

(2009) 08 MAD CK 0396

In the Madras High Court

Case No : C.R.P. (PD) No. 3956 of 2007 and M.P. No. 1 of 2007

Sunnath Jamath Committee of Masjid-e-Akasha

APPELLANT

Vs

K. Anthonysamy and Others

RESPONDENT

Date of Decision : 26-08-2009

Acts Referred:

Citation : (2009) 5 CTC 871

Hon'ble Judges : S. Rajeswaran, J

Bench : Single Bench

Advocate : V. Lakshminarayanan for Mr. M. Hidayathullah Khan, for the Appellant; T. Arulraj, Advocate for Respondent Nos. 1 and 2, Mr. Sulaiman, Advocate for Respondent No. 8 and Mrs. Shanthi Rakkappan, Additional Government Pleader (C.S.) for Respondent Nos. 9 to 12, for the Respondent

Final Decision : Allowed

Judgement

S. Rajeswaran, J.—This Civil Revision Petition is filed against the Order in G. No. 11295 of 2007 (un-numbered W.O.S.) on the file of District Wakf Tribunal (Subordinate Judge), Krishnagiri. The plaintiff in Gen. No. 11295 of 2007/Un-numbered W.O.S. on the file of the Court of District Wakf Tribunal (Subordinate Judge), Krishnagiri, is the revision petitioner before this Court. He is aggrieved by the order of the Wakf Tribunal dated 3.11.2007, by which, the Tribunal rejected the Plaint itself on the ground that the Suit is barred by res judicata, as per Section 11, C.P.C.

2. The plaintiff filed W.O.S. No. (un-numbered) 2007 for the following reliefs:

(1) to declare that the suit property is a Wakf by user as a burial ground for the Muslim community of the plaintiff mosque;

(2) to grant permanent injunction restraining the defendants 1 to 7 from trespassing into the suit property or any part of the same and from disturbing or obstructing the plaintiff people from using the suit property as burial ground of the Muslim community people of the plaintiff mosque;

(3) to declare that the sale deed dated 24.1.1963 executed by the defendants 3 to 5 in favour of Kolandaisamy Mudali, the father of the defendants 1 and 2 and a sale deed dated 29.12.1970 executed by the third defendant in favour of the 7th defendant and the settlement deed dated 20.08.1981 executed by the defendants 3, 4 and 6 in favour of Mustaq Ahamed are null and void and are not binding on the plaintiff mosque;

(4) to declare that the decree and judgment in O.S. No. 286 of 1983 of the District Munsif Court, Krishnagiri and the decree and judgment in A.S. No. 41 of 1997 of the Additional District Judge cum Chief Judicial Magistrate, Krishnagiri are null and void;

(5) to declare the sub-division of S. No. 15/2 as 15/2A and 15/2B and patta issued in favour of the defendants 1 and 2 for the S. No. 15/2A by the defendants 9 to 11 are null and void and to register S. No. 15/2 of 98 cents as burial ground of the Muslim community of the plaintiff mosque;

(6) to grant permanent injunction restraining the defendants 1 and 2 from seeking any enquiry in R.E.P. No. 156 of 2006 of the District Munsif Court, Krishnagiri till the disposal of the suit.

(7) to direct the defendants 1 to 7 to pay the plaintiff the cost of the Suit.

3. The case of the plaintiff is that the suit property is a burial ground which has eventually become a Wakf by user by Muslim community people of Londonpet area, Krishnagiri. The suit property was originally owned by one Md. Kasim who was a very rich and pious Muslim. He orally gifted 98 cents of land in S. No. 15 in Kattiganapalli Village for the usage of the Muslim community as a burial ground. The said gift was made in 1895 and the entire 98 cents are being used for burying the dead bodies of Muslim in and around Londonpet without any interruption. Somewhere in 1960/1961, the said Suit in S. No. 15 was sub-divided as S. No. 15/1 and S. No. 15/2. S. No. 19/1 of 19 cents was classified as the land belonging to Md. Hussain one of the two sons of the said Md. Kasim and S. No. 15/2 of 98 cents was classified as burial ground. Thus, according to the plaintiff, the suit property namely 98 cents in S. No. 15/2 is a burial ground for Muslim community which is being used for more than 100 years and as such, it is a Wakf by user.

4. After the death of the said Md. Kasim, in 1901, his two sons namely Md. Hussain, and Sheik Mohideen, partitioned their father's property and in that partition, the remaining extent of 19 cents in S. No. 15 which was being used by them in common, was agreed to be taken in equal share by both the sons. The family of Md. Kasim in the partition, clearly recognised the suit property as burial ground. However, in the partition of the family of Md. Hussain effected under the Deed of partition dated 21.01.1949 the said 19 cents were said to be owned by Md. Hussain only and sought to be allotted to the share of one of his sons Faizullah. However, the family members of Sheik Mohideen did not raise any objection and the said Faizullah right from 1952 had been mortgaging the said

19 cents and getting loans from the Cooperative Bank, Krishnagiri atleast for four times in 1952, 1955, 1957 and 1960 and ultimately sold the same to one Subaidha Begum under a sale deed dated 7.09.1963.

5. While so, the legal heirs of the said Sheik Mohammed, i.e. the defendants 3 to 5 seem to have executed a sale deed on 24.01.1963 in favour of one Kulandaiswamy Mudaliar who is the father of the defendants 1 and 2 in respect of an extent of 19 cents in the Suit S. No. 15/2. However, this was not at all disclosed by both the parties till 1983. According to the plaintiff, defendants 3 to 5 had no right at all over any portion of the suit property much less then 19 cents under the said Deed of sale. So the said Sale deed has no legal validity and it was executed to defraud the Wakf property fraudulently. As Kulandaiswamy Mudaliar could not take possession of the property till his death, he seemed to have left a Will dated 04.05.1969 in favour of his sons who are defendants 1 and 2. The defendants 1 and 2 also could not get possession of the property as the same is being used as burial ground for the Muslim community.

6. It also came to light that the father of the defendants 1 and 2 seem to have got sub-divided S. No. 15/2 in the revenue records as 15/2A in the name of himself and the remaining 15/2B as burial ground. The sub-division and patta are invalid in law. Defendants 3 to 5 after executing the Sale deed dated 24.01.1963 went to the extent of creating another sale deed dated 29.12.1970 which was created by the third defendant alone in favour of the 7th defendant in respect of 18 cents of land on the southern most portion of the suit property itself. This is also a fraudulent document. The third defendant along with her son 4th defendant and cousin 7th defendant executed a Deed styled as Settlement Deed dated 20.08.1981 as if settling an extent of 62 cents in the suit property to the plaintiff mosque. All the three deeds of 1963, 1970 and 1981 are all concocted and created purposely in order to create confusion over the right and title over the suit property.

7. It is the further case of the plaintiff that the then President of the Mosque filed a Suit in O.S. No. 286 of 1983 before the District Munsif Court, Krishnagiri when the defendants 1 and 2 attempted to mark foundation in the 18 cents of land on the northern most portion of the suit property and tried to trespass and defile the graves therein. The Suit is for the relief of declaration of the suit property namely 98 cents in S. No. 15/2 as Muslim Grave yard by user and also for permanent injunction and mandatory injunction to demolish the foundation. The Suit was decreed by the District Munsif on 20.3.1997 for declaration and injunction in respect of 80 cents only in S. No. 15/2B. Though an Appeal was filed in A.S. No. 41 of 1997 before the Additional District Judge cum Chief Judicial Magistrate, Krishnagiri, the same was dismissed on 04.02.1999 confirming the decree and judgment of the District Munsif.

