

HONOURABLE SRI JUSTICE S.RAVI KUMAR

SECOND APPEAL No.510 of 2002

Dated 29-4-2016

Between:

A.P.State Walkf Board, represented by its Chief
Executive Officer, Office at Haj House, Opp.Public
Garden, Nampally, Hyderabad and others.

...Appellants.

And:

Hanmanth Reddy and others.

...

Respondents.

HONOURABLE SRI JUSTICE S.RAVI KUMAR

SECOND APPEAL No.510 of 2002

JUDGMENT:

This appeal is preferred questioning judgment dated 29-1-2002 in A.S.No.91 of 1999 on the file of I Additional District Judge, Ranga Reddy whereunder judgment and decree dated 30-8-1999 in O.S.No.371 of 1988 on the file of Principal Junior Civil Judge, Ranga Reddy District, is confirmed.

Appellants herein are unsuccessful plaintiffs in both the courts. Plaintiffs filed the above suit for recovery of possession of suit schedule property from the defendants contending that property in S.No.389 admeasuring Ac.7.10 guntas which is under the occupation of respondents/defendants is wakf land and there is Dargah and old Mosque known as Qutub Shai Masjid and grave yard and that the muslims of Attapur village and other adjoining villagers were burying bodies in the same grave yard. It is further contended that second plaintiff committee is supervising the said wakf property and first defendant who was Majipatel of Attapur village used to graze his cattle over the open space in between the graves with the permission of Md. Ismail Saheb. It is contended in the year 1985 taking advantage of

communal rights, D.1 colluded with revenue officials and started plotting land by demolishing graves, for which, second plaintiff gave a complaint to the concerned authorities but no action has been taken to protect the land from the land grabbers. Then first plaintiff instructed second plaintiff to construct a boundary wall and fence the land, but second defendant and his henchmen are interfered and are preventing the fencing work for which a letter was addressed to Commissioner of police to take action but no action has been taken and therefore, appellants are constrained to file the suit.

Defendants resisted the plaintiffs claim contending that the land in S.No.389 was never a wakf land nor it is registered as wakf property and plaintiffs have no manner of right or title or interest over the same. According to defendants, D.1 and his ancestors were cultivating the land since last 50 years and father of D.1 by name Vasudeva Reddy was the protected tenant of this land apart from other land. According to defendants, after death of Vasudeva Reddy in the year 1985, D.1 inherited to that property and mutation was also effected. According to defendants, only in an extent of Ac.0.03 guntas, mosque is in existence and in fact, temple is also there in an extent of Ac.0.01 gunta of land in suit schedule property and as per revenue records, Ac.0.04 guntas of land is recorded as Potu Karabu. According to defendants, during the life time of Vasudeva Reddy, suit schedule land was plotted into 72 plots leaving about Ac.2.00 for grazing purpose and those plots were sold to different persons who in turn constructed residential houses after obtaining necessary permission from Gramapanchayat. According to defendants, second plaintiff tried to grab the suit property by fencing the same and first defendant prevented illegal acts of the appellants. According to defendants, R.2 to R.6 have constructed houses in the schedule land and respective

purchaser of plots constructed houses, in an extent of Ac.5.00 of land and they are residing in the said houses and the plaintiffs have no right.

On these contentions, trial court framed appropriate issues and conducted trial during which two witnesses are examined and 22 documents are marked on behalf of plaintiffs, two witnesses are examined and 56 documents are marked on behalf of defendants besides Exs.X.1 to X.36. On an overall consideration of oral and documentary evidence, trial court dismissed the suit holding that the plaintiffs have failed to prove that the suit schedule property is a wakf land and is in possession and enjoyment of the first plaintiff till 1985 and that the suit is also bad for non-joinder of necessary parties. Aggrieved by the dismissal of suit, plaintiffs preferred appeal to the District Court and I Additional District Judge, Ranga Reddy on a reappraisal of entire oral and documentary evidence of both parties held that the appellants failed to prove their title over the suit schedule property, as such, they are not entitled for recovery of possession holding so, dismissed the appeal. Now, aggrieved by the same, present Second Appeal is preferred.

This court admitted the Second Appeal treating the following as substantial questions of law.

“1. Whether the courts below have properly interpreted the report of the survey commissioner of Walkf in Ex.A.21 and Ex.A.22 as the same are conclusive proof that the suit land S.No.389 extent Ac.7.10 guntas of village Attapur Ranga Reddy District is walkf property under Section 4 of the waklf Act, 1995?

2. Whether Ex.A.21 and A.22 the certified copies of the report of survey commissioner of waklf do cover the entire survey No.389 admeasuring Ac.7.10 guntas of village Attapur though names of different waklf institutions as Mosque, Dargah and grave-yard are mentioned?”

Heard both sides.

