Wakf Board was decreed holding that it was not Wakf property. They also contended that OS. No. 15 of 1991 had already been disposed of dividing the properties between the legal heirs of Khaja Moinuddin and Lal Mohammed; that the land in Sy. No. 356 is not Wakf property in view of the above facts and the Survey Commissioner or the Gazette publication cannot override or overrule the judgment of the Sub-Ordinate Judge, Bhongir in OS. . 43 of 1987; and that all the transactions entered into by the legal heirs of Khaja

Moinuddin in favour of Syed Ameen and Syed Rasool and the further transactions by these persons in favour of defendant Nos. 11 to 16 are all valid.

21. Defendant Nos. 14 to 16 adopted the written statement of defendant Nos. 1 to 13 and pleaded that defendant Nos. 9 and 10 had sold a portion of the land in Sy. No. 356 to defendant Nos. 11 to 13; that defendant Nos. 14 and 15 are partners with defendant Nos. 11 to 13 under an agreement with the latter and they are in joint possession of the purchased portion with defendant Nos. 11 to 13. Defendant No. 16 claimed to be the purchaser of an extent of 192 Sq.yds. from defendant Nos. 9 and 10.

O.S.NO. 79/1999 Renumbered As O.S.156 OF 2000

22. The suit OS. No. 79 of 1999 filed before the Junior Civil Judge, Ramannapet, Nalgonda District was transferred to the Tribunal to be tried along with OS. No. 4 of 2000. It was again renumbered as OS. No. 156 of 2000 by the Tribunal. The Wakf Board was also impleaded in OS. No. 156 of 2000 as 5th defendant by order dt.06.02.2001 in IA. No. 823 of 2000.

23. The Tribunal framed the following issues in OS. No. 156 of 2000:

1. Whether the suit property is a Wakf property?
2. Whether the plaintiffs are entitled for perpetual injunction as prayed for?
3. To what relief?

24. The Tribunal framed the following issues in OS. No. 4 of 2000:

1. Whether the suit property is Wakf property or not?
2. Whether the plaintiff is entitled for perpetual injunction as prayed for?
3. Whether the plaintiff is entitled to seek correction in AP-Gazette No. 7-A dt : 15-02-90 in respect of suit schedule property or misprinting of survey No. 356 as survey No. 856 in following documents, registered in the office of Sub-Registrar, Nalgonda Dist.
 - a. Regd. Sale Deed bearing Document No. 1190/94 dt : 03-06-1994.
 - b. Regd. Agreement of Sale bearing Document No. 3772/99 dt.29-12-1999.
 - c. Regd. Agreement of Sale bearing document No. 3773/99 dt : 29-12-1999.
 - d. Regd. Agreement of Sale bearing document No. 3777/99 dt.30-12-1999.
4. To what relief

It also framed the following additional issues:

1. Whether the Wakf institution Dargah Hzt. Syed Abbas (Rh) situated at Lakkaram Village, Ramannapet Tq. Nalgonda is having attached property in Sy. No. 356 of Choutuppal Village in addition to property in Sy. No. 114 of Lakkaram

Village?

2. Whether the notice is necessary to the parties concerned before issuance of Errata dated 3rd January, 2000?
3. Whether the plaintiff is entitled to make correction of original Gazette notification dated : 15-02-1990?
4. Whether the Decree and Judgment in OS. No. 43 of 1987 dated : 9th February 1990 by the Hon''ble Subordinate Judge, Bhongir, constitute Resjudicata?
5. Whether the Judgment and Decree in OS. No. 43 of 1987 dated 9th February, 1990 by the Hon''ble Subordinate Judge, Bhongir became part of Judgment in OS. No. 15 of 1991 by the Hon''ble Sub-ordinate Judge at Bhongir?
6. Whether the Defendant No. 1 to 8 are entitled to claim title over the suit schedule property by virtue of Judgment and Decree in OS. No. 15 of 1991, on the file of the Hon''ble Subordinate Judge, Bhongir?
7. Whether the execution of sale deed and agreement of sale in favour of defendant No. 9 and 10 is valid?
8. Whether the registered documents executed by defendant No. 9 to 10 in favour of other defendants are valid?

The Decision of The Tribunal

25. By common judgment dt.12.01.2012, the Tribunal decreed OS. No. 4 of 2000 and dismissed OS. No. 156 of 2000.

26. The tribunal held that the crucial issues to be decided are: (a)whether Sy. No. 356 of Choutuppal Village of extent Acs.2.21 gts. was attached to the Dargah, (b)whether it is a service Inam land provided by the then rulers, (c)whether the alienation of Ac.1.00 gts out of this extent to Zaheda Begum is valid, and (d) whether the other Ac.1.00 gts allotted to the legal heirs of Khaja Moinuddin could have been alienated to Syed Ameen and Syed Rasool under the sale deed dt.03.06.1994.

It held that in view of the Gazette dt.15.02.1990 as amended by the errata dt.13.01.2000, the land in Sy. No. 356 has to be held as property attached to the Dargah. Relying on the survey report Ex.A.2 of the Survey Commissioner, it held that the land in Sy. No. 356 is a service Inam land attached to the Dargah which is located in Sy. No. 114 of Lakkaram village; that on account of a mistake, in the Gazette dt.15.02.1990, Sy. No. 356 was wrongly printed as Sy. No. 856 and there was no such Sy. No. 856 in Lakkaram or Choutuppal Villages; that on realising the error, the errata dt.13.01.2000 was published in the Gazette; taking advantage of the misprint of the Sy. No. in the Gazette, the legal heirs of Khaja Moinuddin and Lal Mohammed divided the properties under the collusive decree in OS. No. 15 of 1991; and the evidence of the CEO of the Wakf Board as PW.1 in OS. No. 4 of 2000 proves the above facts. It held that no prior notice is

necessary to the purchasers of the land by the Wakf Board before publishing the errata in the Gazette.

