

(2010) 11 AP CK 0060

In the Andhra Pradesh High Court

Case No : Civil Revision Petition No. 744 of 2008

Shameem Sulthana

APPELLANT

Vs

Syed Ibrahim Quadri and Bee Shahjadee

RESPONDENT

Date of Decision : 12-11-2010

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 14 Rule 1, Order 14 Rule 2, 151
Waqf Act, 1995 — Section 6, 7, 83, 83(3), 85

Citation : (2010) 11 AP CK 0060

Hon'ble Judges : B. Chandra Kumar, J

Bench : Single Bench

Advocate : O. Manohar Reddy, for the Appellant; V. Venkataramana (NP), for the Respondent

Final Decision : Allowed

Judgement

B. Chandra Kumar, J.—This revision petition is directed against the order, dated 27.11.2007 in I.A. No. 871 of 2007 in O.S. No. 211 of 2007 passed by the Junior Civil Judge, Gajwel, whereby the petition filed by the Petitioner under Order XIV Rules 1 and 2 read with Section 151 CPC has been dismissed.

2. The Petitioner herein is the first Defendant in the main suit. The Respondents herein filed the suit in O.S. No. 211 of 2007 against the Petitioner herein and another, seeking perpetual injunction, contending, inter alia, that the Respondents herein are the absolute owners and possessors of the suit schedule property and the Petitioner herein and the second Defendant in the suit have been interfering with their possession and enjoyment of the suit schedule property. Their specific case is that Syed Bhakar Hussain Quadri had three sons, namely, Syed Khaja Gulam Mohiuddin Quadri, Syed Zainullabaddin Quadri, Syed Jaffar Pasha Quadri and that Syed Khaja Gulam Mohiuddin Quadri was the owner and pattadar of the land in S. No. 521 to an extent of Ac 1.11 guntas situated at Gajwal Town, Revenue Mandal, Medak District, (herein after referred to as "suit schedule property") and after the death of Syed Khaja Gulam Mohiuddin Quadri,

the father of the Plaintiff and Syed Jaffar Pasha Quadri succeeded to the said property. It is also their case that the Plaintiff and his brothers succeeded to the property after the death of their father Syed Zainullabaddin Quadri. Smt. Bee Shahjadee succeeded to the share of her husband Syed Jaffar Pasha Quadri.

3. The Petitioner herein filed a written statement and denied the claim of the Respondents herein. It is the case of the Petitioner herein that Syed Zainullabaddin Quadri has six sons and two daughters and the said Jaffar Pasha Quadri has two sons and two daughters. The further case of the Petitioner herein is that the suit schedule property belongs to Wakf Board and that the Civil Court has no jurisdiction to entertain the suit u/s 85 of the Wakf Act, 1995. It is also their case that the list of notified Wakf properties in Andhra Pradesh in Medak District clarified the same. It is also their case that the father of the first Respondent herein had earlier filed a suit in O.S. No. 179 of 1996 on the file of the Junior Civil Judge, Gajwel, Medak District, contending that the suit schedule property is a Wakf property. It is also his case that the boundaries shown by the Respondent herein are not correct and towards the western side of the suit schedule property is shown as house of Yadgiri, but there is no such house and that the Petitioner is having a house plot and vacant land to the western side of the suit land in S. No. 517 and that the Respondents herein are trying to occupy the house plot and vacant land of the Petitioner herein under the guise of falsehood and ex parte injunction was obtained by them.

4. The Petitioner herein filed I.A. No. 871 of 2007 in O.S. No. 211 of 2007 under Order XIV Rules 1 and 2 Code of Civil Procedure, to frame a preliminary issue to decide the jurisdiction of the court to entertain the suit.

5. The learned Junior Civil Judge, Gajwel relying on the judgment of this Court in Waheed Bin Mohammed Vs. Niazunnisa Begum, held that when the subject matter of the suit property is of the Wakf, when the dispute is in between two individuals in respect of their rights, although connected with the property of the Wakf, the Civil Court has jurisdiction to entertain the suit. Accordingly, the petition filed by the Petitioner herein has been dismissed. Challenging the same, the present revision has been filed.

6. The learned Counsel for the Petitioner relying on the judgment of this Court in P. Rama Rao and others Vs. High Court of Andhra Pradesh and others, submitted that when the property is a Wakf property, the civil court has no jurisdiction to entertain the suit.

7. This matter was heard yesterday and from yesterday, there was no representation on behalf of the Respondents. Any how, with a view to give an opportunity to the Respondents, the case is adjourned to this day and in spite of giving an opportunity, there is no representation for the Respondents. Therefore, heard the learned Counsel for the Petitioner.

8. Now the point that arise for consideration is whether the impugned order is sustainable.

9. Section 85 of the Wakf Act, 1995 (for short "the Act") is as follows:

Bar of jurisdiction of Civil Courts: No suit or other legal proceeding shall lie in any Civil Court in respect of any dispute, question or other matter relating to any Wakf, Wakf property or other matter which is required by or under this Act to be determined by a Tribunal.