8. It is contended by the plaintiff that though the Suit was filed in the year 1983 in respect of the Wakf property in the District Munsif Court, the Wakf Act 1995 came into force with effect from 01.01.1996. Therefore, the District Munsif

ceased to have jurisdiction over the subject matter in O.S. No. 286 of 1983. Similarly, the Appellate Court had also no jurisdiction to entertain A.S. No. 41 of 1997. Therefore, the decree of the District Munsif Court in O.S. No. 286 of 1983 and the decree of the Appellate Court in A.S. No. 41 of 1997 are without jurisdiction and are to be declared as null and void.

9. It is also further pleaded that the plaintiff in O.S. No. 286 of 1983 was not in a position to effectively prosecute the Suit.

10. The plaintiff further averred that in 2000, one Abbas and others filed a Suit before the Vacation Civil Judge, Krishnagiri in O.S. No. 10 of 2000 against the defendants 1 and 2 for declaration and injunction in respect of 18 cents of land in S. No. 15/2A. O.S. No. 10 of 2000 was transferred to the District Munsif Court, Krishnagiri and re-numbered as O.S. No. 131 of 2000. By order dated 5.7.2005, the District Munsif returned the Plaint for want of jurisdiction with a direction to re-present it before the proper forum. This was challenged in C.M.A. No. 18 of 2005 by the plaintiff, but, the same was dismissed on 20.03.2006, confirming the order of the Trial Court. Thereafter, the matter was not pursued by the plaintiffs.

11. The plaintiff referred to a private Complaint filed by the first defendant against the plaintiffs in O.S. No. 131 of 2000 for taking action for an alleged evidence under Sections 441, 447 and 147, I.P.C. Consequently, an F.I.R. was registered in F.I.R. No. 1480 of 2006. In the complaint, it was alleged that the respondents therein obstructed the first defendant when he went to the property of 18 cents in S. No. 15/2A for removing the thorns and bushes, etc. On 9.10.2006, the defendants 1 and 2 filed an Execution Petition in R.E.P. No. 156 of 2006 in O.S. No. 286 of 1983 under Sections 12 and 2 of the Contempt of Court Act, 1971. The said R.E.P. No. 156 of 2006 is pending and the same is being contested.

12. There was further reference by the plaintiffs in the Plaint to the Criminal O.P. No. 19517 of 2007 filed by the defendants 1 and 2 and the order passed by this Court on 4.7.2007 directing the Inspector of Police to investigate the case and file a final report within six months and also to give police protection to the petitioners to deal with the property in the face of law and other situation arises. According to the plaintiff, all these efforts of defendants 1 and 2 are to pluck away the 18 cents of land under the guise of the judgment and decree in O.S. No. 286 of 1983.

13. With the above allegations and averments, the plaintiff filed the numbered Suit for the above said reliefs.

14. Even before numbering the Suit, the matter was posted before the Trial Court and the Trial Court on 03.12.2007 rejected the Plaint by holding that the same subject matter of the Suit was already adjudicated upon and decided by the Courts of competent jurisdiction in O.S. No. 286 of 1983 and that was also confirmed by the Appellate Court in A.S. No. 41 of 1997. The Trial Court has also referred to the Criminal case filed by the first defendant against the plaintiff and

the order passed by this Court in Crl.O.P. No. 19517 of 2007. The Trial Court further accused the plaintiff of suppressing the material facts and on the basis of the aforesaid reasons, the Plaint was rejected mainly on the ground of res judicata. Aggrieved by the same, the above Civil Revision Petition was filed by the plaintiff under Article 227 of the Constitution of India.

15. Heard the learned counsel for the petitioner, the learned counsel for the respondents 1 and 2, the learned counsel for 8th respondent and the learned Additional Government Pleader (Civil side) for respondents 9 to 12. I have also considered the entire materials available on record.

16. The learned counsel for the petitioner vehemently contend that a Plaint cannot be rejected on the alleged ground of res judicata as res judicata is an issue which could be taken up only during the trial and not at the stage when the Suit itself was being numbered. The learned counsel further pointed out that there are so many reliefs that are sought for in the Suit and even assuming without admitting that some reliefs are hit by the principles of res judicata, the other reliefs are very much there which are to be decided in the Suit. He further contends that a Plaint cannot be rejected in part and therefore, there is no scope at all for the Trial Court to reject the Plaint. The learned counsel for the petitioner further points out that the reference to Crl.O.P. No. 19517 of 2007 at this stage and accusing the plaintiff of suppression of material facts are not germane facts and therefore, the rejection of the Plaint on this ground also is not proper. The learned counsel in support of his submissions relied on the following decisions:

1. Unreported judgment in of this Court in Gopalrathinam v. NBCC, C.R.P. No. 1361/2001, dated 07.02.2003;
2. Prem Lala Nahata and Another Vs. Chandi Prasad Sikaria,
3. Anil Kumar Vs. Smt. Vijayalakshmi and Another
4. Rangaraj and Others Vs. P.R. Hemachandra Babu,
5. Ram Prakash Gupta Vs. Rajiv Kumar Gupta and Others,
6. Sopan Sukhdeo Sable and Others Vs. Assistant Charity Commissioner and Others,
7. A.M. Ali Akbar and Another Vs. Keelakarai South Street Jamath Masjid Paripalana Committee and Others,
8. Emperor Vs. Balkrishna Hari Phansalkar,
9. The Official Receiver Vs. Amara Seshayya and Others,
10. Chiarman of Manging Committee of the Smt. Dev Kunwar Nanalal Bhatt Vaishnav College for Women Vs. Mrs. Aleyamma Thomas,
11. B. Janaradhana Bhat Vs. Lalitha,

