

(2012) 12 AHC CK 0115

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. 64667 of 2012

Zameel Ahmad

APPELLANT

Vs

Shakeela Bang and Another

RESPONDENT

Date of Decision : 14-12-2012

Acts Referred:

Citation : (2012) 12 AHC CK 0115

Hon'ble Judges : Rajes Kumar, J

Final Decision : Dismissed

Judgement

Rajes Kumar, J.

Heard Sri V.M.Zaidi, learned Senior Advocate, assisted by Sri M.J.Akhtar, learned counsel appearing on behalf of the petitioner and Ashish Kumar Srivastava and Sri Fahim Ahmad, learned counsel appearing on behalf of the respondents.

By means of the present writ petition, the petitioner is challenging the order dated 05.10.2012, by which the revision filed by the respondent no.1 against the order of Judge Small Causes Court dated 1.02.2011 has been allowed and the order of Judge Small Causes Court has been set aside. Judge Small Causes Court by order dated 01.02.2011 has allowed the impleadment application.

Brief facts of the case that the respondent no.1 filed SCC suit no.30 of 1997 against the respondent no.2 in respect of the property CK69/32, Mohalla Resham Katra, Varanasi. In the said suit, the respondent no.1 claimed herself to be owner of the property. The petitioner filed impleadment application claiming as Mutwallia and claimed that the property in dispute is waqf property, therefore, he may be impleaded as party. Trial court vide order dated 11.02.2011 has allowed the application, against which the respondent no.1 filed revision, which has been allowed by order dated 05.10.2012, which is impugned in the present writ petition. Revisional authority has held that in respect of the property in dispute case no.1534 of 1994 has been filed by Mohd. Akhtar, Mutwalli of the waqf Mohd. Hasan Raja Khan against the respondent no.1, Smt. Shakeela Bano, who claimed

to be the owner of the property, claiming that the property in dispute namely, CK69/32, Rasham Katra, Varanasi is a waqf property. The said suit has been decided on 10.12.1996 by a detailed order after examination of the contention of the rival parties. Trial court has held that the property in dispute is not waqf property. The revisional court has allowed the revision on the ground that vide order dated 10.12.1996 in suit no.1534 of 1994 it has been held by the Civil Court that the property in dispute is not waqf property. The said order has become final, inasmuch as it has not been challenged by any of the party and accordingly, held that the petitioner is not necessary party to be impleaded.

Learned counsel for the petitioner submitted that various documents reveals that in respect of the property in dispute one waqf deed dated 19.07.1919 has been executed, which is a registered document and on the basis of this deed, the property is registered with the Waqf Board.

Sri Ashish Kumar Srivastava, learned counsel for the respondent produced the copy of the order dated 10.12.1996 passed by Civil Judge (Junior Division), Varanasi in suit no.1534 of 1994, the same may be kept on record. He submitted that the property in dispute is not waqf property. This issue has been examined in detail and it has been held that it is not waqf property. The said order attained finality and it is not open to the petitioner to raise the same plea. He further submitted that in SCC suit filed by the landlord, third party disputing the title of the plaintiff can not claim his impleadment under order 1 Rule 10, inasmuch as any decree which could be passed shall not be binding on the third party. Reliance is placed on the decision of this Court in the case of Managing Committee, Allah Rabbul Almeen, Khurja, Bulandshahar Vs. Smt. Bhulloo and another, reported in 2005 All.L.J., 625.

Learned counsel for the petitioner submitted that suit no.1534 of 1994 was collusive suit and was not maintainable, any decision given in such suit may not be resjudicata to the claim of the petitioner. He further submitted that the petitioner is necessary party inasmuch as the decision in the SCC suit will effect the right of the party. Reliance is placed on the decision of the Apex Court in the case of Mumbai International Airport Pvt. Ltd. Vs. Regency Convention Centre & Hotels Pvt. Ltd. & Ors., reported in JT 2010 (6) SC, 537.

I have considered the rival submissions and perused the impugned order.

I do not find any substance in the contention of learned counsel for the petitioner.

The petitioner is not able to substantiate his claim that the suit no.1534 of 1994 was collusive suit. Mere saying that it was collusive suit is not sufficient. The suit was filed by the Waf through its Mutwalli and the property in dispute was claimed as Waqf property. Necessary evidences have been adduced in respect of the claim. Those documents and the plea of the respondents have been examined by the Civil Court. The Civil Court in its order dated 10.12.1996 has held that the property in dispute is not waqf property. The decision of the Civil Court attained finality inasmuch as it has not been challenged in any of the higher Court. The

issue whether it is waqf property or not has already been adjudicated, therefore, the claim that it is waqf property is barred by resjudicata and now it is not open to the petitioner to raise such plea and the claim of the petitioner for impleadment in the present suit on the ground that it is waqf property has no substance. The revision court has rightly held so.

In view of the above, the writ petition is devoid of merit and is, accordingly dismissed.