
(2010) 10 MP CK 0062

In the Madhya Pradesh High Court

Case No : First Appeal No's. 568 of 2003 and 76 of 2004

Santosh Yadav

APPELLANT

Vs

Shri Moin Akhtar
 Moin Akhtar Vs Santosh Yadav

RESPONDENT

Date of Decision : 27-10-2010

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 1 Rule 10, 151, 96
Waqf Act, 1995 — Section 85

Citation : (2010) 10 MP CK 0062

Hon'ble Judges : Gulab Singh Solanki, J

Bench : Single Bench

Final Decision : Allowed

Judgement

G.S. Solanki, J.—Being aggrieved by the judgment and decree dated 16.10.2003 , passed by Second Additional District Judge, Jabalpur in civil suit No. 128-A/03, Plaintiff/Appellant of F.A. No. 568/03, as well as Defendant/Appellant of F.A. No. 76/04 have preferred these two appeals u/s 96 of Code of Civil Procedure

2. Since both these appeals arises from the same judgment and decree, therefore these appeals are being disposed of by this common judgment.

3. The brief facts of the case is that, Plaintiff/Appellant of F.A. No. 568/03, filed a suit for declaration of title, possession and permanent injunction against the Defendant/Appellant of F.A. No. 76/04. He pleaded in the plaint interalia that he purchased the suit property from one Zanab Khan situated at Marhotal, area 70X70 sq.ft., out of Khasra No. 155 , by paying the consideration of Rs. 98,000/- in cash. Zanab Khan also executed an agreement to sale and power-of-attorney in the favour of Plaintiff/Appellant of F.A. No. 568/03, on 11.06.90. It is further pleaded that in this plot on 35X56 sq.ft. there was a racked and ruined mosque, which was being made by the interest money collected by forefathers of Zanab Khan. Therefore, for the last 66 years namaj was not performed in the mosque by the followers of Islam. It is further pleaded that there is also a Nag Devta

Mandir and Durga Mandir situated in the suit property. Plaintiff/Appellant of F.A. No. 568/03, being a religious person he renovated Nag Devta Mandir in June, 1990. He also constructed a small temple of Maa Durga Devi Mandir near the Mandir of Nag Devta. According to him, there is no structure like Masjid remained in the disputed plot. He further pleaded that he was performing the pooja for last 10 years but on 29.04.2000 the Defendant/Appellant of F.A. No. 76/04 has forcefully taken the possession over the disputed property and also has demolished the Mandir and has cut some trees and caused damages of Rs. 2 lakh to him. Thus, Plaintiff/Appellant of F.A. No. 568/03, filed a suit for declaration of title, possession of property, recovery of damages and permanent injunction against the Defendant/Appellant of F.A. No. 76/04.

4. Defendant/Appellant of F.A. No. 76/04 resisted the pleading of Plaintiff/Appellant of F.A. No. 568/03, and filed the counter claim along with the written statement and interalia pleaded that the Plaintiff/Appellant of F.A. No. 568/03, has never purchased the suit property nor having possession in the suit property and there was never any existence of Nag Devta Mandir or Durga Mandir in the disputed property and there is only a mosque in the suit property. It was also pleaded by the Defendant/Appellant of F.A. No. 76/04 in the counter claim that on 15.09.91 Zana Khan has given the suit property to Wakf for mosque and imambada and has also executed hibanama in this regard and the Defendant/Appellant of F.A. No. 76/04 is the mutawali of the suit property. It was also claimed in the counter claim that by virtue of hibanama the suit property is got registered by Wakf Board on 13.09.2000. It is also pleaded that Plaintiff/Appellant of F.A. No. 568/03, tried to dispossess the Defendant/Appellant of F.A. No. 76/04, so that he may be restrained to interfere in the possession of Defendant/Appellant of F.A. No. 76/04.

5. Trial Court on appraisal of evidence on record passed the impugned judgment and decree and dismissed the suit filed by Plaintiff/Appellant of F.A. No. 568/03, and has also dismissed the counter claim filed by Defendant/Appellant of F.A. No. 76/04. Being aggrieved, both the parties filed these appeals.