12. S. Sundaram Pillai and Others Vs. P. Govindaswami and Another,
13. The Management of Tamil Nadu Mercantile Bank Ltd. and Another Vs. T. Venkatesan,
14. Annapoorni v. Janaki, 1995 (1) LW 141;
15. Varada Reddiar and Another Vs. Jayachandran and Others, and
16. Surya Dev Rai Vs. Ram Chander Rai and Others,
17. Per contra, the learned counsel for the respondents 1 and 2 tried his best to support the order of the Trial Court by submitting that the attempt of the petitioner/plaintiff is nothing but an act of relitigation which should be nipped in the bud. He points out that the very same subject matter is being agitated again and again with ulterior motive and thereby putting the respondents 1 and 2 to face litigation always. In such circumstances, the attempt of the plaintiff is nothing but a sheer abuse of the process of the Court and the same was seen there by the Trial Court and the Trial Court rightly returned the Plaint which need not be interfered with by this Court.
18. I have considered the rival submissions carefully with regard to facts and citations.
19. Though this Civil Revision Petition could be disposed of on the available materials alone without referring to any of the judgments referred to by the learned counsel for the petitioner, I propose to deal with the same as the learned counsel has taken pains to collect those judgments and cite the same before this Court.
20. In the unreported judgment made in Gopalrathinam v. NBCC, C.R.P. No. 1361/2001, dated 07.02.2003, this Court held as under:
 11. The learned counsel appearing for the first respondent here again raised a technical ground and relied on the decision of this Court in G. Murugan and Others v. Manickam, 2003 (1) MLJ 55, to contend that a Revision as against the order of rejection of the Plaint is not maintainable and contended that only an Appeal is the remedy. The reliance, in my opinion, is misplaced. The Order, which is questioned in this action, is not passed under Order 7, Rule 11 of the CPC so as to deem it as a decree and contend that as against a decree passed under Order 7, Rule 11, the remedy is only by way of Appeal and not by way of Revision. The order impugned is one passed at the instance of the first respondent by filing an Application u/s 151, of C.P.C. Though in the order impugned, it is stated that the Application was filed under Order 7, Rule 11, it is not so because when the Suit as originally instituted and even after the invocation of the Bank guarantee, it does not disclose a cause by the first respondent. The Suit does disclose the cause of action. The subsequent invocation of Bank guarantee by the first respondent cannot be said to be obliterated the cause of action of the Suit. The Suit was entertained and interim

orders were also passed. Because of the supervening circumstances of invocation of the Bank guarantee on the guise that there is no interim order in favour of the petitioner, would not brought the action within the purview of clause (a) of Rule 11 that the action does not disclose any cause of action. In such eventuality, it has to be construed that the Application is one filed u/s 151 of the Civil Procedure Code. IF that be so, the revision against the order is very well maintainable. For coming to this conclusion, I can draw support to the judgment of Srinivasan, J. (as he then was) in the case of The Management of Tamil Nadu Mercantile Bank Ltd. and Another Vs. T. Venkatesan, and also the Gujarat High Court Judgment in Zakinaben and Others Vs. Babubhai Alimohmad Kapadia and Others,

21. In Prem Lala Nahata and Another Vs. Chandi Prasad Sikaria, the Hon''ble Supreme Court observed as under:

15. It is well understood that procedure is the handmaid of justice and not its mistress. The scheme of Order 1 and Order 2 clearly shows that the prescriptions therein are in the realm of procedure and not in the realm of substantive law or rights. That the Code considers objections regarding the frame of Suit or joinder of parties only as procedural, is further clear from Section 99 of the Code which specifically provides that no decree shall be reversed in Appeal on account of any misjoinder of parties or causes of action or non-joinder of parties unless a Court finds that the non-joinder is of a necessary party. This is on the same principle as of Section 21 of the Code which shows that even an objection to territorial jurisdiction of the Court in which the Suit is instituted, could not be raised successfully for the first time in an Appeal against the decree unless the appellant is also able to show consequent failure of justice. The Suits Valuation Act similarly indicates that absence of pecuniary jurisdiction in the Court that tried the cause without objection also stands on the same footing. The amendment to Section 24 of the Code in the year 1976 confers power on the Court even to transfer a Suit filed in a Court having no jurisdiction, to a Court having jurisdiction to try it. In the context of these provisions with particular reference to the rules in Order 1, and Order 2 of the Code, it is clear that an objection of misjoinder of plaintiffs or misjoinder of causes of action, is a procedural objection and it is not a bar to the entertaining of the Suit or the trial and final disposal of the Suit. The Court has the liberty even to treat the Plaint in such a case as relating to two Suits and try and dispose them of on that basis.

16. Order 7, Rule 11(d) speaks of the Suit being "barred by any law". According to Black's Law Dictionary, bar means, a plea arresting a law Suit or legal claim. It means as a verb, to prevent by legal objection. According to Ramanatha Aiyar's Law Lexicon, "bar" is that which obstructs entry or egress; to exclude from consideration. It is therefore necessary to see whether a Suit bad for misjoinder of parties or of causes of action is excluded from consideration or is barred entry for adjudication. As pointed out already, on the scheme of the Code, there is no such prohibition or a prevention at the entry of a Suit defective for

misjoinder of parties or of causes of action. The Court is still competent to try and decide the Suit, though the Court may also be competent to tell the plaintiffs either to elect to proceed at the instance of one of the plaintiffs or to proceed with one of the causes of action. On the scheme of the Code of Civil Procedure, it cannot therefore be held that a Suit barred for misjoinder of parties or of causes of action is barred by a law, here the Code. This may be contrasted with the failure to comply with Section 80 of the Code. In a case not covered by sub-section (2) of Section 80, it is provided in sub-section (1) of Section 80 that "no suit shall be instituted". This is therefore a bar to the institution of the Suit and that is why Courts have taken the view that in a case where notice u/s 80 of the Code is mandatory, if the averments in the Plaint indicate the absence of a notice, the Plaint is liable to be rejected. For, in that case, the entertaining of the Suit would be barred by Section 80 of the Code. The same would be the position when a Suit hit by Section 86 of the Code is filed without pleading the obtaining of consent of the Central Government if the Suit is not for rent from a tenant. Not only are there no words of such import in Order 1 or Order 2 but on the other hand, Rule 9 of Order 1, Rules 1 and 3 of Order 1, and Rules 3 and 6 of Order 2 clearly suggest that it is open to the Court to proceed with the Suit notwithstanding the defect of misjoinder of parties or misjoinder of causes of action and if the Suit results in a decision, the same could not be set aside in Appeal, merely on that ground, in view of Section 99 of the Code, unless the conditions of Section 99 are satisfied. Therefore, by no stretch of imagination, can a Suit bad for misjoinder of parties or misjoinder of causes of action be held to be barred by any law within the meaning of Order 7, Rule 11(d) of the Code.

17. Thus, when one considers Order 7, Rule 11 of the Code with particular reference to clause (d), it is difficult to say that a Suit which is bad for misjoinder of parties or misjoinder of causes of action, is a Suit barred by any law. A procedural objection to the impleading of parties or to the joinder of causes of action or the frame of the Suit, could be successfully urged only as a procedural objection which may enable the Court either to permit the continuance of the Suit as it is or to direct the plaintiff or plaintiffs to elect to proceed with a part of the Suit or even to try the causes of action joined in the Suit as separate Suits.

19. It is recognised that the Court has wide discretionary power to control the conduct of proceedings where there has been a joinder of causes of action or of parties which may embarrass or delay the trial or is otherwise inconvenient. In that situation, the Court may exercise the power either by ordering separate trials of the claims in respect of two or more causes of action included in the same action or by confining the action to some of the causes of action and excluding the others or by ordering the plaintiff or plaintiffs to elect which cause of action is to be proceeded with or which plaintiff should proceed and which should not or by making such other order as may be expedient. (See Halsbury's Laws of England, Vol. 37, para 73.) Surely, when the matter rests with the discretion of the Court, it could not be postulated that a Suit suffering from such a defect is something that is barred by law. After all, it is the convenience of the

trial that is relevant and as the Privy Council has observed in the decision noted earlier, the defendant may not even have an absolute right to contend that such a suit should not be proceeded with.