It held that the genuineness of the Survey Commissioner's report cannot be doubted and that in an order dt.21.05.2001, the Joint Collector, Nalgonda held in an appeal u/s 24(1) of the A.P. (Telangana Area) Abolition of Inams Act, 1955 to which the legal representatives of Khaja Moinuddin are parties that the subject land is Mashroothul Khidmath Inam (conditional Inam) granted in the name of an individual burdened with service to the Dargah Hazrath Syed Abbas, a Wakf Institution under the Wakf Act, 1954 and that the Institution is entitled to Occupancy Certificate for the said land on the abolition of the Inam.

It rejected the contention of the plaintiffs in OS. No. 156 of 2000 that the Joint Collector was not empowered to pass the order relating to Wakf properties when suits were pending in the Tribunal.

It also noted that the plaintiff in OS. No. 156 of 2000 admitted in their cross-examination that they verified the revenue records before purchase and found as per the Pahanis, the land was mentioned as Mafi Inam land and that the Pahanis do not disclose the name of their vendor as Khatedars or Pattedars.

Once it is Wakf property, the Tribunal held that any alienation by Muthawalli or their legal representatives would have no recognition under Law in view of Section 51 of the Wakf Act, 1995 corresponding to Section 36-A of the Wakf Act, 1954.

It further held that the decision in OS. No. 43 of 1987 would not operate as res judicata since in that case only an extent of Ac.1.00 gts out of Acs.2.21 gts. in Sy. No. 356 was the subject matter and there is no declaration in OS. No. 43 of 1987 that the land is not Wakf property and the only decision was that it is not Inam land. It therefore held that the said decision is not binding on the Wakf Board since the property involved in OS. No. 4 of 2000 and OS. No. 156 of 2000 is the entire extent of Acs.2.21 gts. in Sy. No. 356.

It also held that in spite of the sale in favour of Syed Ameen and Syed Rasool, their vendors had participated in the proceedings under the Inam Abolition Act where a decision was given that the land is Inam land attached to the Dargah, and so the said sale deed was a sham document.

It noted that in OS. No. 15 of 1991, the suit was dismissed against some defendants as can be seen from the final decree passed therein; that it is not known who has endorsed that it was not pressed and on what understanding; and that it is difficult to believe that a pious person like Lal Mohammed would have given away his share in land without leaving anything for his own wife and children when there is no evidence that he has got any other property. It therefore held that the judgment in OS. No. 15 of 1991 is collusive. Therefore, it held that the sale deed dt.03.06.1994 in favour of Syed Ameen and Syed Rasool has no legal sanctity since the subject matter of the said sale is Wakf property

and alienation thereof is prohibited by Law.

Although in OS. No. 43 of 1987 Ac.1.00 gts in Sy. No. 356 was the subject matter, since the entire extent of Acs.2.21 gts. in that survey number was the subject matter of OS. No. 4 of 2000, it held that the decision in OS. No. 43 of 1987 would not operate as res judicata and bar OS. No. 4 of 2000.

It however held that the Pahanis for the year 1994-95, 95-96 and 96-97 show the possession of Syed Ameen and Syed Rasool in respect of Ac.1.00gts in Sy. No. 356 but the said entries cannot be relied upon in the absence of an order under the A.P. Record of Rights in Land and Pattedar Pass Books Act, 1971 mentioned in the said Pahanis. It held that the said persons did not produce evidence showing that they were cultivating the land or examine neighbouring ryots. It noted that certain Pahanis subsequent to the above period showed the Wakf Board as Pattedar and mentioned making of house plots.

It however held that Zaheda Begum who had obtained the decree in OS. No. 43 of 1987 in respect of Ac.1.00 in Sy. No. 356 was not made a party in OS. No. 4 of 2000 filed by the Board and the decision in OS. No. 43 of 1987 was not challenged by the Board. It therefore held that the decision in OS. No. 43 of 1987 to that extent of land operates as res judicata.

It therefore dismissed OS. No. 156 of 2000 and allowed OS. No. 4 of 2000 and set aside the sale deed dt.03.06.1994 in favour of Syed Ameen and Syed Rasool and the other alienations made by the said persons. It also granted an injunction restraining the petitioners/defendants in OS. No. 4 of 2000 from interfering with the possession and enjoyment of the Wakf Board over the property.

THE CRP. No. s 2037 OF 2012, 2053 OF 2012, 2384 OF 2012, 5236 AND 5237 OF 2013:

27. Challenging the said judgment, Syed Ameen and Syed Rasool, (the plaintiffs in OS. No. 156 of 2000, and defendant Nos. 9 and 10 in OS. No. 4 of 2000) filed CRP. No. 2037 of 2012 challenging the judgment in OS. No. 4 of 2000; and CRP. No. 2053 of 2012 challenging the judgment in OS. No. 156 of 2000.

28. The defendant Nos. 11, 12, 13 and 16 in OS. No. 4 of 2000 filed CRP. No. 2384 of 2012 challenging the judgment in OS. No. 4 of 2000.

