
(2011) 05 UK CK 0125

In the Uttarakhand High Court

Case No : Civil Revision No. 55 of 2007

Waqf Masjid Railway Station

APPELLANT

Vs

Ashok Sethi and Others

RESPONDENT

Date of Decision : 04-05-2011

Acts Referred:

Waqf Act, 1995 — Section 32, 33, 35, 40, 51

Citation : (2011) 2 UC 1368 : (2011) 1 UD 554

Hon'ble Judges : B.S. Verma, J

Bench : Single Bench

Judgement

B.S. Verma, J.—Heard learned Counsel for the parties and perused the record.

2. This revision is directed against the judgment and decree dated 15-9-2007 passed by Wakf Tribunal/District Judge, Haridwar in Original Suit No. 2 of 2004, Wakf Masjid Railway Station Jwalapur v. Ashok Sethi and Ors., whereby the Plaintiff-revisionist's suit for eviction and recovery of possession was dismissed.

3. Brief facts giving rise to the present revision, according to the revisionist, are that that the revisionist-Plaintiff filed Suit No. 2 of 2004 against the Respondent-Defendants for their eviction and possession before the District Judge, Haridwar/Wakf Tribunal on the ground that the suit property was given on rent to the ancestors of the Respondents and the lease thereof was valid upto 1995. The lease and rent-deed expired in the year 1995 and the same had not been renewed hence the possession of the Defendant-Respondents thereon is illegal.

4. The suit was resisted by the Respondents-Defendants by filing their written statement mainly on the ground that the suit is not barred by the provisions of the Wakf Act and that the occupation of the Defendant-Respondents is permissive.

5. The learned Tribunal framed as many as seven issues in the suit, recorded the evidence of the parties and after hearing them has come to the conclusion that that the Defendant-Respondents have acquired the ownership by adverse

possession and has ultimately dismissed the suit by judgment and decree dated 15-9-2007.

6. I have heard learned Counsel for the parties and perused the record.

7. Learned Counsel for the revisionist has vehemently argued that the learned Tribunal has exceeded its jurisdiction in recording a finding that the Defendant-Respondents have become owner of the suit property by adverse possession, particularly the Defendants admitted themselves to be lessees and the suit was brought within limitation.

8. On the other hand, learned Counsel for the Defendant-Respondents has raised a preliminary objection that the suit of the Plaintiff-revisionist for possession was not maintainable before the Wakf Tribunal/District Judge. Learned Counsel also contended that the dispute between landlord and tenants does not arise under Wakf Act and the revisionist should have filed a suit before the civil Court. In support of his contention, learned Counsel for the Respondents has placed reliance upon the case of Yashpal Lala Shiv Narain Vs. Allatala Tala Malik Waqf Ajakhan Mus, wherein in paragraph Nos. 170 and 171, the following observations have been made by the Allahabad High Court:

170. Further, analysis of various provisions of the Wakf Act, 1995, particularly, Sections 6, 7, 32, 33, 35, 40, 51, 52, 54, 64, 67, 69 and 83 thereof, shows that such a Suit for eviction of the tenant i.e. Petitioner (Defendant) after determination of the tenancy/lease is also not covered within the purview of the words "other matter which is required by or under this Act to be determined by a Tribunal.

171. In the circumstances, I am of the opinion that the bar created by Section 85 of the Wakf Act, 1995 does not apply in the present case, which pertains to a Suit for eviction of the tenant from the disputed shop after determination of the tenancy/lease. As such, in my opinion, the submissions made by the learned Counsel for the Petitioner (Defendant) in this regard, cannot be accepted.

9. In the cited case, the Allahabad High Court while considering the provisions of Section 85 (Bar of jurisdiction of civil Courts) has held that that the bar created by Section 85 of the Wakf Act does not apply in a suit for eviction of the tenant.

10. Learned Counsel for the Respondents has also relied upon the case of Sayed Abdul Vasit and Ors. v. Addl. Civil Judge and Ors. AIR 2009 (NOC) 1394 (Raj) (Jaipur Bench) wherein it has been held that merely because the property was Wakf property would not oust jurisdiction of Civil Court to try suit relating to recovery of rental property and for grant of permanent injunction.

11. In the case at hand, there is no dispute between the parties about the legal proposition as to the jurisdiction of the Tribunal, involved in the present revision.

12. Without entering into the merits of the case and considering the preliminary objection raised by the learned Counsel for the Defendant-Respondents on the

point of jurisdiction of the Tribunal, I am of the view that the revisionist-Plaintiff should have filed a suit before the competent Court for the eviction of the Respondents and the Tribunal/District Judge has no jurisdiction to entertain the suit for eviction and possession filed by the Plaintiff revisionist. I am fortified in my view by the Apex Court judgment in the case of Ramesh Gobindram v. Sugra Humayun Mirza Wakf (2010) 8 SCALE 698, wherein it was held that eviction proceedings can only be decided by the Civil Court and not by the Wakf Tribunal.

13. For the reasons and discussion above, I hold that the suit brought by the Plaintiff-revisionist was not maintainable before the Wakf Tribunal and, therefore, findings recorded by the learned Tribunal in the suit for eviction are liable to be set aside being without jurisdiction and the suit filed by the Plaintiff-revisionist before the Tribunal stands dismissed as not maintainable. The revision deserves to be allowed.

14. The revision is allowed with no order as to costs. The impugned judgment and decree dated 15-9-2007 are set aside. The suit of the Plaintiff-revisionist for eviction stands dismissed as not maintainable before the Wakf Tribunal.