10. The bar against the said suit arose from the date of commencement of the Act.

Section 83 of the Act envisages regarding the constitution of Tribunals, which is as follows:

The State Government shall, by notification in the Official Gazette, constitute as many Tribunals as it may think fit, for the determination of any dispute, question or other matter relating to a Wakf for Wakf property under this Act and define the local limits and jurisdiction under this Act of each of such Tribunal.

Sub-Section 2 of Section 83 of the Act reads as follows:

Any mutawalli person interested in a Wakf for any other person aggrieved by an order made under this Act, or rules made thereunder, may make an application within the time specified in this Act or where no such time has been specified, within such time as may be prescribed, to the Tribunal for the determination of any dispute, question or other matter relating to the Wakf.

11. In a case between P. Rama Rao and Ors. v. High Court Of A.P., Represented By Registrar (Vigilance) and Ors. (supra 2) the Honourable Justice P. Venkatarama Reddy as he then was dealt with the issue mainly with regard to the suits that were instituted between 01.01.1996 to 20.06.1997 i.e., from the period after the commencement of the Act came into force and till the date of constitution of the Tribunal.

12. Of course, it was held that the civil court will have no jurisdiction to entertain the suit with regard to the Wakf property and the Tribunal alone constituted under the Act will have jurisdiction to entertain the disputes, if any with regard to the Wakf property.

13. This Court in the case of Waheed Bin Mohammed v. Niazunnisa Begum (supra 1) considered the issue and held that where a litigation in between the Plaintiff and the Defendant inter se falls out of the purview of Sections 85 and 83 read with Section 6 of the Act., such a dispute which is purely personal in between the Plaintiff and Defendant and which has nothing to do with the administration of the wakf property by the Wakf Board, cannot be taken away from the purview of the Civil Court under the Act. It was further observed that simply because the subject matter of the suit is the property of the wakf, when the dispute is in between two individuals in respect of their rights although connected with the property of the wakf, it is not a dispute regarding the wakf property as envisaged under the provisions of the Act. This Court having regard

to the facts of that case observed that the Plaintiff in that suit never disputed the title of the Wakf Board and that a registered lease deed executed by the Wakf Board and the Plaintiff was seeking for the eviction of the Defendant in that suit and claiming arrears of rent and that the suit between the parties is a simple suit between the landlord and tenant and that the civil suit was maintainable.

14. As far as the present case is concerned, the averments made by the Respondents herein in their plaint reveal that they have been claiming the property as absolute owners of the property. They did not whisper that the suit property originally belongs to the Wakf Board. The case of the Plaintiff herein is that the suit schedule property is a wakf property. As in the case relied on by the lower court, the Respondents herein did not file any memo before the lower court declaring that there is no dispute with regard to the title of the suit schedule property or that they are not disputing the title of the Wakf Board. When they have not filed any memo, the facts of the case in *Waheed Bin Mohammed v. Niazunnisa Begum* (supra 1) are clearly distinguishable. In that case there was no dispute with regard to the title of the property and that the Plaintiff in that case categorically admitted that the suit schedule property is a wakf property and the only contention of the Plaintiff in that case was that the Defendant in that case is liable to be evicted and liable to pay the arrears of rent, but in this case, when the Petitioner herein has specifically averred in the written statement that the suit schedule property is a wakf property, then certainly a question arises as to whether the suit property is the property of the Petitioner as claimed by him or it is a wakf property. Therefore, there is a dispute with regard to the ownership of the suit schedule property. The Respondents claim that they are the owners of the property. The Petitioner herein as a Defendant claims that the suit property is a wakf property. When there is such a dispute, the provisions of the Act, particularly Section 7 of the Act, which is dealt with the powers of the Tribunal makes it clear that the civil court has no jurisdiction. Section 7 of the Act is as follows:

Powers of Tribunal to determine disputes regarding Wakfs:

If, after the commencement of this Act, any question arises whether a particular property specified as Wakf property in a list of Wakfs is Wakf property or not, or whether a Wakf specified in such list is a Shia Wakf or a Sunni Wakf, the Board or the mutawalli of the Wakf, or any person interested therein, may apply to the Tribunal having jurisdiction in relation to such property, for the decision of the question and the decision of the Tribunal thereon shall be final.

15. Admittedly, in this case, the Petitioner herein in his written statement categorically referred to the certificate issued by the Sub-Registrar, Gajwel showing that the suit schedule property is a wakf property. After the constitution of the Tribunals, where a dispute arises with regard to the title of the wakf property, the Tribunal alone has the jurisdiction to entertain the suit. Of course, the suit filed between the parties may be a suit for bare injunction and the main question may be as to who is in possession of the property as on the date of

filing of the suit, but necessarily the court has to examine as to whether the Plaintiff has got a prima facie title or not.

16. In the above circumstances, I am of the view that the order passed by the lower court is liable to be set aside and accordingly, the same is set aside. Consequently, I.A. No. 871 of 2007 in O.S. No. 27.11.2007 filed by the Petitioner herein stands allowed and the lower court is directed to return the plaint filed by the Respondents herein for the purpose of presenting the same before the Wakf Tribunal. The C.R.P is accordingly allowed. No costs.