29. D. Kishtappa and nine others claiming to be purchasers of small extents of land which fell to the share of Lal Mohammed filed CRP. No. 5236 of 2013 challenging the judgment of the Tribunal in OS. No. 4 of 2000 after obtaining leave of this Court to challenge it in CRP.MP. No. 4022 of 2012.

30. Likewise, G. Bixapathi and three others, also claiming to be purchasers of small extents of land in the area allotted to Lal Mohammed filed CRP. No. 5237 of 2013 challenging the judgment in OS. No. 4 of 2000 after obtaining leave of this Court to file the said Revision in CRP.MP. No. 7880 of 2012. All these Revisions are filed u/s 83(9) of the Wakf Act, 1995.

31. Heard Sri P. Gangi Rami Reddy, counsel for the petitioners in all the Revisions; Sri M.A. Mukheed, counsel for the Andhra Pradesh State Wakf Board/1st Respondent in all the Revisions; and Sri A.M. Qureshi, counsel for respondent Nos. 1, 2 and 4/the legal representatives of Lal Mohammed, in CRP. No. 2053 of 2012.

The Contentions of The Parties

32. The counsel for petitioners contended that the 1st respondent/Wakf Board was a party in OS. No. 43 of 1987 filed by Zaheda Begum where it had filed a written statement through a counsel stating that the entire extent in Sy. No. 356 is Wakf property attached to the above Dargah and that there could not be a gift of any extent in Sy. No. 356 in favour of Zaheda Begum by Lal Mohammed; that defendant Nos. 1 to 3 therein have taken a plea that the property which is subject matter of the suit is not patta land but is Inam land attached to the Dargah and is under the control of the Wakf Board; that in support of the said plea it did not examine any witness or file any document to show that the land in Sy. No. 356 is Wakf property and the Sub-Ordinate Judge in his judgment dt.09.02.1990 had held that the land in Sy. No. 356 is not Inam land or Wakf property and declared that the plaintiff is entitled for declaration and injunction as owner and possessor of the land in Sy. No. 356 of extent of Acs.1.00 gts; therefore, he contended that in the light of the adjudication in OS. No. 43 of 1987 that the land in Sy. No. 356 is not Inam land attached to the Dargah or Wakf property and it is the private property of Lal Mohammed, the said finding is binding on the Wakf Board and would operate as res judicata in OS. No. 4 of 2000 as well as in OS. No. 156 of 2000; that this principle of res judicata would be attracted to the facts of these cases because the identity of title of the Wakf Board to the land in Sy. No. 356 is the issue common to both OS. No. 43 of 1987 and OS. No. 156 of 2000/ OS. No. 4 of 2000, even though the subject matter i.e., the property in OS. No. 43 of 1987 may be different from the subject matter in OS. No. 156 of 2000; that the subject matter in OS. No. 43 of 1987 is also the subject matter in OS. No. 4 of 2000 and it was not open to the Wakf Tribunal to come to the conclusion in its judgment in OS. No. 4 of 2000 that the land in Sy. No. 356 is Wakf land contrary to the finding in OS. No. 43 of 1987; that it is the private property of Lal Mohammed and, therefore, not a Wakf property. He relied upon the following decisions in Raj Lakshmi Dasi and Others Vs. Banamali Sen and Others, and Ram Gobinda Dawan and Others Vs. Smt. Bhaktabala, .

33. The counsel for petitioners further contended that subsequent to the decision in OS. No. 43 of 1987 there was a compromise in OS. No. 15 of 1991 between the legal heirs of Khaja Moinuddin and Lal Mohammed and a compromise decree was passed on 29.03.1993 giving Ac.1.00 gts in Sy. No. 356 to Zaheda Begum and another acre in Sy. No. 356 to the legal heirs of Lal Mohammed, the balance Acs.0.21 gts being covered by a road; that the legal heirs of Khaja Moinuddin were competent to alienate under the registered sale deed dt.03.06.1994 the extent of Ac.1.00 gts which had fallen to their share to Syed Ameen and Syed

Rasool in the above property, and the latter were also competent to execute a registered agreement of sale on 29.12.1999 and 30.12.1999 in favour of defendant Nos. 11 to 13; that defendant No. 16 had independently purchased 192 Sq.yds. from Syed Ameen and Syed Rasool and none of these transactions could have been impugned by the Wakf Board in OS. No. 4 of 2000; that the Tribunal erred in holding that the judgment in OS. No. 43 of 1987 would not constitute res judicata in OS. No. 156 of 2000 on the ground that the extent of Ac.1.00 gts involved in OS. No. 43 of 1987 was not the subject matter in OS. No. 156 of 2000; that the Tribunal erred in holding that in OS. No. 43 of 1987 there was no declaration that the land in Sy. No. 356 is not Wakf property; that once the Tribunal held that the land in Sy. No. 356 is private property and also that that it is not Wakf property, it is binding on the Wakf Board; and the judgment in OS. No. 4 of 2000 and OS. No. 156 of 2000 be set aside and OS. No. 4 of 2000 be dismissed and OS. No. 156 of 2000 be allowed.

