

(2011) 08 MAD CK 0001

In the Madras High Court

Case No : S.A. No"s. 817, 818 of 2006 and 436 of 2007

Rubab Begum

APPELLANT

Vs

Hazarath Imam Hussain Wakf and Others

RESPONDENT

Date of Decision : 11-08-2011

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 92
Religious Endowments Act, 1863 — Section 14, 14, 92
Waqf Act, 1954 — Section 55, 6(5), 7, 83, 85

Citation : (2011) 08 MAD CK 0001

Hon'ble Judges : R.S. Ramanathan, J

Bench : Single Bench

Advocate : Rita Chandrasekaran for M/s. Aiyer and Dolia, for the Appellant;
Aiyer and Dolia, 1st Respondent in all the S.As, Mr. M.L. Ganesh for Respondent
No. 1, Mr. Moin for Respondent Nos. 2 and 3, Mr. Muniruddin Sheriff for
Respondent No. 4, Mr. M.Sundar, for the Respondent

Final Decision : Dismissed

Judgement

R.S. Ramanathan

1. The first respondent in all the three appeals filed the suit in O.S.No.1309 of 1990 on the file of the I Assistant Judge, City Civil Court, Chennai,

for eviction of the defendant by name Mrs. Shazaidi Begam, who was the sole defendant at the time of filing of the suit.

2. The case of the first respondent/plaintiff was that the plaintiff is a Public Religious Muslim Wakf registered with the Tamil Nadu Wakf Board.

and Chotta Naksha Charities, another Public Religious Muslim Wakf, is the owner of the landed property, comprised in Old S.No.912 and Re.

S.No. 1284/2 and the land was given on lease to the plaintiff-Trust. Thereafter, the plaintiff-Wakf permitted the defendant by name Mrs. Shazaidi

Begum, to remain in a portion of the suit premises and the suit property bears Door No.18, situate at Mirza Gulam Hussain Ali Khan Street,

Royapptai and the said defendant was permitted to occupy two rooms, one hall, one Verandah, Kitchen etc., and she was residing there as a

lessee. Later on, the license was cancelled by the plaintiff by proceedings dated 19.9.1989, directing the defendant to vacate and handover

possession and as the defendant refused to vacate and handover possession, the suit was filed for recovery of possession of the property.

3. The defendant filed the statement disputing the character of the plaintiff and contended that the plaintiff is not a Wakf as per the Mohammedan

Law and she in possession of the property for more than 55 years and the building assessment stands in her name and she was not inducted into

possession by the plaintiff either as a tenant or as a licensee. The defendant also sent a reply to the notice sent by the plaintiff on 19.9.1990 and

that was also suppressed and the suit was not properly valued and as the building is not exempted from the provisions of Tamil Nadu Buildings

(Lease and Rent) Control Act 1960, the suit filed by the plaintiff is not maintainable.

4. The defendant also filed an additional statement stating that there was no proper dedication of property in the name of Almighty God and

therefore, the plaintiff cannot claim to be a Wakf, which can claim exemption from the provisions of Tamil Nadu Act 18 of 1960 and the Chotta

Naksha Charities, only owned the land and the building was not owned by it and hence, the suit for eviction is not maintainable.

5. During the pendency of the suit, the sole defendant died and the appellants in three appeals were impleaded as her legal representatives and

Tamil Nadu Wakf Board was also impleaded as the fifth defendant and Chotta Naksha Charities, was also impleaded as sixth defendant. The

appellants, who were impleaded as defendants 2 to 4 filed independent statement questioning the status of the plaintiff and disputed that the plaintiff

is not a Wakf as per the Muslim Law and they have not stated that the deceased/ first defendant was inducted into possession and without giving

the exact date on which the defendant was inducted into possession either as a lessee or as a licensee, the plaintiff is not entitled to claim recovery

of possession and the deceased/first defendant was paying the land rent only to the Chotta Naksha Charities, which is a registered Wakf.