22. In *Anil Kumar Vs. Smt. Vijayalakshmi and Another* the Kerala High Court observed as under:

10. On going through the plaint it cannot be said that the plaint does not disclose a cause of action. What is to be looked into at the stage of pre-registering of the Plaint, is whether the Plaint discloses a cause of action. Court has jurisdiction to reject the Plaint where the Plaint does not disclose a cause of action or where the relief claimed is undervalued and the valuation is not corrected within the time as fixed by the Court or where the Suit appears from the statement in the Plaint to be barred by any law. True, Court has an obligation to reject the Plaint, if any of the grounds provided under Rule 11 of Order 7 of the Code is attracted. So long as the Plaint discloses a cause of action, the Plaint cannot be rejected for the mere reason that in the opinion of the Judge the plaintiff may not succeed. Apex Court in *Mayar (H.K) Ltd.*'s case (supra) held:

12. From the aforesaid, it is apparent that the plaint cannot be rejected on the basis of the allegations made by the defendant in his written statement or in an Application for rejection of the Plaint. The Court has to read the entire Plaint as a whole to find out whether it discloses a cause of action and if it does, then the Plaint cannot be rejected by the Court exercising the powers under Order 7, Rule 11 of the Code. Essentially, whether the Plaint disclose a cause of action, is a question of fact which has to be gathered on the basis of the averments made in the Plaint in its entirety taking those averments to be correct. A cause of action is a bundle of facts which are required to be proved for obtaining relief and for the said purpose, the material facts are required to be stated but not the evidence except in certain cases where the pleadings relied on are in regard to misrepresentation, fraud, wilful default, undue influence or of the same nature. So long as the plaint discloses some cause of action which requires determination by the Court, the mere fact that in the opinion of the Judge the plaintiff may not succeed cannot be a ground for rejection of the Plaint. In the present case, the averments made in the Plaint, as has been noticed by us, do disclose the cause of action and therefore, the High Court has rightly said that the powers under Order 7, Rule 11 of the Code cannot be exercised for rejection of the suit filed by the plaintiff/appellants

23. In *Rangaraj and Others Vs. P.R. Hemachandra Babu*, a Division Bench of this Court held as under:

16. In the present case, as pointed out and noticed by the learned Single Judge that the plaintiff has raised the question of fact and the issue involved is a mixed question of law and fact, we are in agreement with the learned Single Judge that such issue cannot be determined as a preliminary issue, which can be determined at the time of trial along with the other issues.

24. In Ram Prakash Gupta Vs. Rajiv Kumar Gupta and Others, the Hon''ble Supreme Court observed as under:

18. As observed earlier, before passing an order in an Application filed for rejection of the Plaint under Order 7, Rule 11(d), it is but proper to verify the entire plaint averments. The above mentioned materials clearly show that the decree passed in Suit No. 183 of 1974 came to the knowledge of the plaintiff in the year 1986, when Suit No. 424 of 1989 titled Assema Architect v. Ram Prakash, was filed in which a copy of the earlier decree was placed on record and thereafter he took steps at the earliest and filed the Suit for declaration and in alternative for possession. It is not in dispute that as per Article 59 of the Limitation Act, 1963, a Suit ought to have been filed within a period of three years from the date of the knowledge. The knowledge mentioned in the Plaint cannot be termed as inadequate and incomplete as observed by the High Court. While deciding the Application under Order 7, Rule 11, few lines or passage should not be read in isolation and the pleadings have to be read as a whole to ascertain its true import. We are of the view that both the Trial Court as well as the High Court failed to advert to the relevant averments as stated in the Plaint.

25. In Sopan Sukhdeo Sable and Others Vs. Assistant Charity Commissioner and Others, the Hon''ble Supreme Court held as under:

15. There cannot be any compartmentalization, dissection, segregation and inversions of the language of various paragraphs in the plaint. If such a course is adopted it would run counter to the cardinal canon of interpretation according to which a pleading has to be read as a whole to ascertain its true import. It is not permissible to cull out a sentence or a passage and to read it out of the context in isolation. Although it is the substance and not merely the form that has to be looked into, the pleading has to be construed as it stands without addition or subtraction or words or change of its apparent grammatical sense. The intention of the party concerned is to be gathered primarily from the tenor and terms of his pleadings taken as a whole. At the same time, it should be borne in mind that no pedantic approach should be adopted to defeat justice on hair spitting technicalities.

16. Submission of learned counsel for respondent No. 2 trust was that requirement of law being reading the plaint in its totality, the appellants cannot take the plea that they would give up or relinquish some of the reliefs sought for. That would not be permissible. The plead clearly overlooks the basic distinction between statements of the facts disclosing cause of action and the reliefs sought for. The reliefs claimed do not constitute the cause of action. On the contrary, they constitute the entitlement. If any, on the basis of pleaded facts. As indicated above, Order 6, Rule 2 requires that pleadings shall contain and contain only a statement in a concise form of the material facts on which the party pleading relies for his claim. If the plea of Mr. Savant, learned counsel for the respondent-trust is accepted the distinction between the statement of material facts and the reliance on them for the claim shall be obliterated. What is required in law is not

the piecemeal reading of the plaint but in its entirety. Whether the reliefs would be granted on the pleaded facts and the evidence adduced is reliefs claimed may not be allowed to a party on the pleadings and the evidence adduced. Whether part of the relief cannot be granted by the Civil Court is a different matter from saying that because of a combined claim of reliefs the jurisdiction is ousted or no cause of action is disclosed. Considering the reliefs claimed vis-a-vis the pleadings would not mean compartmentalization or segregation, in that sense. The plea raised by the respondents-trust is therefore clearly unacceptable.

17. Keeping in view of the aforesaid principles the reliefs sought for in the suit as quoted supra have to be considered. The real object of Order 7, Rule 11 of the Code is to keep out of Courts irresponsible law Suits. Therefore, the Order 10 of the Code is a tool in the hands of the Courts by resorting to which and by searching examination of the party in case the Court is prima facie of the view that the Suit is an abuse of the process of the Court in the sense that it is a bogus and irresponsible litigation, the jurisdiction under Order 7, Rule 11 of the Code can be exercised.

18. As noted supra, the Order 7, Rule 11 does not justify rejection of any particular portion of the Plaint. Order 6, Rule 16 of the Code is relevant in this regard. It deals with "striking out pleadings". It has three clauses permitting the Court at any stage of the proceedings to strike out or amend any matter in any pleading i.e. (a) which may be unnecessary, scandalous, frivolous or vexatious, or (b) which may tend to prejudice, embarrass or delay the fair trial of the Suit, or (c) which is otherwise an abuse of the process of the Court.