34. On the other hand, the counsel for 1st respondent/Wakf Board contended that the Survey Commissioner's report was marked as Ex.A.2; the Gazette notification was marked as Ex.A.3; and the errata of the Gazette was notified on 13.01.2000 under Ex.A.4 and these documents conclusively show that the land in Sy. No. 356 is Wakf property; that the judgment in OS. No. 43 of 1987 would not constitute res judicata in OS. No. 156 of 2000 or in OS. No. 4 of 2000 for the reason that in OS. No. 43 of 1987 there is no declaration by the court that the land in Sy. No. 356 is not Wakf property and the only declaration therein is that it is not Inam property; that the extent of Ac.1.00 gts in Sy. No. 356 which is the subject matter of OS. No. 156 of 2000 is not the subject matter in OS. No. 43 of 1987; and therefore, it was open to the Tribunal to hold that the land in Sy. No. 356 is Wakf property.

35. The counsel for respondent Nos. 1, 2 and 4 in CRP. No. 2053 of 2012 contended that the determination by the court below in OS. No. 43 of 1987 is not a determination in a suit filed u/s 6(1) of the Wakf Act, 1995, and therefore, under sub-Section (5) of Section 7 of the Act, it was open to the Tribunal to again decide whether the subject matter of the suits OS. No. 4 of 2000 and OS. No. 156 of 2000 was Wakf property or not. He relied upon the judgments in Sayyed Ali and Others Vs. Andhra Pradesh Wakf Board Hyderabad and Others, in support of his plea that the decision of the court below in OS. No. 43 of 1987 is not binding on the Tribunal in OS. No. 4 of 2000 or OS. No. 156 of 2000.

The Consideration by This Court

36. I have noted the submissions of the respective parties.

37. There is no dispute that in OS. No. 43 of 1987 Zaheda Begum claimed an extent of Ac.1.00 gts in Sy. No. 356 as having been gifted to her under a registered Gift Deed dt.16.10.1984 by Lal Mohammed, her paternal uncle. She had sought relief of declaration and title and a perpetual injunction restraining the defendants therein, including Lal Mohammed and the Andhra Pradesh Wakf

Board (5th defendant therein) from interfering with her possession and enjoyment of the said land. Defendant Nos. 1 to 3 in that suit had taken a plea that the plaint schedule property was not patta land but was Inam land attached to the Dargah under the control of the Wakf Board. The Wakf Board had also filed a written statement stating that the land in Sy. No. 356 related to the Wakf Board which had been endowed by the Government to the Dargah and there was no question of gifting of the said land without the consent of the Wakf Board under the Wakf Act, 1954. The Sub-Ordinate Judge, Bhongir framed the issue : "Whether the suit land is Inam land attached to the Dargah of "Azrath Syed Abbas Rahmathullah Alhey" as alleged by Defendants 1 to 3?". The Wakf Board did not examine any witness or mark any document. Therefore, the Sub-Ordinate Judge, Bhongir decreed the suit OS. No. 43 of 1987 on 09.02.1990 declaring the title of Zaheda Begum to the extent of Ac.1.00 gts in Sy. No. 356 and also holding that the said land is not Inam land. In the said judgment it also observed " defendant no. 5 Wakf board did not choose to examine any witnesses or file any document to show that suit Survey no. 356 is Wakf property...Until and unless the defendants 1-5 produce documents to rebut the documents filed by the plaintiff to show that the suit land of Ac.1.00 gts is Wakf property, I hold that the statement of PW1 remains unchallenged and the documents produced by the plaintiff should be believed unless they are disproved by the defendants..." Thus, clearly the Civil court had held that land in Survey No. 356 was not Wakf property and rejected the plea of the Wakf Board that the land in Sy. No. 356 is Wakf property. This judgment became final as there was no challenge to it by the Wakf Board.

38. Although the counsel for Wakf Board sought to contend that the Wakf Board had no knowledge about the said suit and that the counsel who represented the Wakf Board in that suit was not authorised to represent the Wakf Board, I am not inclined to entertain the said plea. The Wakf Board should have raised such a plea in the Tribunal and adduced evidence to show that the Wakf Board did not receive any notice from the Court in O.S. No. 43/1987 and that it did not engage Counsel K.Ravindra Reddy. It did not do so.

39. The basis of gift by Lal Mohammed to Zaheda Begum and the basis for transfer of land by legal heirs of Khaja Moinuddin to Syed Ameen and Syed Rasool was that land in Sy. No. 356 was not Wakf property but was their matraka property. In O.S.43 of 1987, the Court held that land in Sy. No. 356 was not Wakf property but private property.

40. It may be that in O.S. No. 43 of 1987 Khaja Moinuddin was not a party and Lal Mohammed/Zaheda Begum were a parties. But in the land in Sy. No. 356, Lal Mohammed claimed to be owner of Ac.1.00 and Khaja Moinuddin's legal heirs claimed to be owners of another Ac.1.00. Admittedly, Khaja Moinuddin and Lal Mohammed are brothers and there was no partition between legal heirs of Khaja Moinuddin and Zaheda Begum, to whom the other one acre was gifted by Lal Mohammed on 16.10.1984 by the date of filing of the suit O.S.43 of 1987. This

happened only on 29.3.1993 in O.S.15 of 1991 under a compromise decree. So they were co-owners by date of decision in O.S.43 of 1987 on 9.2.1990 and decision in favour of one co-owner therefore enures to the benefit of the other co-owner.

41. Therefore Khaja Moinuddin and his legal heirs/ purchasers from them (Syed Ameen and Syed Rasool) can take advantage of the decision in O.S. No. 43 of 1987 and contest the claim of the Wakf Board that property in Sy. No. 356 is Wakf property since they are privies in estate with Zaheda Begum/ Lal Mohammed who is a party to O.S. No. 43 of 1987. They can also invoke the principle of res judicata.