Therefore, the suit filed by the plaintiff is not maintainable.

6. The sixth defendant viz., Chotta Naksha Charities, filed a statement admitting that the land was given on lease to one Mr. Mirza Parvees Ali and

he was paying the land rent and he puts up a superstructure and it has become corpus of the plaintiff-Wakf and the plaintiff allowed the defendants

1 to 4, to occupy the suit premises. As the sixth defendant is taking steps to terminate the tenancy of the plaintiff, the plaintiff cannot maintain the

suit. It was further stated that the plaintiff was permitted to reside in the suit property by putting up a construction and contrary to the terms, the

plaintiff allowed the defendants 1 to 4, to occupy the premises and there is no cause of action against the sixth defendant.

7. The Trial Court held that the plaintiff is a Wakf and there is a dedication to the Almighty God, as per the Muslim Law and it is a valid Wakf and

it has put up a superstructure and permitted the deceased/first defendant to occupy the premises on lease and as the superstructure belongs to the

plaintiff, which is a Wakf, the provisions of Tamil Nadu Act, 18 of 1960 will not apply. Therefore, the suit for eviction is maintainable and having

revoked the permission given to the deceased/first defendant, the suit was filed for recovery of possession and the defendants 2 to 4, who are the

legal heirs claiming under the deceased/first defendant, cannot claim any better title. Hence, the defendants 2 to 4, are liable to be evicted and

decreed the suit, directing the them to vacate and handover vacant possession to the plaintiff.

8. Aggrieved against the judgment and decree rendered in O.S.No.1309 of 1990 by the Trial Court, the defendants 2 to 4, filed three independent

appeals and all the appeals were dismissed by the First Appellate Court, confirming the judgment and decree of the Trial Court. Feeling aggrieved

by the same, the present appeals were filed by the appellants/defendants 2 to 4.

9. In S.A.Nos.817 & 818 of 2007, the following substantial question of law was framed, at the time of admitting the Second Appeal :-

i) Whether the Courts below are right in exercising jurisdiction under the Wakf Act, 1954 and determining the dispute relating to the alleged Wakf

property in view of the bar u/s 85 of the Wakf Act and the Wakf Tribunal alone has the jurisdiction over the subject matter of the suit?

10. In S.A.No.436 of 2007, the following substantial questions of law were

framed at the time of admitting the Second Appeal :-

i) Whether the Courts below are right in exercising jurisdiction under the Wakf Act, 1954 and determining the dispute relating to the alleged Wakf

property in view of the bar u/s 55 (c) of the Wakf Act, 1954 and the Wakf Tribunal alone has the jurisdiction over the subject matter of the suit?

ii) Whether the Courts below are right in holding that the first defendant is a licensee under the plaintiff and is in permissive occupation of the suit

property without the same being proved by the plaintiff even inspite of the denial of the first defendant made at the earliest point of time under Ex.

B7 and inspite of the findings of the Courts below that there is no evidence on record to show when the first defendant came to occupy the suit

property, who inducted her and her predecessors and when the first defendant occupied the superstructure and also holding the possession of

defendants 1 to 4 as illegal?

iii) Whether the Courts below are right in shifting the onus on defendants 1 to 4 to prove their case when the plaintiff had not discharged his initial

onus by pleading and proving by evidence that the first defendant is a licensee under it?

11. Mrs.Rita Chandrasekaran, the Learned Counsel appearing for the appellants in all the three appeals submitted that both the Courts below

erred in granting the relief of recovery of possession, when the first respondent was not able to prove the date on which the deceased/first

defendant was let into possession of the suit property and the deceased/first defendant was in possession of the property for more than 50 years

and the building assessment stands in the name of the deceased/first defendant, as evidenced by Ex. B6, which is of the year 1982 and the

appellants are paying the rent only to the sixth defendant viz., the fifth respondent herein and therefore, without proving that the appellants are

tenants or licensees under the first respondent, the suit for recovery of possession is not maintainable.

