

HON'BLE DR. JUSTICE B. SIVA SANKARA RAO

CIVIL REVISION PETITION No.706 of 2016

ORDER:

The Telangana State Wakf Board, who is the revision respondent, filed O.S.No.113 of 2015 against the revision petitioner, before the State Wakf Tribunal at Hyderabad, for the relief of permanent prohibitory injunction restraining the defendant from interfering with the alleged possession and enjoyment of the Wakf Board over the plaint schedule property claiming as lying in S.No.150 admeasuring 2700 square yards of Boduppal Village, Ghatkesar Mandal, Ranga Reddy District. Pending suit, the plaintiff/Wakf Board maintained I.A.No.461 of 2015 for temporary injunction under Order 39 Rules 1 & 2 read with Section 151 CPC and after contest from the counter filed by the defendant as respondent, the Tribunal by order running 42 pages granted interim injunction restraining the respondent/defendant and his men from interfering with the possession and enjoyment of the plaint schedule property.

It is impugning the same the present revision is maintained against the petitioner/plaintiff. The contentions in the grounds of revision raised are that the Tribunal has no jurisdiction to entertain the suit for bare injunction for the same is governed by the Specific Relief Act, 1963 (for short 'the Act') and that there is bar under Section 41 of the Act and without going into the merits on the threshold and prima facie for want of jurisdiction and maintainability of the suit claim before the Tribunal, but for before a regular common law Court, that the Tribunal thereby should not have been granted the injunction and the revision is therefore to be allowed. The other contention raised is there is an identity dispute even from the pleadings of plaintiff and defendant respectively supra as to the disputed suit property is in survey Nos.150 or 152 as the case may be and in the order of the lower Court there is no clarity in this regard though it ought to have

been decided so positively with a cogent finding if at all to come to a conclusion of the property is in survey No.150 claimed by the Wakf Board as against the claim of the defendant of the same is lying only in Survey No.152. The other contention raised is the so called certified copy of the Gazette No.6A-Ex.P1 dated 09.02.1989 is not a conclusive one to presume the same as document of title, that too when obtained behind back of the defendant with no opportunity to oppose as against the other documents, that too when Ex.R12 which is a certified copy of Khasra Pahani for the year 1954-1955, submitted in Telugu language with English translation which is evidencing title clearly shows that it is not the property of the Wakf to make a claim even under Section 83 of the Wakf Act, 1995, which came into force with effect from 01.01.1996, for the reason Section 83 applies if at all to decide all disputes and questions relating to Wakf property and the property does not belong to Wakf to invoke Section 83 of the Act.

Whereas it is the submission of the learned Standing Counsel for the Wakf that the lower Court order running 42 pages itself is crystal clear with cogent reasons as to the conclusion of the land in survey No.150 and not as claimed by the defendant of Survey No.152, from also noticing about interpolation or correction in relation thereto tampering of the original record, that the Wakf Tribunal got jurisdiction to decide any dispute or any question and once it is in S.No.150 as concluded by the lower Court and it is the Wakf property prima facie, the Tribunal got jurisdiction to decide the lis and there is no bar to maintain the proceeding before the Tribunal merely and because another view also possible that is even a ground for this Court to sit against the impugned order much less to reverse or interfere and sought for dismissal of the revision in question.

Heard and perused the material on record.

It is needless to say a relief in the nature of injunction even within the purview of the Specific Relief Act, more particularly, covered

by Sections 36 to 38 of the Act; which deal with temporary injunctions and permanent injunctions and among them either prohibitory or mandatory as the case may be; so far as mandatory relief concerned, it is to restore the status quo anti and so far as prohibitory relief concerned, it is only to maintain the existing status quo as on the date of the suit or as on the date of filing of the application for temporary injunction. Needless to say pending decision on the temporary injunction application, interim injunction can be granted for a limited period or pending service of notice and after service of notice and appearance and from contest to grant any temporary injunction till disposal of the suit and the same be co-terminus with the result of the suit. It is needless to reiterate therefrom that a temporary prohibitory injunction even is to maintain existing status quo as on the date of the suit or as on the date of the application filed for temporary injunction as the case may be. These are all the disputed questions which require to be adjudicated by a full dressed trial. The main dispute is on 3 aspects as to whether the property is in survey No.150 or in S.No.152 that is the core issue and other to be decided from the Khasra Pahani, the document of title from the expression of the Division Bench of this Court and also of the Apex Court expression recently, whether the Ex.P1 certified copy of Gazette No.6A dated 09.02.1989 which is long subsequent to the said Khasra Pahani entry whether to prevail and what is the evidentiary value of these documents. What is required to be decided for temporary injunction or ad interim injunction or an exparte interim injunction for limited period in between is not to decide the ultimate success, but for from the settled law of something more than a tribal issue and bonafide contention. Therefore, the Courts must be cautious not to dwell into find merits of the issue.

Having regard to the above, the interest of justice could be subserved to left open to the trial Court to decide is either as to the property is in survey No.150 or 152 and whether the Gazette under

Ex.P1 prevails over Ex.R12 or Ex.R12 prevails over Ex.P1 as the case may be and also as to the Tribunal got inherit or lack of jurisdiction as contended by the defendant despite if it is shown as wakf property or otherwise that is also requires of efficacious decision making process by a full dressed trial, without prejudice to any of the observation made by the impugned order of the lower Court. The revision is disposed of accordingly by directing both parties to maintain the existing status quo as on the date of the suit and as on date of temporary injunction application and the impugned order granting injunction till disposal of the main matter with a direction to the Tribunal to give preference in disposal of the suit lis, preferably, within three (3) months from the date of receipt of this order as per letter and spirit of Order 17 CPC by taking up day to day trial to the extent possible.

Consequently, miscellaneous petitions, if any shall stand closed. No costs.

JUSTICE Dr. B.SIVA SANKARA RAO

Date: 18.08.2016
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