42. The question whether the land in Sy. No. 356 is private property of Lal Mohammed or Wakf property was directly and substantially in issue in OS. No. 43 of 1987 since the Wakf Board had specifically pleaded that the entire land in Sy. No. 356 of extent Acs.2.21 gts is Wakf land. It's plea was " the land bearing Sy. No. 356 related to the Wakf Board...". It had not contended in OS. No. 43 of 1987 that only the extent of Ac.1.00 gts in Sy. No. 356 claimed by Zaheda Begum in that suit was Wakf property.

43. In OS. No. 156 of 2000, Syed Ameen and Syed Rasool and some of the purchasers from the legal heirs of Khaja Moinuddin pleaded that the extent of Ac.1.00 gts in Sy. No. 356 purchased by them under the sale deed dt.03.06.1994 is their private property, but the legal heirs of Lal Mohammed who were defendant Nos. 1 to 4 therein had taken the plea that the land in Sy. No. 356 is Wakf property. Subsequently the Wakf Board which was impleaded also took the plea that the total extent in Sy. No. 356 is Wakf property attached to the Dargah.

44. In OS. No. 4 of 2000, the Wakf Board contended that the entire land in Sy. No. 356 of extent Acs.2.21 gts is Wakf land.

45. In view of these pleadings it is clear that the identity of title to the land in Sy. No. 356 is specifically in issue in both OS. No. 43 of 1987 and OS. No. 4 of 2000/ OS. No. 156 of 2000. It is also pertinent to note that the entire extent of Acs.2.21 gts in Sy. No. 356 is the subject matter of OS. No. 4 of 2000 and it includes the extent of Ac.1.00 gts gifted to Zaheda Begum by Lal Mohammed under the Gift Deed dt.16.10.1984.

46. In *Srimati Raj Lakshmi Dasi and others v. Banamali Sen and others* (1 supra), in a compromise decree dt.09.01.1907 passed in a suit filed in 1903, one Katayani was held entitled to a six anna share in absolute right in the estate of one Raj Ballab who had died. She was the wife of the adopted son of Raj Ballab. Sens, the grandsons of Raj Ballab through his predeceased daughter, were held entitled to four annas share. Prior to the filing of the suit, the Sens had mortgaged the whole estate to one Das to secure a loan. Part of the property of Raj Ballab's estate which had been allotted under the compromise to the share of the Sens was notified under the Land Acquisition Act, 1894 on 16.01.1921. On 07.07.1928, a joint Award was made in favour of all the claimants. Raj Lakshmi

asked for a reference to the Court on the point of apportionment of compensation and asserted that the Sens and Das were not entitled to any portion of the compensation money. The reference Court rejected her claim but on appeal, the Privy Council declared that only Raj Lakshmi was entitled to the entire compensation money. Thereafter, Raj Lakshmi filed another suit against the Sens and Das for possession of the properties which represented the four anna share of the estate allotted to the Sens, the possession of which was delivered to them in pursuance of the terms of the final decree in the suit of 1903. It was contended for the Sens that the judgment of the Privy Council could not operate as *res judicata* against the contention of the Sens and Das about the title to the four anna share of Raj Ballab's estate, because the subject matter of those proceedings was the compensation money, a sum of Rs. 900/-, and not the property which is the subject matter of the later suit. The Supreme Court referred to and followed the decision of the Privy Council in AIR 1939 133 (Privy Council) . In that case, in a regular suit which concerned the rest of the property the plea of *res judicata* was upheld by reason of the decision in a prior land acquisition case which concerned another part of the property which had been acquired and for which compensation was payable. The Supreme Court held:

19. the test of *res judicata* is the identity of the title in the two litigations and not the identity of the actual property involved in the two cases.

It held that the argument of the Sens and Das was not tenable and was liable to be rejected.

47. The same principle was again reiterated in *Ram Gobinda Daw and others v. Smt. H. Bhakta Bala Dassi* (2 supra), although on the facts of that case it was not applied as the matter was not heard and finally decided on merits in the previous litigation.

48. In *Varupanda Seetharama Swamy and Others Vs. Allam Ugra Narasimha Murthy*, , the principle in the decision of *Srimati Raj Lakshmi Dasi and others* (1 supra) was applied by this Court. There, a suit was filed for injunction by lessor against his relative based on a family arrangement. The suit failed. Subsequently, a suit was filed for injunction by his lessee for different items of property but traceable to the same family arrangement. This Court held that there was complete identity of subject matter in both suits and the later suit is therefore barred by *res judicata*. This Court held:

11..... (3) "Matter in issue" in S. 11 of the CPC is distinct from the subject matter and the object of the suit as well as from the relief that may be asked for in it and the cause of action on which it is based, and the rule of *res judicata* requiring the identity of the matter in issue will apply even when the subject matter, the object, the relief and the cause of action are different. It is the "matter in issue" and not the subject matter of the suit that forms the essential test of *res judicata*.

(emphasis supplied)

It held that the claim for possession in the earlier as well as in the later suit are based on the factum of family arrangement and there is commonness in the "matter in issue" in the two suits and a lawful judgment against a lessor binds his lessee even though the latter is not a party to the judgment, in the absence of any fraud or collusion. It held that a lessee is a "privy" in estate and any decision against his lessor in an earlier suit will bind the lessee in a later suit filed by him though lessee was not a party to the earlier suit nor the lessor a party to the later suit and also, even if the said lease commenced prior to the finality of the judgment in the earlier suit, provided however, the lease is from month to month.