12. The Learned Counsel further contended that after the passing of the Wakf Act 43 of 1995, only the Wakf Tribunal has got jurisdiction to settle

the disputes relating to the Wakf properties and the Wakf Tribunal was constituted u/s 85 of the Wakf Act and as per Section 85 of the said Act,

no suit or other legal proceedings shall lie in any Civil Court in respect of the

Wakf properties and therefore, the suit for eviction filed before the Civil Court is not maintainable.

13. On the other hand, the Learned Counsel appearing for the first respondent submitted that both the Courts below concurrently held that the first

respondent is a Wakf as per the Muslim Law and no contra evidence was let in by the appellants to dispute the same. The fifth respondent is

admittedly the owner of the land and the fifth respondent admitted in the written statement that the land was leased out to the first respondent-trust

and they have put up a superstructure and inducted the defendants into possession and in the absence of any proof adduced by the appellants that

they are the owners of the superstructure or they are lessees or tenants under the fifth respondent, it has to be presumed that they are licensees

under the first respondent. Moreover, the deceased/first defendant also did not state that she had put up a superstructure, her only defence was

that she was in occupation of the property for more than 50 years and she was not let into possession of the property by the first respondent.

14. The Learned Counsel for the first respondent therefore submitted that in the absence of any proof regarding ownership or tenancy under the

fifth respondent, the fact that the fifth respondent, who is admittedly the owner of the land, admitted the lease in favour of the first respondent and

also admitted that the first respondent constructed a superstructure and the first respondent must have inducted the deceased/first defendant into

possession of the property and considering all these aspects, both the Courts below decreed the suit.

15. The Learned Counsel for the first respondent further contended that the suit was filed in the year 1989 and at that time, there was no Tribunal

constituted under the old Wakf Act and the Tribunal was constituted under the Wakf Act, 1995 and during the pendency of the trial, this plea was

not raised and hence, it is not open to the appellants to raise such a plea at time of Second Appeal stage. Therefore, the decree was validly passed

by the Courts below and hence, the appeals are liable to be dismissed. The Learned Counsel for the first respondent also submitted that the fifth

respondent is taking steps to evict the first respondent and the first respondent is a Wakf and they are the tenant of the land and they have

constructed the superstructure.

16. Heard both sides.

17. As rightly contended by the Learned Counsel for the first respondent that the landed property admittedly belongs to the fifth respondent and

the fifth respondent admitted that the land property was given on lease to the first respondent and it has put superstructure and allowed the

deceased/first defendant and the other defendants viz., the appellants to reside in the suit building. The fifth respondent did not claim that the

appellants are its tenants or licensees. Further, the deceased/first respondent also did not contend in the written statement that she has put up

superstructure and she was paying the rent to the fifth respondent.

18. Therefore, having regard to the fact that the original owner of the land viz., the fifth respondent herein admitted the tenancy of the land in favour

of the first respondent-Trust and further admitted that the superstructure was put up by the first respondent and in the absence of any claim by the

deceased/first defendant regarding the ownership of the superstructure, it can be presumed that the deceased/first defendant as well as the

appellants were permitted to occupy the premises only by the first respondent.

19. Eventhough, the first respondent has not stated the period from which the deceased/first defendant was permitted to occupy the premises,

having regard to the admission of the fifth respondent as stated supra, both the Courts have rightly held that the deceased/first defendant was only a

licensee under the first respondent and the appellants failed to discharge the burden on them to prove that they are owners of the superstructure or

they are the tenants under the fifth respondent and I am of the opinion that both the Courts below have rightly held that the defendants are the

licensees under the first respondent and after the license was terminated, they are bound to surrender possession. Hence, the substantial questions

of law 2 and 3 framed in S.A.Nos.436 of 2007, are answered against the appellants.