6. It is undisputed that during the pendency of these appeals an interim application No. 7531/06 was filed by Wakf Board under order 1 Rule 10 read with Section 151 of the CPC and another I.A. No. 8484/10 was filed on behalf of applicant Mutawali, under order 1 Rule 10 of CPC This Court passed the order that both these interim applications are considered and adjudicated at the time of final hearing of these appeals. Therefore, learned Counsel for the parties were heard on both these applications along with these appeals.

7. Considering the nature of interim applications these are considered and decided firstly.

8. Learned Counsel for Wakf Board contended on the basis of averments of I.A. No. 7531/06 that disputed property is a Wakf property duly registered in the register of Wakf Board. Both Plaintiff and Defendant have not brought to the

notice of the trial court as well as this Court that the disputed property is a Wakf property. He further contended that it is well settled in law that no decree can be passed with regard to the title of a Wakf property unless M.P. Wakf Board is impleaded as a party in the suit. Therefore, it was prayed that this Court may please to allow the applicant(Wakf Board) to be impleaded as Respondent No. 2 in these appeals.

9. Learned Counsel for applicant Mutawali Committee, Wakf Masjid, Chandal Bhata, Marhotal, Jabalpur through its president Shri Mubeen Ahmad contended on the basis of averments of I.A. No. 8484/10 that disputed property is registered as Wakf property with the M.P. Wakf Board and he is appointed as Mutawali. He further contended that subject matter of the civil suit before the trial court was Khasra No. 155, area 70"X70" sq.ft. Learned Civil Court has no jurisdiction to try the suit relating to Wakf property because jurisdiction of trial of such suits is vested in the M.P. State Wakf Tribunal, Bhopal which was constituted in the year 1994. He further contended that u/s 85 of Wakf Act, 1995 jurisdiction of civil court pertaining to Wakf properties is absolutely barred therefore, he prayed for adding the applicant as Respondent in these appeals and further prayed to dismiss both the appeals for want of jurisdiction.

10. Learned Counsel for the Appellant of F.A. No. 568/03 contended that applications filed by M.P. Wakf Board and Mutawali Committee, Wakf Masjid, Chandal Bhata, Marhotal, Jabalpur through its President Shri Mubeen Ahmad with the intention to delay the proceedings. He further contended that both applicants are colluding with the Respondent therefore both the applications are liable to be dismissed.

11. I have perused the record annexed with the applications under order 1 Rule 10 of CPC which reveal that disputed Khasra No. 155, area 1.22 acre was registered in the year 1977 as Wakf property. Since, subject matter of this suit before the trial court is of area 70X70 sq.ft. of the Khasra No. 155. It is well settled position of law that appeal is a continuation of a suit, since suit is for declaration and permanent injunction and Appellant/Plaintiff claiming title over the suit property which are registered as Wakf Property. In these circumstances, applicants have direct interest in the subject matter and an effective decree can not be passed without impleading the Wakf Board as party in the suit. therefore, they are necessary party in the suit.

12. Considering the afore mentioned facts and circumstances of the case, applications i.e. I.A. No. 7531/06 filed by M.P. Wakf Board through its C.E.O. as well as I.A. No. 8484/10 filed by Mutawali Committee, Wakf Masjid, Chandal Bhata, Marhotal, Jabalpur through its president Shri Mubeen Ahmad are allowed.

13. Considering the fact that property was registered in the name of Wakf Board, newly added party has right to plead their case before the trial Court and Plaintiff/Appellant of F.A. No. 568/03 has right to controvert the pleadings before the trial court. All such proceeding is not possible before this appellate court, in these

circumstances, judgment and decree passed by the trial Court is hereby set aside. The case is remanded to the trial court with the following directions:

(i) Plaintiff/Appellant of F.A. No. 568/03 will implead applicant Wakf Board as Defendant No. 2 and applicant Mutawali committee, Wakf Masjid, Chandal Bhata, Marhotal, Jabalpur through its president Shri Mubeen Ahmad as Defendant No. 3 within the period of one month.

(ii) Trial court provide the opportunity to newly added Defendants to file their respective written statements within the further period of one month.

(iii) Trial Court provide opportunity to Plaintiff to amend his plaint to controvert the new pleading regarding title of disputed property.

(iv) Trial Court is directed to frame additional issues including the jurisdiction of the civil court. And then after providing the opportunity to lead evidence(if any), by the respective parties and then decide the suit afresh according to law.

14. All parties are directed to appear before the trial court on 08.12.2010.

15. Parties will bear their own cost.