(2013) 08 P&H CK 0212

In the Punjab And Haryana At Chandigarh

Case No : C.R. No. 3762 of 2005

Sarwan Singh	APPELLANT
Vs	
Sawar Deen and Others	RESPONDENT

Date of Decision : 03-08-2013

Acts Referred:

Citation : (2014) 173 PLR 486

Hon'ble Judges : K. Kannan, J

Bench : Single Bench

Judgement

K. Kannan, J.—The 3rd defendant in suit before the Wakf Tribunal is the revision petitioner before this Court. The suit had been filed by Sawar Deen and Sadeek as residents of village Bariah to contend that the property is a kabristan and a notified wakf and the revenue entry relating to the property measuring 9 kanals 2 marals comprised in Khasra No. 31 situate in village Bariah and the entry made to an extent of 6 kanals as Chahi was erroneous. The whole property must have been shown only as a kabristan. The Wakf Board and the Estate Office were cited as defendant Nos. 1 and 2 and the revision petitioner before this Court, who had been a lessee of the property, was cited as 3rd defendant. The trial Court upheld the contention of the plaintiffs in part and granted an injunction restraining the defendants from using the land in dispute for any other purpose than the purpose for graveyard and preventing the plaintiff and other muslims from using the land for burial of dead bodies. The 3rd defendant, who is also the les-see is aggrieved of the decree passed by the Wakf Tribunal and is in revision before this Court. Learned counsel argues that the revenue entry which the plaintiff was seeking for correction was made in the year 1975-76 and the suit is barred by limitation in seeking for said correction on 24.05.2003. The further contention is that the property was never set apart as kabristan and therefore, the lease created by the Wakf Board cannot be in any way challenged and that in any event there was not even a prayer to challenge the lease executed by the Wakf Board. The Tribunal, therefore, was in error in causing a restraint order in the manner in which it has been done.

2. If there is a revenue entry which is erroneous, I do not think there is any issue of limitation that could be urged. A revenue entry which is wrong in law could be an entry which can be corrected any time, for revenue entry by itself does not create any right and it merely records an act consistent with its user. I will not, therefore, take an objection relating to the issue of limitation as worthy of acceptance. I will find, therefore, that suit cannot be decided on the issue of limitation.

3. However, I find that there is something much more fundamental about the nature of suit and the relief sought for in the plaint. The Wakf Act of 1995 that constitutes a Tribunal could adjudge a dispute regarding the character of property as wakf or not. There ought to be a contest on the nature of property. If the plaintiffs were contending for a position that it was not a wakf property and the defendants including the Wakf Board were entering a dispute that it was a wakf property then the adjudication could be on the character of property. If the plaintiffs made an assertion that it is a wakf property and the Wakf Board as the respondent also affirmed the same then there is no dispute that the Tribunal can decide. Section 6 of the 1995 Act in clause (1) reads thus:- (6) Disputes regarding wakfs.

(1) If any question arises whether a particular property specified as wakf property in the list of wakfs is wakf property or not or whether a wakf specified in such list is a Shia wakf or Sunni wakf, the Board or the mutawalli of the wakf or any person interested therein may institute a suit in a Tribunal for the decision of the question and the decision of the Tribunal in respect of such matter shall be final:

Provided that no such suit shall be entertained by the Tribunal after the expiry of one year from the date of the publication of the list of wakfs.

Explanation.--For the purposes of this section and section 7, the expression" any person interested therein", shall, in relation to any property specified as wakf property in the list of wakfs published after the commencement of this Act, shall include also every person who, though not interested in the wakf concerned, is interested in such property and to whom a reasonable opportunity had been afforded to represent his case by notice served on him in that behalf during the course of the relevant inquiry u/s 4.

(2) xxxxxx xxxxxx xxxxxx

(3) xxxxxx xxxxxx xxxxxx

(4) xxxxxx xxxxxx xxxxxx

(5) On and from the commencement of this Act in a State, no suit or other legal proceeding shall be instituted or commenced in a court in that State in relation to any question referred to in sub-section (1).

The explanation refers to a person, who could be interested and we will not examine the same. Sub-section 2 refers to a proceeding before the commencement of the Act and that is also unnecessary for us. Sub-section 3 refers to a duty of the Commissioner and clauses (4) and 5 refer to list of wakfs and the exclusive jurisdiction of the Tribunal to decide on the dispute referred to in sub-section 1. The dispute which Section 6(1) refers to is a dispute as regards character of property as a wakf property or not. There is no defence denying the entire character of property as wakf. If the property is kabristan, even a non-user cannot change the character of property as wakf since the definition of wakf under the Act in Section 3(r) itself makes it clear that a wakf by user shall not cease to be a wakf only because of the fact that it has ceased to be used as such. A non-user or a cessation of use is hardly relevant for determination of character of property as wakf. In this case if a portion of the property is used as kabristan and rest of the portion of the property is also endowed by wakf for carrying out the purpose of main endowment then that will also partake the character of wakf and if there is a dispute from such a use and some person is interested in preserving its use in a particular way, the relief must be before a normal Civil Court and it cannot be before the Wakf Tribunal. The jurisdiction of the Wakf Tribunal is restricted only to a consideration of an endowment being a wakf or not and cannot extend to the manner of user by the Wakf Board. In this case, the Wakf Board has affirmed the character of property as wakf and that concludes the issue. Another direction which the Wakf Tribunal has given is incompetent for it to undertake. If there is an issue regarding wrong entry in the jamabandi, it shall be left to the revenue authorities for consideration if an appropriate objection or petition is given invoking the relevant provisions u/s 34 and 35 of the Punjab Land Revenue Act and it cannot be an issue of consideration of the Wakf Tribunal. The relief sought for in the suit before the Wakf Tribunal was wholly incompetent and the whole suit ought to have'' been dismissed. The decree already granted is set aside and I allow the civil revision holding that the Wakf Tribunal did not have a jurisdiction to entertain the suit and grant the relief the way it has done.

