

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

CIVIL REVISION PETITION No.854 OF 2016

ORDER:

The revision petitioners herein are defendant Nos.4 and 5 in O.S. No.36 of 2007 on the file of Junior Civil Judge, Banswada, and their status is mentioned as President of Jama Masjid Committee, Durki village, Birkur Mandal, Nizamabad District, and Secretary of the said Masjid, respectively.

2. During the pendency of proceedings in the suit, the petitioners filed I.A. No.108 of 2014 under Order XIV, Rule 2 read with Section 151 CPC, requesting the trial Court to frame the following issues as preliminary issues:

“1)Whether the suit schedule property is a wakf property or private property? and

2) whether this Court have territorial jurisdiction to try the suit with respect to wakf property U/s.85 of Wakf Act and return the plaint to Wakf Board Tribunal at Hyderabad? ”

3. The learned trial Court observed that trial was completed and the case was coming up for arguments, and even an Advocate Commissioner was appointed to make local inspection, who has executed the warrant and filed report touching the controversy between the rival parties, that being, that the plaintiff asserting that the suit

property is private property belonging to him, whereas the opposite party challenged it raising the stand that it is Wakf property, and even in the Gazette Notification the said property was recorded at an appropriate place and on a petition filed for summoning the Commissioner for cross-examination touching his report, the same was allowed, and at that stage, I.A. No.108 of 2014 was filed for framing preliminary issues. The trial Court opining that it was intended to drag on the matter and if the request was acceded to, both parties are automatically intend to lead evidence and will go again to the root of the case, dismissed the petition.

4. Challenge is made by the petitioners, who are defendant Nos.4 and 5, raising various grounds substantially stating in paragraph No.6 that the suit schedule property is Wakf property duly notified in the official gazette, and that Civil Court does not have jurisdiction to entertain a matter of Wakf property as contemplated under Section 85 of the Wakf Act, 1995 and, therefore, framing of such issue is necessitated and thereby sought to set aside the order under challenge.

5. Heard Sri Abdul Muqueeth Qureshi, learned counsel for the petitioners.

6. At the outset, it is to be stated that the issues originally settled for trial have not been filed along with the

instant revision petition. As could be gathered from the request made, the revision petitioners are seeking for framing of preliminary issues, which is not contemplated by Order XIV CPC. In fact, the proper procedure is for settlement of additional issues a request has to be made in a case of this nature. But, since 2007 onwards, no such action was initiated by the petitioners herein, and only when the trial was completed and the matter came up for arguments and at the stage when the petition was allowed for summoning the Advocate Commissioner, who has filed report, for his cross-examination, the said application was filed. In fact, it is for the plaintiff, who is the sole respondent herein, to prove his case. It is needless to mention that the plaintiff cannot derive any benefit from the laches, if any, on the part of the defendants. It is no doubt true, the relief sought for by him in the suit is for perpetual injunction simpliciter, but, certainly, as it is settled proposition of law, that incidentally, the title has to be probed into by the trial Court. The aspect which is now sought to be projected by the petitioners would be taken care by the Court below. Therefore, the request to frame the preliminary issues is misconceived.

7. With the above observation, the instant revision petition is disposed of at the admission stage itself. There shall be no order as to costs.

As a sequel thereto, miscellaneous petitions, if any,
pending in the revision, stand closed.

A. SHANKAR NARAYANA, J

June 10, 2016.

Mgr