Advocate for appellants have submitted that both

trial court and first appellate court have not examined the title aspect properly with reference to the provisions of wakf Act. He submitted that though a memo was filed before trial court stating that case has to be transferred to wakf Tribunal, the same was not considered and proceeded with trial. It is further submitted that from the document, now filed as additional evidence, it is clear that Tahsildar in the counter affidavit filed in a writ petition, clearly asserted that the suit schedule property is a wakf property and the said document may be received as additional evidence and decide the matter.

On the other hand, advocate for respondents submitted that suit property was never a wakf property and therefore, trial court has not accepted the memo of the plaintiffs to transfer the suit to wakf Tribunal. He submitted that to claim the property as wakf property, it should be registered under the wakf Act and the plaintiffs have not produced a single document to show that the property is registered as wakf as per provisions of wakf Act and both trial court and First Appellate court rightly dismissed the suit. It is further submitted that additional document now filed along with the petition is not admissible because the person who filed counter affidavit is not a party to the suit, and a 3rd party, document that too an affidavit cannot be taken as additional evidence. He further submitted that as many as 75 plots were there in the said property, during which, 50 to 60 houses were also constructed with the permission of Grampanchayat and as on today, there is a residential colony in the suit schedule property and the contention of plaintiffs that it is a grave yard, is not at all correct. He further submitted that the property was mutated in the name of defendants way back in the year 1988 and considering that mutation and other part of evidence, both trial court and appellate court have rightly dismissed the suit and that there are no grounds to interfere with the same.

Now the point that would arise for my consideration in this appeal is whether there is a substantial question of law to be determined by this court.?

POINT:

As already referred to above, suit is filed specifically contending that the suit schedule property is a wakf property and defendants have encroached into the same, burden is on the plaintiffs to first prove that the suit schedule property is a wakf property and registered as such, as per the provisions of wakf Act. Plaintiffs have not placed any documentary evidence to show that the plaint schedule property is a wakf property. When the plaintiffs contended that second plaintiff was managing the property till 1985 it is their burden to prove the same. On the contrary, the evidence on record would clearly disclose that the suit property was divided into house plots and sold to several third parties and houses were constructed in the year 1988 in some of the plots with the permission granted by Grampanchayat. If really, the suit schedule property is a wakf property, the same should have been recorded in the village records in which case, there is no possibility for the Grampanchayat to accord permission for construction of houses. Now, at the appellate stage, appellants wants to rely on counter affidavit filed by Deputy Collector and Tahsildar, Rajendra Nagar in Writ Petition No.16656 of 2014 contending that the defendants herein are making a false claim over the plots in S.No.389 of Attapur village. As rightly pointed out by advocate for defendants/respondents, that document is a third party document that too, it is only an affidavit and if really there is record to show that claim of defendants over S.No.389 of Attapur village is false, nothing prevented the appellants to produce the documents which would show that the claim of defendants herein over S.No.389 of Attapur is false. When the plaintiffs came to the court contending that they are owners of the property

and sought for recovery of possession, it is not the burden of defendants to disprove plaintiffs' case but it is the burden of plaintiffs to establish their case, without proving their case, appellants cannot contend that the possession of defendants over the suit property is illegal. Therefore, counter affidavit filed along with additional evidence petition, cannot be accepted and cannot be taken on file.

The main contention of appellants is that both the courts have not properly interpreted document Exs.A.21 and A.22. In fact, the grounds urged under substantial questions of law are also in respect of these two documents. Exs.A.21 and A.22 are the certified copies of reports of the Commissioner of the wakf Board. Both the courts have examined these two documents including remarks recorded in the remarks column of Ex.A.22 and held that on the basis of these two documents, property cannot be held as wakf property. As rightly pointed out by advocate for respondents, these two documents are self serving documents, because the Commissioner of wakf prepared some reports stating that some land in S.No.389 belongs to wakf which is not supported by any official record. These documents cannot confer any right unless it is shown that the property is registered as wakf as per the provisions of wakf Act. Even otherwise, objection of appellants is only about appreciation of these two documents by courts below. Only in case of perversity in interpreting documents, this court can interfere with such findings. But as seen from the record, both trial court and First Appellate court have rightly discussed each and every aspect relied on by both parties and recorded findings based on sound reasoning.

I do not find any wrong or perversity in the findings of the courts below to be interfered in second appeal.

For these reasons, I am of the view that there is no question of law involved, much less, substantial questions of law to be determined by this court and that the appeal is

devoid of merits.

Accordingly, this appeal is dismissed. No costs.

As a sequel to the disposal of this appeal, the Miscellaneous Petitions, if any, pending, shall stand dismissed.

JUSTICE S.RAVI

KUMAR

Dated 29-4-2016

Dvs.

HONOURABLE SRI JUSTICE S.RAVI KUMAR

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