26. In A.M. Ali Akbar and Another Vs. Keelakarai South Street Jamath Masjid Paripalana Committee and Others, this Court held as follows:

12. The Act does not define the Wakf property. However, whatever the property dedicated for the religious, pious and charitable purpose and for the upliftment of the poorer Section of the society by a Wakf shall be construed a Wakf property. On a reading the definition of the definition of Wakf coupled with types of Wakf, essentials of Wakf, it is manifestly clear that the word Wakf relates to the dedication of movable and immovable properties for religious, pious and charitable purpose and for the upliftment of poorer sections of the society by Wakf. As per Section 83(1) of the act, the Tribunal constituted by the State Government under a notification shall have the power for determination of any dispute, question or other matter relating to a Wakf or Wakf property under the Act which would necessarily mean and to be understood that the powers of the Tribunal is demarcated and limited only in respect of a dispute, question or other matter relating to the managing committee could be called as dispute, question or other matter relating to Wakf or Wakf property. As per Section 85 of the Act, no suit or other legal proceedings 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 the Act to be determined by the Tribunal. The very fact that provision u/s 85 barring the jurisdiction of the Civil Court in

respect of the disputes enumerated would indicate that the Tribunal would have the jurisdiction only in respect of the dispute, question and other matters relating to Wakf or Wakf property or other matter which are required by or under the act to be determined by the Tribunal under the provisions of the Act and the said Section does not bar the jurisdiction of the Civil Court to entertain a suit for permanent injunction of the nature that has been made in the Petition before the Tribunal by the first respondent. However, the submission of the learned counsel for the respondents is that by virtue of Section 83(1) of the Act, the Tribunal has got exhaustive powers to entertain any dispute, question or other matter relating to the Wakf or Wakf property including a dispute relating to the managing committee. It would be relevant to note that wherever the powers conferred on the Tribunal relating to disputes, question or other matters, specific exclusion of the powers of the Tribunal in granting stay is also enacted in various provisions of the Act especially when, 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 u/s 6(1) of the Act. When such a Suit is filed it has been indicated that notwithstanding anything contained in the C.P.C. under the Act in respect of any Wakf shall be stayed by pendency of any such suit or in Appeal arising out of such Suit. Similarly, u/s 7(1) of the Act, if, after the commencement of the Act, any question arises, whether a particular property 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. In such event, by the reason of the provisions of Sub-section (5) of Section 7, no proceedings under the Section in respect of any Wakf shall be stayed by any Tribunal or other Authority or reason pending of any Suit or Appeal arising out of such Suit, Appeal or other proceedings. A reading of the above provisions would indicate that wherever the legislature intended to specifically indicate that the Tribunal or the Court as the case may be, shall not grant stay of the Board's proceedings, it has been provided so under the provisions of the Act. The Wakf Act is a complete code by itself. The Tribunal is constituted under the Act by the State Government under notification. The powers of the Tribunal are restricted only to the disputes specifically referred in Section 83(1) of the Act to be adjudicated. u/s 83(1) of the Act, the Tribunal is empowered to determine the dispute, question or other matters relating to Wakf or Wakf property and not in respect of an application for permanent injunction as has been filed by the first respondent in W.O.P. No. 2 of 2001. In this context, the words "or other matter which is required by or under the act to be determined by the Tribunal" shall be referable only to Sections 6, 7, 76(4), 70(1) and (2) and Section 94. None of the provisions of the Act either expressly or impliedly empowers the Tribunal to entertain, adjudicate upon and decide a Petition for permanent injunction. Section 85 of the Act also does not specifically bar the jurisdiction of Civil Court to entertain a suit for injunction. Section 94 of the Act also empowers the

Tribunal to issue direction to mutawalli to pay to the Board or to any person authorised by the Board the amount necessary for the performance of such Act where mutawalli who is under an obligation to perform any act which is recognised by Muslim law is pious, religious or charitable and the mutawalli fails to perform such Act. Therefore, the submission of the learned counsel for the respondents that the word used "any dispute" shall also mean a dispute relating to the managing committee of the Jamath and the word "any" used in Section 83(1) of the act shall mean every and whatever the dispute relating to a Wakf and the said word Wakf does relate to the managing committee cannot be accepted, it is also to be noted that the power to order injunction shall vest with the Civil Court by virtue of Sections 39 and 41 of the Specific Relief Act. However, the learned counsel for the respondents contended that the Tribunal had inherent power to grant temporary injunction while entertaining an application for permanent injunction. I am not inclined to accept the said submission of the learned counsel since in the absence of any specific power under the Act, the Tribunal would have no jurisdiction to entertain a petition for grant of permanent injunction, as the power of the Tribunal to adjudicate upon the dispute is specifically enumerated under the act. In the light of the provisions of the Act and in the absence of any specific power for the Tribunal to determine the dispute as to the constitution of managing committee or the conduct of election to the respondent are not entertainable by the Tribunal. In the judgment reported in Koil Kandadai Chandamarutham Vedanthacharswami and others Vs. Rajah Sir Muthiah Chetti a Division Bench of this Court while considering the powers of the Tribunal constituted under the Madras Estates (Abolition and Conversion into Ryotwari Act, 1948 in entertaining an Application of cross-objection has held that in the absence of any provision under the Act attracting the entire procedure laid down in the C.P.C. including the right to file objection does not arise and the right of the aggrieved person is restricted to an Appeal u/s 51. The judgment of the Calcutta High Court reported in re: State Transport Authority and another, In Re: State Transport Authority and Another, it has been held as follows:

Next comes the question of passing ad interim order by a Tribunal and interim order by a Tribunal. It is well settled, that unless a Tribunal, set up under a Special Statute is vested with such power under the Statute itself, it cannot pass such an order, not can a Tribunal exercise the inherent power as prescribed under C.P.C., if such a Tribunal is not a Court. So far as the Consumer Protection Act, 1986 is concerned, the procedure to be adopted by a District forum on receipt of a Complaint, is laid down in Section 13 of the said Act and sub-section (4) of the said Section 13 states that for the purpose of the said Section, the Forum shall enjoy the same powers as are vested in a Civil Court under C.P.C., while trying a Suit, in respect of the following matters:

(i) the summoning and enforcing attendance of any defendant or witness and examining the witness on oath;

- (ii) the discovery and production of any document or other material object producible as evidence;
- (iii) the reception of evidence on affidavits;
- (iv) the requisitioning of the report of the concerned analysis or test from the appropriate laboratory or from any other relevant source;
- (v) issuing of any commission for the examination of any witness; and (vi) any other matter which may be prescribed, and same powers have been vested with the State Commission also as per the provisions of Section 18 of the Act.

From the aforesaid provisions it is thus quite clear, that neither a District Forum nor the State Commission has been vested with any power under the Consumer Protection Act, 1986, to grant and/or pass any ad-interim order, not any of those Tribunals is a Civil Court so as to be deemed as such to enjoy the inherent powers as embodied in C.P.C. Those Tribunals have been vested with only some limited powers of a Civil Court as specifically stated in Sections 13 and 18 of the said act and as such, the said Tribunals cannot travel beyond their such limited powers. Hence, the interim orders passed both by the President, Calcutta District Forum and the Chairman, State Commission are wholly without jurisdiction.

13. In the judgment reported in *M.S. Ramachandra Sastrigal v. Kuppuswami Vanniar*, 1974 LW 167, a Division Bench of this Court while considering the power of Revenue Court in granting injunction has held that a Revenue Court has no jurisdiction to grant an order of injunction in the absence of specific power under the Act. In the judgment reported in *Ramaswamy Raja and Another Vs. Ellappa Gounder*, it has been held thus:

An injunction which is a preventive remedy, is granted by Courts under the Specific provisions of the C.P.C. There is no inherent power in any Tribunal to grant an injunction unless the jurisdiction to grant it is expressly conferred by Statute and such a power cannot be assumed by implication..... Hence, a Revenue Divisional Officer would have no jurisdiction to grant an injunction restraining a Landlord from entering his property. The tenant has always got his remedy in such cases to approach the Civil Courts for relief by way of injunction.

