

O.A.No.667 of 2014 and A.No.114 of 2016
in
C.S.No.556 of 2014

M.M.SUNDRESH, J.

Application in O.A.No.667 of 2014 has been filed by the applicant/plaintiff, seeking an order of interim injunction restraining the respondents from interfering with the peaceful functioning and the religious activities of the applicant and its members at Masjidthavba mosque at Palayamkottai branch, pending disposal of the suit.

2.Application in A.No.114 of 2016 has been filed by the applicants/defendants 1 to 4 and 6 to 8, seeking to frame the preliminary issue on the maintainability of the suit.

3.Learned senior counsel for the applicant/plaintiff submits that the land was gifted by the Masjidthavba Jammath in favour of the applicant/plaintiff, by a registered gift settlement deed dated 06.10.2006. Thereafter, construction of the mosque has been made and maintained by the applicant/plaintiff. The respondents, though being the members of the applicant/plaintiff, did not act as per the bye-laws with respect to following of the Hijira Committee of India while dealing with citing of new moon. Accordingly, they having done

so in following the Hijira Committee of India, they were suspended. The learned senior counsel submits that the administration of the mosque is with the applicant/plaintiff. The gift settlement deed dated 06.10.2006 in favour of the applicant/plaintiff and the gazette notification declaring the Masjidthavba as defunct are not challenged. Learned senior counsel also made reliance upon the audit report to show that the construction of the mosque has been made by the applicant/plaintiff.

4.Insofar as A.No.114 of 2016 is concerned, it is submitted that the application filed under Order 7 Rule 11 C.P.C. having been dismissed, the issue, being one of mixed question of fact and law, has to be decided along with the suit.

5.Learned senior counsel for the respondents in O.A.No.667 of 2014 and applicants in A.No.114 of 2016 submits that the gift settlement deed dated 06.10.2006, executed in favour of the plaintiff itself is void, being hit by Section 51 of the Wakf Act, 1995. Admittedly, there cannot be any gift without following the procedure contemplated thereunder. It is not as if the sanction of the Board has been obtained for alienation. Thus, when the document is void, there is no necessity to challenge the same. Incidentally, it is submitted that

the suspension of the respondents is different from being that of interference with the affairs of the mosque. The prayer in the suit has been cleverly drafted so as to draw the jurisdiction of this Court as the mosque is admittedly situated outside the territorial jurisdiction of this Court. It is further submitted that the document filed in the typed set of papers would show that right from the year 2009, the receipt of electricity consumption apart from other documents stand in the name of the Masjidthavba Jammath. Reliance has been made specifically to the statement of account issued by the Bank of Baroda pertaining to the period 2014 to 2016, communication of L.P.G. connection dated 07.08.2014, receipt of electricity consumption charges from 04.11.2013 to December 2015. However, reliance has also been made on the voucher of masjid dowbha for payment of salary to the employees from 2014 to 2016. Insofar as A.No.114 of 2016 is concerned as the said issue would go to the root of the matter, the same cannot be taken as a preliminary issue.

6.It appears that the Wakf Nama Settlement has been executed on 30.08.2006 by one Janab P.A.Abdul Karim, in favour of masjid jamad (mosque). This jamad, in turn, had executed a gift deed dated 06.10.2006 in favour of the plaintiff. Prima facie it appears that the said gift deed did not comply with Section 51 of the Wakf Act, 1995.

Be that as it may, the document produced by the respondents would show that they stand in the name of Masjidthavba Jammath. These documents are not in dispute. Some of the documents are issued by the banks and Electricity Department apart from voucher for payment of salary to the employees. Thus these documents would prima facie show that the administration is with the respondents. As these documents have been filed by the respondents, the same would be a factor to come to a prima facie conclusion that it is the respondents who are in the management of the affairs of the mosque.

7.The contention raised that the society has become defunct also cannot be countenanced, as under Section 5 of the Societies Registration Act, the registration is optional with respect to religious activities. There is no interim order for the past two years. Therefore, this Court is of the view that the applicant/plaintiff has not satisfied the requirement of Order 39 Rules 1 and 2 C.P.C. Even one has to take prima facie case and balance of convenience on the one side and the irreparable loss on the other side, while considering grant of injunction and this Court has to see the irreparable loss to be made out by the applicant/plaintiff. It is also not available before this Court and therefore, this Court is not inclined to exercise its discretion in favour

of the applicant/plaintiff. Accordingly, O.A.No.667 of 2014 is dismissed.

8.However, it is made clear that the order of suspension passed against the respondents is in force as of now. Therefore, it is hereby clarified that the respondents shall not interfere with the affairs of the plaintiff society otherwise. Accordingly, the order passed in O.A.No.667 of 2014 is clarified to that effect. It is further made clear that the observations made will not have any bearing on the merits of the matter.

9.Inso far as A.No.114 of 2016, admittedly, the contentions raised under Order 7 Rule 11 C.P.C., with respect to the same issue got rejected. The issue sought to be raised is one of mixed question of fact and law. Even otherwise, it is one of discretion. In other words, it is not mandatory to decide the issue as a preliminary issue. The suit is pending from the year 2014 onwards. Therefore, A.No.114 of 2016 also stands dismissed.

10.Considering the fact that the suit is of the year 2014, Registry is directed to post the suit in C.S.No.556 of 2014, after two weeks for framing issues.

29.07.2016

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