49. In *K. Ethirajan (Dead) by Lrs. Vs. Lakshmi and Others*, , the Supreme Court held:

20. The argument that the principle of *res judicata* cannot apply because in the previous suit only a part of the property was involved when in the subsequent suit the whole property is the subject-matter, cannot be accepted. The principle of *res judicata* u/s 11 of the CPC is attracted where issues directly and substantially involved between the same parties in the previous and subsequent suit are the same, maybe, in the previous suit only a part of the property was involved when in the subsequent suit, the whole property is the subject-matter.

50. Going by the above test, it is clear that the issue whether the land in Sy. no. 356 is Wakf property or not is the "matter in issue" in O.S. No. 43 of 1987 as well as in O.S. No. 156/2000/ O.S. No. 4/2000. It was decided against the Wakf Board in OS. No. 43 of 1987 when the Sub-Ordinate Judge, Bhongir had declared that the land of Acs.1.00 in Sy. No. 356 is the property of Zaheda Begum under the Gift deed dt.16.10.1984 executed by Lal Mohammed and also observed that land in survey No. 356 was not proved to be Wakf property. Even if the actual property which is subject matter of OS. No. 43 of 1987 is different from the actual property which is subject matter of OS. No. 156 of 2000, still since there is "identity of title" in both litigations (the Wakf Board having pleaded that the land in Sy. No. 356 was Wakf property in both litigations), the principle of *res judicata* is attracted and the Tribunal could not have taken a different view in OS. No. 156 of 2000.

51. Since the entire extent of Acs.2.21 gts in Sy. No. 356 is the subject matter of OS. No. 4 of 2000, it was not open to the Tribunal in OS. No. 4 of 2000 to hold that the Ac.1.00 gts in it sold by legal heirs of Khaja Moinuddin is a Wakf property (and the other acre gifted to Zaheda Begum by Lal Mohammed was not Wakf property) to annul the sale deed dt.3.6.1994 and the consequent two agreements of sale dt.29.12.1999 and the third agreement of sale 30.12.1999, contrary to the finding of the Civil Court in OS. No. 43 of 1987 that the land in Sy. No. 356 is not Wakf property.

52. The Tribunal, in my opinion, erred in holding that the judgment in OS. No. 43 of 1987 would not operate as *res judicata* on the ground that there is no

declaration in OS. No. 43 of 1987 that the land in Sy. No. 356 is Wakf property. Infact the Court in O.S.43 of 1987 categorically observed that there is no evidence adduced by the Wakf Board that land in Survey no. 356 is Wakf property. The Tribunal ought to have seen that when the court in OS. No. 43 of 1987 declared that the property is owned by Zaheda Begum, it also clearly rejected the plea of the Wakf Board that it is Wakf property.

53. The Tribunal also erred in holding that since the Wakf Board did not adduce any evidence in OS. No. 43 of 1987, and on that basis the decree in OS. No. 43 of 1987 was passed, therefore the decision in OS. No. 43 of 1987 is not a decision on merits. Nothing prevented the Wakf Board from leading evidence in O.S. No. 43 of 1987 in support of it's plea that land in Sy. No. 356 is Wakf property. It cannot take advantage of it's own wrong and seek to wriggle out of consequences of it's own inaction in leading evidence in O.S.43 of 1987. Whether or not the Wakf Board has adduced any evidence in OS. No. 43 of 1987 is irrelevant, since the decision in OS. No. 43 of 1987 was rendered on the evidence led by Zaheda Begum, the plaintiff therein. The applicability of principle of res judicata does not depend upon whether the finding in the earlier litigation was rendered after contest or ex parte.

54. In *Saroja Vs. Chinnusamy (Dead) by L.Rs and Another*, , the Supreme Court held as follows:

15. In this connection, reference can be made to a decision of the Madras High Court in *Arukkani Ammal v. Guruswamy* which was also relied on by the first appellate court. The Madras High Court in that decision observed as follows: (LW p. 708, para 1)

It is also difficult to appreciate the view taken by the District Munsif that ex parte decree cannot be considered to be "full decree on merits". A decree which is passed ex parte is as good and effective as a decree passed after contest. Before the ex parte decree is passed, the court has to hold that the averments in the plaint and the claim in the suit have been proved. It is, therefore, difficult to endorse the observation made by the Principal District Munsif that such a decree cannot be considered to be a decree passed on merits. It is undoubtedly a decree which is passed without contest; but it is only after the merits of the claim of the plaintiff have been proved to the satisfaction of the trial court, that an occasion to pass an ex parte decree can arise.

(emphasis supplied)

16. We are in full agreement with this view of the Madras High Court holding that a decree which is passed ex parte is as good and effective as a decree passed after contest. A similar view has also been expressed by a Division Bench of the Allahabad High Court in *Bramhanand Rai v. Dy. Director of Consolidation*.

If as held above, even an exparte decree would operate as res judicata, a judgment like the one in O.S. No. 43 of 1987 in which the Wakf Board was a

party, received summons, engaged a counsel, filed a written statement, yet for reasons best known to it did not lead evidence, causing the Court to hold that land in Sy. No. 356 is not Wakf property, would definitely constitute res judicata.