27. In *Emperor Vs. Balkrishna Hari Phansalkar*, the High Court of Bombay while dealing with the power of superintendence, which the High Court enjoys over other Courts, in the light of Sections 71, 72 and 107 of the Government of India Act, held that the right of superintendence which the High Court possess includes not only the superintendence of administrative points but the superintendence of the judicial side and under this power of superintendence, the High Court can correct an error in the judgment of a Court subject to its Appellate jurisdiction.

28. In *The Official Receiver Vs. Amara Seshayya and Others*, this Court observed as follows:

9. Mr. Govindachari attempted to argue that revision could not be allowed in this

case because the Official Receiver had a remedy by way of Suit under Order 21, Rule 63, he refers us to the Full Bench decision *Ittiachan v. Velappan*, 1885 ILR (8) Mad. 484 (F.B.). In that judgment dealing with a similar Revision Petition (266 of 1884) the learned Judges have observed "we have no power to interfere u/s 622, C.P.C. - the petitioner's remedy is by Suit." From this, we are asked to infer that the Full Bench laid down that whenever there is a remedy by way of Revision. Cases in which this Court has interfered in Revision in spite of the fact that the petitioner had another remedy are too numerous to be quoted. The principle that Revision should not be allowed where another remedy is available is a principle which may very conveniently be applied at the stage of admission. This Revision Petition was admitted by Mr. Justice Varadachariar nearly two years ago and since it has been admitted we think that it would be wrong at this stage to say that it must be dismissed merely because the Official Receiver might have proceeded by way of Suit. Since it is clear to us that the learned Subordinate Judge had not jurisdiction to attach this money in the hands of the Official Receiver and Special Receiver it would be an unnecessary multiplication of legal proceedings to refer the petitioner now to a Suit. We are satisfied that we have jurisdiction to act u/s 115 of C.P.C. and to allow this Petition.

29. In *Chairman of Manging Committee of the Smt. Dev Kunwar Nanalal Bhatt Vaishnav College for Women Vs. Mrs. Aleyamma Thomas*, this Court while dealing with the scope of Section 115, of C.P.C. observed as follows:

4. In *Major S.S. Khanna Vs. Brig. F.J. Dillon*, the Supreme Court, while dealing with the scope of Section 115 of the Code traced the historical evolution of the powers of the diverse High Courts' supervisory jurisdiction, and expressed that the revisional jurisdiction of the High Court may be exercised irrespective of the question whether an Appeal lies from the ultimate decree or order passed in the Suit that the expression "in which no Appeal lies thereto" occurring in Section 115 is not susceptible of the interpretation that it excludes the exercise of the revisional jurisdiction when an Appeal may be competent from the final order and that the use of the word "in" therein is not intended to distinguish orders passed in proceedings not subject to Appeal from the final adjudication from those from which no Appeal lies. The learned Judges of the Supreme Court took the view that only in a case where an Appeal lies against an adjudication directly to the High Court or to another Court from the decision of which an Appeal lies to the High Court, the High Court has no power to exercise its revisional jurisdiction, but that where the decision itself is not appealable to the High Court directly or indirectly, the exercise of the revisional jurisdiction by the High Court would not be deemed excluded.

30. In *B. Janaradhana Bhat Vs. Lalitha*, a Division Bench of the Karnataka High Court held that a Complaint cannot be rejected unless it is vexatious and frivolous.

31. In *S. Sundaram Pillai and Others Vs. P. Govindaswami and Another*, this Court held as under:

Mr. Gandhi who appears on behalf of the original plaintiff, has, at the outset; contended that the Revision Petition filed by the defendants should be dismissed, because no Appeal or Revision Petition lies against an interim order, and he has placed reliance on a Division Bench decision of this Court in Abdul Shukoor Sahib Vs. Umachander and others, The Division Bench has, in Abdul Shukoor's case held that no Appeal will lie against an ex parte and ad interim injunction but the specific remedy available in Order 39, Rule 4, C.P.C. has to be availed by the interdicted party so that a final reasoned order could be obtained in the Trial Court itself against which the Code has provided an obvious Appeal under Order 43, Rule 1(r), C.P.C. That was a case in which against an ad interim temporary injunction restraining the defendants from interfering with the plaintiff's peaceful possession and enjoyment of the suit property the defendants filed an Appeal before the Subordinate Judge passed an order suspending the interim injunction. This order of the Subordinate Judge was challenged in the Revision Petition. While holding that the order of ad interim injunction was not appealable, the Division Bench held that the order of the Subordinate Judge was absolutely without jurisdiction, because no Appeal lay against the ad interim order and the order of the Subordinate Judge was set aside. Now, it is true that the Division Bench has held in Abdyul Shukoor's case that no Appeal lies against an order of ad interim injunction. But, to accept the contention of the plaintiff in the present case that the defendants should first appear before the Trial Court and move the Trial Court for setting aside the injunction, would really have the effect of permitting the plaintiff to have the benefit of an order which is patently erroneous, and to sap the least, perverse and has been obtained by suppressing material facts. In any case, the High Court in the exercise of its revisional jurisdiction u/s 115 of C.P.C., cannot allow an order which amounts to an abuse of the powers vested in the Trial Court to stand once such an order comes to the notice of the High Court.

32. In The Management of Tamil Nadu Mercantile Bank Ltd. and Another Vs. T. Venkatesan, this Court observed as follows:

28. Though at the time of the arguments learned counsel for the respondent did not raise any objection to the maintainability of the Revision Petitions, I put a question to learned counsel for the petitioners as to how he filed these Revisions in this Court, when the C.P.C. has provided an appeal against the order of the Court below under Order 43, Rule 1(4) thereof. Learned counsel for the petitioners has submitted that the order in I.A. No. 22349 of 1990 is one u/s 151 of C.P.C. and not appealable. As regards the other Revision Petition, it is his contention that when the Trial Court has no jurisdiction whatever to entertain the Suit, it is open to this Court to interfere u/s 115 of C.P.C. with the interlocutory orders passed by the Trial Court, even if they are appealable. He places reliance on the judgment of this Court in S. Sundaram Pillai and Others Vs. P. Govindaswami and Another, ; Indian Oxygen Ltd., Electro Factory, Industrial Estate Vs. Ganga Prasad, and Southern Roadways Ltd. and Another Vs. C. Palanikumar and Others, . There is no doubt whatever that the Trial Court has no

jurisdiction to entertain the Suit. Nor is there any doubt that C.R.P. No. 1531 of 1991 as against the order in I.A. No. 22349 of 1990 is maintainable in this Court as the order in the said I.A. is not an appealable one. It is not an order under Order 39, C.P.C., but one u/s 151 of C.P.C. The question involved in both the Revisions being the same, and the judgment of the Court below in the two Applications being the same, even if an Appeal had been preferred by the defendants against the order in I.A. No. 22348 of 1990 in the Court of the Principal Judge, City Civil Court, Madras, I would have had it transferred to this Court suo motu to be heard along with C.R.P. No. 1531 of 1991. It is also open to me to exercise my power under Article 227 of the Constitution of India suo motu and call for the records in I.A. No. 22438 of 1990 and set aside the order made therein when it is found by me that the Trial Court has no jurisdiction to entertain the Suit itself. Having come to the conclusion that the Suit is unsustainable for want of jurisdiction in the Court in C.R.P. No. 1531/1991, which is undisputedly maintainable in this Court, I do not think it necessary to decide whether the other Revision Petition viz. C.R.P. No. 2269 of 1991 is maintainable or not. While taking note of the three rulings referred to above to the effect that this Court can exercise its power u/s 115 of the C.P.C. when the Trial Court suffers from total lack of jurisdiction, I refrain from entering into any discussion and expressing my conclusive opinion on that question, as it is unnecessary in this case. For the purpose of this case, I prefer to accept the three rulings referred to above and hold that C.R.P. No. 2269 of 1991 is also maintainable in this Court.