20. The substantial question of law No.1, framed in S.A.Nos.436 of 2007, and the substantial question of law framed in S.A.Nos.817 & 818 of

2007, are one and the same viz., Whether the suit is maintainable in a Civil Court, after formation of the Tribunal? Admittedly, the suit in

OS.No.1309 of 1990, was filed in the year 1990 and at that time, no Wakf Tribunal was constituted and the Wakf Tribunal was constituted under

the provisions of Wakf Act, 1995, which came into force in the year 1996.

21. It is true that during the pendency of the trial, Wakf Tribunal was constituted, but no plea was raised by the appellants about the jurisdiction of

the Civil Court to try the suit after the formation of the Wakf Tribunal and both the parties contested the suit and let the decree to be passed. Even

in the first appeal also, the jurisdiction issue was not raised and for the first time in the grounds, the jurisdiction issue was raised. Being a question of

law, as the jurisdiction issue goes to the root of the case, it has to be seen whether the Civil Court has got jurisdiction to try the suit.

22. Admittedly, the landed property belongs to the fifth respondent, which is a Wakf as per the Muslim Law. The building was constructed by the

first respondent-Trust, which is also a Wakf, as concurrently held by the Courts below. Therefore, the provisions of the Tamil Nadu Act, 18 of

1960 will not be applicable to such a building and the building has been exempted under the provisions of the said Act. Therefore, when the suit

was filed in the year 1990, the Civil Court alone has got jurisdiction. Admittedly, the Wakf Tribunal was constituted for the first time under the

Wakf Act, 1995 and the suit was filed in the year 1990. Hence, the suit was properly laid before the Civil Court. The question then arise for

consideration is after the formation of the Wakf Tribunal under the provisions of Wakf Act, 1995 Can the Civil Court try the suit, without

transferring the case to the Wakf Tribunal?

23. As already stated above, no objection was raised by the appellants when the case was tried by the Civil Court and only in the Second Appeal,

the question of jurisdiction issue was raised for the first time. It has been held by the Hon"ble Supreme Court as well as our High Court that when

the suit was filed before the Civil Court and at that time, the Civil Court alone has got jurisdiction, eventhough, the Civil Court ceases to have the

jurisdiction during the pendency of the suit and some other authority was vested with the jurisdiction, the Civil Court can continue to exercise the

jurisdiction in respect of the suit filed before it.

24. It has been held by the Learned Single Judge in the judgment reported in Mrs. Achamma George Vs. R. Krishnaswamy, that cause of action

has to be decided only as on the date of filing of the suit and not on the date of judgment. The Learned Single Judge also relied upon the judgments

of the Hon''ble Supreme Court as well as our High Court and held that the rights of the parties will have to be decided, as on the date of filing of

the suit and any change of circumstances, thereafter, will not affect the rights of the plaintiff to get possession.

25. The Hon''ble Supreme Court in the judgment reported in Nand Kishore Marwah and Others Vs. Samundri Devi, held that the law applicable

on the date of the institution of the suit alone covers the suit and the suit has to be decided without reference to the subsequent events. The same

principle was also reiterated in the judgment reported in AIR 1982 Mad 111 in the case of [A.V. Hanifa Vs. Salima Dhanu]. Therefore, having

regard to the fact that the suit for eviction was filed in the year 1990 and at that time, there was no Tribunal constituted for dealing with the Wakf

property, and hence, the Civil Court was competent court to try and decide the issue and it cannot be stated that the Civil Court has no jurisdiction

to decide the issue.

26. Further, prior to Wakf Act, in 1995, originally, Section 55 of the Wakf Act, 1954 deals with such an issue and Section 55 of the said Act

reads as follows:-

A suit to obtain any of the reliefs mentioned in Section 14 of the Religious Endowments Act, 1863 (XX of 1983) and in Section 92 of the CPC

1908 (Act V of 1908) relating to any wakf may notwithstanding anything to the contrary contained in those Acts, be instituted by the Board

without obtaining the leave or consent referred to in those Acts.