Even if the earlier decision in O.S. No. 43 of 1987 is wrong, it still operates as res judicata. In Mohanlal Goenka Vs. Benoy Krishna Mukherjee and Others, , the Supreme Court categorically held that the correctness or otherwise of a decision has no bearing on the question whether or not it operates as res judicata.

55. It was also not open to the Tribunal to hold that the decision in OS. No. 43 of 1987 did not concern the remaining extent of Acs.1.21 gts in Sy. No. 356 as the Tribunal clearly overlooked the principle that the true test of applicability of res judicata is the "identity of title" and not the identity of the subject matter of the earlier suit and the later suit. For this same reason, the finding of the Tribunal that in regard to the extent of Acs.2.21 gts in Sy. No. 356 which is the subject matter of O.S. No. 4 of 2000, the principle of res judicata does not apply, cannot be rejected.

56. It is pertinent to note that after the judgment in OS. No. 43 of 1987, there was partition of the properties between the legal heirs of Khaja Moinuddin and his brother Lal Mohammed in OS. No. 15 of 1991 and at the said partition Ac.1.00 gts on the western side of Sy. No. 356 was allotted to Zaheda Begum, Ac.1.00 gts was allotted to legal heirs of Khaja Moinuddin and the balance Ac.0.21 gts was recorded as having been covered by a road on the basis of this partition.

57. Merely because in OS. No. 15 of 1991, the final decree stated that the suit was not pressed against the legal heirs of Lal Mohammed (D.10 to D.13 there) and others, it cannot be said that the judgment dt.29.03.1993 is collusive as held by the Tribunal. Since Lal Mohammed had gifted Ac.1.00 in Sy. No. 356 to Zaheda Begum, his niece and under the compromise decree in OS. No. 15 of 1991, this Ac.1.00 was allotted to Zaheda Begum who was D.27 therein, his wife and children had no interest in the said property. The wife and children of Lal Mohammed had not questioned the Gift Deed dt.16.10.1984 executed by Lal Mohammed in favour of Zaheda Begum or the decree obtained by her on 09.02.1990 in OS. No. 43 of 1987. Therefore, the suit OS. No. 15 of 1991 was rightly not pressed against them as they had no right, title or interest therein.

58. The Tribunal in its order had also expressed a doubt as to how Lal Mohammed, a pious person could have given away the above extent to Zaheda Begum instead of giving it to his wife and children and noted that he had even filed a suit before the Junior Civil Judge, Ramannapet (mentioned as OS. No. 202/1986 in the judgment in OS. No. 43 of 1987) denying the gift in favour of Zaheda Begum. In my opinion, this is also an irrelevant circumstance to decide whether the decree in OS. No. 15 of 1991 is collusive since nothing is placed before the Tribunal that Lal Mohammed had succeeded in OS. No. 202 of 1986 against Zaheda Begum and even if he did, since Zaheda Begum had obtained a

declaration of title against Lal Mohammed in OS. No. 43 of 1987 apart from an injunction against him, Lal Mohammed can no longer be the owner of the Ac.1.00 gifted to Zaheda Begum. Even assuming that the gift to Zaheda Begum by Lal Mohammed leaving his wife and children is unnatural, in the face of a decree suffered by Lal Mohammed in OS. No. 43 of 1987, the Tribunal ought not to have considered this fact to hold that the decree in OS. No. 15 of 1991 is collusive. Therefore, the finding of the Tribunal that the decree in OS. No. 15 of 1991 is collusive is perverse and unsustainable.

59. Coming to the contentions of Sri A.M. Qureshi, counsel for respondent Nos. 1, 2 and 4 in CRP. No. 2053 of 2012 are concerned, admittedly, they are the legal heirs of Lal Mohammed. Lal Mohammed had executed a Gift deed gifting Ac.1.00 gts of land in Sy. No. 356 to Zaheda Begum. In OS. No. 43 of 1987 Zaheda Begum had obtained a decree for declaration of her title and for injunction against both Lal Mohammed and Andhra Pradesh Wakf Board. It is therefore not open to them to plead (contrary to the finding in the judgment in OS. No. 43 of 1987 and contrary to the statement of Lal Mohammed in the gift deed dt.16.10.1984) that the land in Sy. No. 356 is Wakf property. So they are estopped from raising any plea that the property in Sy. No. 356 is Wakf property. When the Wakf Board is barred from pleading that land in Sy. No. 356 is Wakf property, the legal heirs of Lal Mohammed, who urge the same plea, also have to fail.

60. Although the counsel for respondent Nos. 1, 2 and 4 in CRP. No. 2037 of 2012 sought to contend that the judgment of the Civil Court is not binding on the Tribunal and that after the judgment of the Civil Court on the basis of the Survey Commissioner's report (Ex.A.2 in OS. No. 4 of 2000), Ex.A.3/Gazette Notification was issued mentioning the survey number wrongly as Sy. No. 856 which was subsequently corrected by issuing an errata on 13.01.2000 (Ex.A.6 in OS. No. 4 of 2000) and that the Survey Commissioner's report and the Gazette notification prevail over the decision of the Civil Court, I am unable to agree with the said contention.