33. In *Annapoorni v. Janaki*, 1995 (1) LW 141, this Court held as follows:

25. In my opinion, the Section should be construed in such a manner that sub-section (2) would not apply to cases where this Court chooses to exercise its power suo motu, and not on any Application by a party. When this Court decides to exercise its power suo motu, it means that there is a flagrant violation of justice, and this Court wants to prevent the perpetuation thereof by exercising its suo motu powers. In such case, it would be unreasonable to say that if an Appeal lies to any Court against the decree or order, which has caused the miscarriage of justice, this Court is not entitled to vary or reverse the same. Hence, sub-section (2) should be limited in its application to Petitions filed by parties u/s 115, C.P.C. invoking the power of Revision of this Court. That sub-section cannot, in the nature of things, apply to the suo motu exercise of power of Revision and restrict the same in any manner. When it found that the Revisional power of this Court is necessarily to be exercised suo motu, even if any party has not moved this Court therefor, the procedural fetters cannot stop this Court from exercising the same.

27. Turning to Article 227 of the Constitution of India, the power of superintendence of this Court is not only administrative but also judicial. It is open to this Court under that Article to interfere with a judicial order made by a Subordinate Court, if and when necessary. Vide *In re In Re: Gangalakurthi Pattisam and Others*, ; *Waryam Singh and Another Vs. Amarnath and Another*, ;

and Hari Vishnu Kamath Vs. Syed Ahmad Ishaque and Others,

34. In Varada Reddiar and Another Vs. Jayachandran and Others, , this Court held as under:

9. In this connection, it is better to follow a decision of the Court reported in Annapoorni v. Janaki, 1991 (1) LW 141. When the Revision Petition came up for hearing, Srinivasan J. Treated it as a suo motu Revision Petition, by exercising powers under Article 227 of the Constitution of India.

10. That was a case where a daughter-in-law filed a Suit against the mother-in-law, claiming to be a legal heir of her husband. She claimed that she is the absolute owner of the property, though the mother also had an equal share as an heir to her son. The mother did not contest the matter, and ultimately a decree was passed in favour of the plaintiff. Execution proceedings were taken. It was at that time, a question came up for consideration whether the decree is legally valid. The learned Judge said thus:

When this Court finds that a decree suffers from an error of law apparent on the face of the record owing to non application of mind of the Court, to the relevant principles of law, this Court cannot keep silent and allow the decree to be in force, particularly, when it causes grave injustice. There can be no doubt whatever that under the Hindu Succession Act, certain persons are designated as Class I heirs and all of them are entitled to succeed to the estate of the deceased Hindu. There is no earthly reason for depriving the mother of the deceased, of her legitimate share in the estate which in this case happens to be a moiety.

This is a typical case of miscarriage of justice which should be rectified the moment it comes to the notice of the Court. It is only for that reason, I am exercising my powers u/s 115 of the C.P.C. and Article 227 of the Constitution of India.

The case on hand is also similar. A decree which is beyond the scope of the Suit has been granted, thereby depriving certain Temples of their properties. A wrongful gain has been obtained by the plaintiffs, respondents 1 and 2 herein. The decree passed by the Court below has resulted in miscarriage of justice. Therefore, this is a fit case where I have to exercise my powers under Article 227 of the Constitution of India. Accordingly by exercising my powers u/s 115, C.P.C. and Article 227 of the Constitution, I modify the decree passed by the Court below as follows:

The decree of the Court below will be read as if injunction was there restraining the defendant (third respondent herein) for conducting auction on 24.7.1991 or any other date till 30.6.1992, and the defendant was entitled to auction or lease out the properties after the said period.

35. In Surya Dev Rai Vs. Ram Chander Rai and Others, the Hon"ble Supreme Court held as under:

34. We are of the opinion that the curtailment of revisional jurisdiction of the High Court does not take away "and could not have taken away" the constitutional jurisdiction of the High Court to issue a Writ of Certiorari to a Civil Court nor is the power of superintendence conferred on the High Court under Article 227 of the Constitution taken away or whittled down. The power exists, untrammelled by the amendment in Section 115, C.P.C., and is available to be exercised subject to rules of self-discipline and practice which are well settled.

38. Such like matters frequently arise before the High Courts. We sum up our conclusions in a nutshell, even at the risk of repetition and state the same as hereunder:

(1) Amendment by Act 46 of 1999 with effect from 1.7.2002 in Section 115 of the CPC cannot and does not affect in any manner the jurisdiction of the High Court under Articles 226 and 227 of the Constitution.

(2) Interlocutory orders, passed by the Courts subordinate to the High Court, against which remedy of revision has been excluded by CPC Amendment Act 46 of 1999 are nevertheless open to challenge in, and continue to be subject to, certiorari and supervisory jurisdiction of the High Court.

(3) Certiorari under Article 226 of the Constitution, is issued for correcting gross errors of jurisdiction i.e. when a subordinate Court is found to have acted (i) without jurisdiction "by assuming jurisdiction where there exists none, or (ii) in excess of its jurisdiction" by overstepping or crossing the limits of jurisdiction, or (iii) acting in flagrant disregard of law or the rules of procedure or acting in violation of principles of natural justice where there is no procedure specified, and thereby occasioning failure of justice.

(4) Supervisory jurisdiction under Article 227 of the Constitution is exercised for keeping the subordinate Courts within the bounds of their jurisdiction. When a subordinate Court has assumed a jurisdiction which it does not have or has failed to exercise a jurisdiction which it does have or the jurisdiction though available is being exercised by the Court in a manner not permitted by law and failure of justice or grave injustice has occasioned thereby, the High Court may step in to exercise its supervisory jurisdiction.

(5) Be it a Writ of Certiorari or the exercise of supervisory jurisdiction, none is available to correct mere errors of fact or of law unless the following requirements are satisfied: (i) the error is manifest and apparent on the face of the proceedings such as when it is based on clear ignorance or utter disregard of the provisions of law, and (ii) a grave injustice or gross failure of justice has occasioned thereby.

(6) A patent error is an error which is self-evident i.e. which can be perceived or demonstrated without involving into any lengthy or complicated argument or a long-drawn process of reasoning. Where two inferences are reasonably possible and the Subordinate Court has chosen to take one view, the error cannot be

called gross or patent.

