

(2010) 05 AHC CK 0012
In the Allahabad High Court
Case No : Second Appeal No. 488 of 2010

Waqf Kabristan and Others

APPELLANT

Vs

Jagannath and Others

RESPONDENT

Date of Decision : 04-05-2010

Acts Referred:

Uttar Pradesh Consolidation of Holdings Act, 1953 — Section 9, 9A, 9A(2)

Citation : (2011) 4 AWC 3448

Hon'ble Judges : Rakesh Tiwari, J

Bench : Single Bench

Advocate : Deepak K. Jaiswal and Santosh Tripathi, for the Appellant; Ramendra Asthana, for the Respondent

Final Decision : Dismissed

Judgement

Rakesh Tiwari, J.—Heard Learned Counsel for the Appellants Sri Deepak Kumar Jaiswal and Learned Counsel for the Respondents Sri Ramendra Asthana.

2. It appears from record that Appellant-Plaintiffs filed Original Suit No. 67 of 2002 inter alia that entire khasra No. 530 area 0.764 hectare of village Bhawanpur, tehsil and district Meerut is a graveyard of Muslim community it is registered in the office of the U.P. Sunni Central Waqf Board of Lucknow at Sl. No. 3338. The Waqf Board has constituted a committee for the maintenance of the graveyard of which Plaintiff No. 1 Sri Jalees Ahmad is the mutwalli. It was averred in the plaint that the Respondents belonging to Jogia community claimed part of plot No. 530 as their graveyard and were interfering in cremation of bodies of Muslims, hence it was prayed that they be restrained by permanent injunction from interfering in cremation of the dead bodies of the Muslim community in the said plot No. 530.

3. The suit was contested by the Defendant Respondents inter alia that whole land of plot No. 530 area 0.764 hectare is not the graveyard of the Plaintiff Appellants above.

4. It appears that the plot No. 530 in dispute is constituted of earlier plot Nos. 848 area 1 bigha, 18 biswa, khasra No. 849, 4 biswa and plot No. 850/2 area 10 biswa, 8 biswansi plot

No. 446 area 4 biswa and 10 biswansi and plot No. 847 area 3 biswa, 10 biswansi. In plot No. 530, 14 biswa and 8 biswansi of the land of old plot No. 849 and 850 was being used as graveyards by the Hindu Joglans.

5. Sri Deepak Kumar Jaiswal submits that the courts below have committed an illegality in relying upon the finding of facts by consolidation authorities and placing reliance upon revenue entries for deciding title of kabristan on plot No. 530. He has urged that admittedly khasra No. 530 is registered in the U.P. Sunni Waqf Board, Lucknow that at serial No. 3338 as waaf property but the court below did not consider this aspect of the case hence grave injustice has resulted to the Appellants as they have wrongly placed reliance on the contradictory statements/evidence adduced by the Respondents and that court below have wrongly discarded the evidence of the Appellants which was reliable. According to the counsel for the Plaintiffs Appellants the Consolidation Authorities had no right and jurisdiction to register the property in dispute of gata Nos. 849 and 850/2 part of new khasra No. 530 as kabristan of Jogians community in the proceedings u/s 9 of Consolidation of Holdings Act.

6. Per Contra Sri Ramendra Asthana, Learned Counsel for the Respondent submits that admittedly khasra No. 530 was constituted by consolidating old khasra Nos. 846M, 847M, 848, 849 and 850 and the entire area of which on the spot at village Bhawanpur was not kabristan of the Muslim community only. He further submits that the Appellants could not identify the part of graveyard land which is alleged which the Defendants wanted to take possession of. He submits that in fact Plaintiffs Appellants wanted to encroach upon the graveyard of Jogians which is proved from Khewat No. 26 as the land in dispute lies in part of plot No. 530. It is lastly stated the findings of fact have been challenged in the second appeal and no substantial question of law is involved therein.

7. From the record it appears u/s 9A(2) of Consolidation of Holdings Act in Case No. 1787, Bhim Singh v. Gram Samaj, the court of Consolidation Officer vide order and judgment dated 7.6.1968 had affirmed the fact the graveyard of Hindu Jogians was 4 biswa on plot No. 849 and 10 biswa, 8 biswansi in plot No. 850 and that graveyard of Gram Samaj was directed to be registered on khasra plot No. 848 area 1 bigha, 8 biswa.

8. It appears from the argument of the counsel for the parties that the Appellants Plaintiffs claimed the whole of land of plot No. 530 as graveyard of Muslims whereas the Defendants Respondents claim their graveyard in part of plot Nos. 849 and 850 which later on were merged in plot No. 530.

9. It also appears that in view of the sensitive matter, as dispute arose between two communities. The revenue authorities on the spot demarcated the khasra No. 530 out of which 1900 square metres area as graveyard of Jogians

community according to the aforesaid findings recorded in Case No. 1787 of Consolidation of Holdings Act and 5740 square metres land of plot No. 530 graveyard was of the Muslim community. The graveyard land of the Jogians community is on the western part of plot No. 530 plots at lower level whereas the graveyard of Muslim community is on eastern side of plot on the higher level and the approach roads to these two graveyards are also different.

10. It further appears that the Plaintiffs Appellants did not raise any objection to the written statement filed by the Defendant Respondents that the entire area of plot No. 530 is not graveyard land of Muslim community only.

11. Counsel for the Appellants could not place any documentary evidence before this Court to prove that entire plot No. 530 was the kabristan of Muslim community. In fact the case of Defendants Respondents is that since plot No. 530 was constituted by consolidating plot Nos. 846M, 847M, 848, 849 and 850 and that it was registered as waqf property the entire said plot No. 530 was their graveyard being used by them as such.

12. Merely because in the Waqf Board plot No. 530 is recorded as graveyard does not mean that the whole plot No. 530 is graveyard of Muslim community on the spot. Rather from the record it appears that plot No. 530 is big chunk of plot, which has been formed by consolidating plot Nos. 846M, 847M, 848, 849 and 850 in which graveyard of Jogians also existed in old plot Nos. 849 and 850 which was demarcated by the revenue authorities pursuant to decision in Case No. 1787 u/s 9A of Consolidation of Holdings Act as stated above pursuant to which 1900 square metres area was demarcated as graveyard of the Jogians.

13. The measurements were made by the Revenue Authorities on spot before the above graveyards were demarcated. No question of title was involved in the courts below either in the suit or in the appeal. It rather appears that both the parties were disputing the area of land as graveyard by them which was later on demarcated and separated by the revenue authorities pursuant to decision of Case No. 1787.

14. Thus, in my considered opinion as the Plaintiff in his suit could not establish from any record that the whole of plot No. 530 was being used as graveyard by the Muslim community and part of it was not graveyard of Jogians. There is no illegality or infirmity in the order. Mere findings of facts challenged by the Appellants cannot be termed as substantial question of law. No substantial question of law is involved in this case.

15. For all the reason stated above, the appeal is accordingly dismissed.

No orders as to cost.