61. The judgment of a competent court of civil jurisdiction can only be set aside by superior courts. Its effect cannot be nullified either by a Survey Commissioner or by a Gazette notification issued by the Government at the instance of the Wakf Board. If such a contention is accepted it would be amount to allowing the decision of a judicial body to be overruled by an Executive act. Any such act would violate the "Doctrine of Separation of powers" which is part of the Basic structure of the Constitution and cannot be allowed. When even the Legislature cannot over-turn a judgment (it can only take away the basis of a judgment Virender Singh Hooda and Others Vs. State of Haryana and Another,), it is not open to the Executive to claim such a power which even the Legislature does not possess.

62. Section 5 of the Wakf Act, 1995 states that after the Survey Commissioner submits its report under Sub-Section (3) of Section 4 to the State Government

would forward the copy of the said report to the Wakf Board and the Wakf Board would then examine the report and then get it published in the Gazette.

63. In a situation like the present one, when the Wakf Board is aware that its title in respect of a particular parcel of land is lost by a decree of a Civil Court, it cannot override the said decision of the civil court by directing publication in the Gazette of a list of Wakfs properties prepared by the Survey Commissioner which include the property which was subject matter of the said litigation. This would amount permitting a party to litigation to escape the consequences of a judgment by misusing the provisions of the Wakf Act, 1995. The 2nd proviso to sub-Section (1) of Section 7 bars the Tribunal from reopening any question which had been heard and finally decided by a Civil Court in a suit instituted before the commencement of the Wakf Act, 1995. Since the issue of title to the land in Sy. No. 356 was decided by the Civil Court in OS. No. 43 of 1987, this provision bars the Tribunal from reopening the said question.

64. I am also of the view that the judgment in Sayyed Ali (3 supra), sought to be relied by the counsel for respondent Nos. 1, 2 and 4 in CRP. No. 2053 of 2012 has no application. In that case, the Tahsildar exercising jurisdiction under the Andhra Pradesh (Andhra Area) Inams (Abolition and conversion into Tyotwari) Act, 1956 had given a finding in a proceeding before him that the property which was subject matter of the said enquiry before him under that Act for grant of patta was not Wakf property. The said finding of the Tahsildar was sought to be relied upon in subsequent suit filed by the Wakf Board u/s 6 of the Act. The Supreme Court held that under the provisions of the said Act, it was not competent for the Tahsildar to adjudicate upon the character of Wakf property and the finding given him is without jurisdiction and so it would not operate as res judicata in the subsequent suit filed by the Wakf Board.

65. In the present case, it was the Civil Court in OS. No. 43 of 1987 which had decided that the land in Sy. No. 356 is not Wakf property and the said finding was given on merits. It is not the contention of the counsel for respondents that the Civil Court could not have given such a finding and that such finding is without jurisdiction. Therefore, the finding of the Civil Court in OS. No. 43 of 1987 would bind the Tribunal constituted under the Wakf Act, 1995.

66. Moreover Ex.A13 in O.S. No. 4 of 2000 (the order passed by the Joint Collector in the appeal under the A.P.(Telangana Area) Abolition of Inams Act, 1955 that the subject land is a service inam land and is a Wakf property, on which the Tribunal placed much reliance) would be a decision without jurisdiction in view of the judgement in Sayyed Ali (3 supra), because it was not for authorities under the said Act to decide whether the property is Wakf property, more so, after a civil court had held that it was not Wakf property.

67. For all the above reasons I hold that the land which was subject matter of O.S.156/2000 and O.S. No. 4/2000 in Sy. No. 356 is not Wakf property. It was therefore competent for the legal heirs of Khaja Moinuddin to sell the Ac.1.00 gts

of land allotted to them to Syed Ameen and Syed Rasool under the sale deed dt.03.06.1994. The subsequent sales in favour of defendant Nos. 11 to 16 by Syed Ameen and Syed Rasool as also the sales in favour of the petitioners in CRP. Nos. 5236 of 2013 and 5237 of 2013 would therefore be valid and cannot be questioned by the Wakf Board.

68. I am also unable to agree with finding of the Tribunal that Syed Ameen and Syed Rasool were not in possession of land in Ac.1.00 in Sy. No. 356 on date of filing of O.S.79/1999 (O.S.156/2000). The Pahanis for the year 1994-95, 95-96 and 96-97 show the possession of Syed Ameen and Syed Rasool in respect of Ac.1.00gts in Sy. No. 356. The said entries are presumed to have been made in the normal course after verification by the Revenue authorities. They cannot be given a go by merely because they do not mention about an order under the A.P. Record of Rights in Land and Pattedar Pass Books Act, 1971 in their favour. In my view it is not necessary for them to prove that they are cultivating the land either. Since the entries about possession of the Wakf Board in the subsequent pahanies were made on the basis of the Ex.A13 order of the Joint Collector in an appeal under the A.P. (Telangana Area) Abolition of Inams Act,1955, and the said order was held to be without jurisdiction supra, the later entries cannot be believed. Therefore it is held that Syed Ameen and Syed Rasool are in possession of this land on the date of filing of the suit O.S. No. 79/1999 (O.S. No. 156 of 2000). They are therefore entitled to perpetual injunction restraining the Wakf Board and other defendants therein from interfering with their possession and enjoyment of Ac.1.00 gts in Sy. No. 356 mentioned in the plaint schedule thereto.

69. Therefore, the common judgment in OS. No. 4 of 2000 and OS. No. 156 of 2000 is set aside and OS. No. 156 of 2000 is decreed and OS. No. 4 of 2000 is dismissed. The Civil Revision Petitions are allowed as above with costs of Rs. 2,500/- to be paid by the Wakf Board to each of the petitioners in the CRPs.