(7) The power to issue a Writ of Certiorari and the supervisory jurisdiction are to be exercised sparingly and only in appropriate cases where the judicial conscience of the High Court dictates it to act lest a gross failure of justice or grave injustice should occasion. Care, caution and circumspection need to be exercised, when any of the abovesaid two jurisdictions is sought to be invoked during the pendency of any suit or proceedings in a Subordinate Court and the error though calling for correction is yet capable of being corrected at the conclusion of the proceedings in an Appeal or Revision preferred there against and entertaining a Petition invoking certiorari or supervisory jurisdiction of the High Court would obstruct the smooth flow and/or early disposal of the Suit or proceedings. The High Court may feel inclined to intervene where the error is such, as, if not corrected at that very moment, may become incapable of correction at a later stage and refusal to intervene would result in travesty of justice or where such refusal itself would result in prolonging of the lis.

(8) The High Court in exercise of certiorari or supervisory jurisdiction will not convert itself into a Court of Appeal and indulge in re-appreciation or evaluation of evidence or correct errors in drawing inferences or correct errors of mere formal or technical character.

(9) In practice, the parameters for exercising jurisdiction to issue a Writ of Certiorari and those calling for exercise of supervisory jurisdiction are almost similar and the width of jurisdiction exercised by the High Courts in India unlike English Courts has almost obliterated the distinction between the two jurisdictions. While exercising jurisdiction to issue a Writ of Certiorari, the High Court may annul or set aside the act, order or proceedings of the Subordinate Courts but cannot substitute its own decision in place thereof. In exercise of supervisory jurisdiction the High Court may not only give suitable directions so as to guide the Subordinate Court as to the manner in which it would act or proceed thereafter or afresh, the High Court may in appropriate cases itself make an order in supersession or substitution of the order of the Subordinate Court as the Court should have made in the facts and circumstances of the case.

39. Though we have tried to lay down broad principles and working rules, the fact remains that the parameters for exercise of jurisdiction under Articles 226 or 227 of the Constitution cannot be tied down in a strait-jacket formula or rigid rules. Not less than often, the High Court would be faced with a dilemma. If it intervenes in pending proceedings there is bound to be delay in termination of proceedings. If it does not intervene, the error of the moment may earn immunity from correction. The facts and circumstances of a given case may make it more appropriate for the High Court to exercise self-restraint and not to intervene because the error of jurisdiction though committed is yet capable of being taken care of and corrected at a later stage and the wrong done, if any, would be set right and rights and equities adjusted in Appeal or Revision preferred at the conclusion of the proceedings. But there may be cases where "a

stitch in time would save nine". At the end, we may sum up by saying that the power is there but the exercise is discretionary which will be governed solely by the dictates of judicial conscience enriched by judicial experience and practical wisdom of the judge.

36. Citing the above decisions, the learned counsel for the petitioner contends that the Trial Court has committed an illegality in rejecting the plaint on the ground of *res judicata* and further submits that this Court has got powers under Article 227 of the Constitution of India to interfere in such matters. He also tried to impress upon this Court about the jurisdiction of Wakf Tribunal by contending that the previous Suits relied on by the Trial Court are without jurisdiction.

37. There is no quarrel about the settled principles of law that emerged from the above judgments.

38. In the light of the above settled legal principles, now let me consider the facts of the present case to find out whether the petitioner has made out a case under Article 227 of the Constitution of India to interfere with the order of the Trial Court.

39. It is not in dispute that the plaintiff has filed the Suit for six main reliefs, out of which, the plaintiff sought for a declarative relief to declare the Sale Deeds dated 24.1.1963 and the Sale Deed dated 29.12.1970 and the Settlement Deed dated 20.8.1981 are null and void and are not binding on the plaintiff Mosque. Further, another declarative relief also was sought for by the plaintiff to declare the decree and judgment in O.S. No. 286 of 1983 and the judgment and decree in A.S. No. 41 of 1997 are null and void. The plaintiff also prayed for the relief to declare the sub-division of S. No. 15/2 as 15/2A and 15/2B and the patta issued in favour of the defendants 1 and 2 S. No. 15/2A by the defendants 9 to 11 are null and void and to register S. No. 15/2 of 18 cents as burial ground of the Muslim community of the plaintiff Mosque. Apart from these reliefs, the plaintiff also sought for a declaration to declare that the suit property is a Wakf by user as a burial ground for the Muslim community of the plaintiff Mosque and also for a consequential permanent injunction.

40. If that being so, the Trial Court rejected the Plaint mainly on the ground of *res judicata* by stating that the same subject matter of the Suit was already adjudicated upon and decided by the Courts of competent jurisdiction in O.S. No. 286 of 1983 as well as in A.S. No. 41 of 1997. The Trial Court has miserably failed to consider the relief of declaration sought for by the plaintiff to declare the judgment in O.S. No. 286 of 1983 and in A.S. No. 41 of 1997 as null and void.

41. When such a relief was also prayed for, I am of the considered view that the Trial Court has certainly committed an illegality in rejecting the Plaint on the ground of *res judicata*. Further, *res judicata* is an issue which could not be decided by the Trial Court even before the Suit was numbered, as admittedly the issue *res judicata* has a mixed question of facts and law. Further, the averments of the Plaint alone are to be treated and considered by the Trial Court while

deciding the question whether there is a cause of action for filing the Suit. For that purpose, the entire Complaint is to be read as a whole and not in bits and pieces. Even assuming without admitting that the Suit is barred by res judicata, in so far as the prayer of declaring the suit property as a Wakf by user as a burial ground, it cannot be said that the other reliefs prayed for by the plaintiff are also barred by res judicata. It is also a legal principle that a Complaint cannot be rejected in part and therefore, the Trial Court has failed to exercise its jurisdiction in numbering the Suit and proceeding with the matter. At least notice should have been given to the other side before deciding the question of res judicata.

42. Therefore, in a matter of this nature, when the plaintiff has prayed for so many reliefs, it is not for the Trial Court to reject the Complaint, that too, on the ground of res judicata at the pre-number stage itself. It is true that there is no hard and fast rule and each case has to be decided on its own merits. If the present case is considered on its own merits, I am of the considered view that the Suit is to be numbered and to be proceeded with as per the provisions of the C.P.C. Hence, I do not approve of the order passed by the Trial Court in rejecting the Complaint on 03.12.2007. Accordingly, the order of the Trial Court dated 3.12.2007 is set aside and the Trial Court is directed to number the W.O.S. (un-numbered) of 2007 and proceed with the same in accordance with law.

43. Considering the fact that the Suit was filed in the year 2007 and already respondents 1, 2, 8 and 9 to 12 are before this Court, I direct the above said respondents to enter appearance in the Suit directly without waiting for any orders from the Trial Court.

44. The Trial Court is directed to give utmost importance to the present Suit and try to dispose of the same as expeditiously as possible. The petitioner as well as the respondents are directed to co-operate with the Trial Court in proceeding with the Suit by giving top priority. In the result, the Civil Revision Petition is allowed as prayed for. No cost. Consequently, M.P. No. 1 of 2007 is closed.