No suit to obtain any of the reliefs referred to in sub-section (1) relating to a wakf shall be instituted by any person or authority other than the

Board without the consent in writing of the Board:

Provided that no such consent shall be required for the institution of a suit against the Board in respect of any act purporting to be done by it in

pursuance of this Act or of any rules or orders made thereunder. This was amended by the amendment Act 34 of 1964 and Section 55 was

substituted as follows:-

Institution of suits u/s 92 of the Code. (1) A suit to obtain any of the reliefs mentioned in 92 of the CPC 1908 (Act V of 1908) relating to any

wakf may notwithstanding anything to the contrary contained in that section be instituted by the Board without obtaining consent referred to therein:

No suit to obtain any of the reliefs referred to in Section 92 of the CPC 1908 relating to any wakf shall be instituted by any person or authority

other than the Board without the consent in writing of the Board and for the institution of any such suit, it shall not be necessary to obtain the

consent referred to in that section notwithstanding anything contained therein:

Provided that nothing in this sub-section shall apply in relation to any such suit against the Board.

Therefore, under the provisions of Section 55, of the Wakf Act, 1954, no Tribunal was constituted and therefore, there was no bar for filing the

suit for recovery of Wakf property, before the Civil Court.

27. Further, Sections 83, 85 of the Wakf Act was also interpreted by the Hon''ble Supreme Court in the judgment reported in Ramesh Gobindram

(dead) through Lrs. Vs. Sugra Humayun Mirza Wakf, and after elaborately discussing whether the above sections excludes jurisdiction of the Civil

Court in respect of the disputes regarding the Wakf properties, has held as follows:-

There is, in our view, nothing in Section 83 to suggest that it pushes the exclusion of the jurisdiction of the Civil Courts extends beyond what has

been provided for in Section 6(5) Section 7 and Section 85 of the Act. It simply empowers the Government to constitute a Tribunal or Tribunals

for determination of any dispute, question of other matter relating to a Wakf or Wakf property which does not ipso facto mean that the jurisdiction

of the Civil Courts stands completely excluded by reasons of such establishment. It is noteworthy that the expression "" for the determination of any

dispute, question or other mater relating to a wakf or wakf property"" appearing in Section 83(1) also appears in Section 85 of the Act. Section 85

does not, however, exclude the jurisdiction of the Civil Courts in respect of any or every question or disputes only because the same relates to a

wakf or a wakf property. Section 85 in terms provides that the jurisdiction of the Civil Court shall stand excluded in relation to only such matters as

are required by or under this Act to be determined by the Tribunal. The crucial question that shall have to be answered in every case where a plea

regarding exclusion of the jurisdiction of the Civil Court is raised is whether the Tribunal under the Act or the Rules is required to deal with the

matter sought to be brought before a Civil Court. If it is not, the jurisdiction of

the Civil Court is not excluded. But if the Tribunal is required to decide the matter the jurisdiction of the Civil Court would stand excluded.

In the cases at hand the Act does not provide for any proceedings before the Tribunal for determination of a dispute concerning the eviction of a

tenant in occupation of a wakf property or the rights and obligations of the lessor and the lessees of such property a suit seeking eviction of the

tenants from what is admittedly wakf property could, therefore, be filed only before the Civil Court and not before the Tribunal. The contrary view

expressed by the Tribunal and the High Court of Andhra Pradesh is not, therefore, legally sound.

28. Therefore, the suit filed by the first respondent/plaintiff for eviction of the appellants is maintainable and as per Sections 83 and 85 of the Wakf

Act, there is no bar for maintaining the suit and therefore, the substantial question of law No1. in S.A.Nos.436 of 2007 and in S.A.Nos.817 &

818 of 2006 are also answered against the appellants.

29. In the result, the Second Appeals are dismissed. Judgments and decrees of the Courts below are confirmed. In the circumstances, there shall

be no order as to costs. Consequently, connected Miscellaneous Petitions are closed.