

HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

CIVIL REVISION PETITION No.2932 of 2016

ORDER

This revision petition is filed under Article 227 of the Constitution of India challenging the order dated 31.03.2016, passed in IA.No.55 of 2015 in OS.No.1640 of 2014, whereby the trial Court dismissed the application filed by 1st defendant/petitioner under Order VII Rule 10 of the Code of Civil Procedure to return the plaint to present before the A.P.Wakf Tribunal on the ground that the Civil Court has no jurisdiction.

Undisputedly the schedule property-Mulgies bearing Municipal No.17-6-457, 17-6-458, 17-6-459 & 17-6-460, is a notified Wakf as per the Gazette notification dated 28.06.1984 in serial No.1500. The main endeavour of the counsel for the petitioner is that in view of bar under Section 85 of the Wakf Act, 1995 the Civil Court has no jurisdiction to entertain any suit in respect of Wakf property and that the Civil Court's jurisdiction ousted by express bar contained under Section 85 of the Wakf Act. In view of the specific contention, it is necessary to advert to Section 85 of the Wakf Act.

Section 85 of the Wakf Act deals with bar of jurisdiction of Civil Courts and no suit or other legal proceeding shall lie in any Civil Court in respect of any dispute, question or other matter relating to any Wakf, Wakf property or other matter which is required by or under this Act "to be determined by this Tribunal".

The word 'to be determined by the Tribunal' assume importance either to oust jurisdiction of the Civil Court or to assume jurisdiction by the Civil Court. Section 7 of the Wakf Act, 1995 deals with power vested on the Wakf Tribunal to determine

disputes regarding Wakfs and clause (2) which deals with scope of jurisdiction of the Tribunal under the Wakf Act. Even a bare look at Section 7(1) of the Wakf Act, the Tribunal is competent to decide whether a particular property specified as Wakf property in a list of Wakfs is Wakf property or not, or whether a Wakf specified in such list is a Shia Wakf or a Sunni Wakf, the Board or the Mutawalli of the Wakf, or any person interested therein.

Therefore, the Tribunal is competent to decide whether a particular Wakf property listed as Wakf is a Wakf property or not or whether a Wakf specified in such list is a Shia Wakf or a Sunni Wakf, but not otherwise.

Admittedly, the suit was filed after grant of permanent injunction under Section 38 of the Specific Relief Act alleging that the defendant is in possession and enjoyment of the property while complaining that the respondents are threatening to interfere. Therefore, if there is dispute between two individuals regarding possession of the property belonging to Wakf or not they are not inviting any decision from the trial Court whether it is a Wakf property or not or whether the property is Shia Wakf or Sunni Wakf. Since the jurisdiction vested on the Tribunal under Section 7 of the Act is limited and injunction can be granted by a Civil Court under Section 38 of the Specific Relief Act when the dispute is purely between two individual not pertaining to rights in Wakf property. However, the scope of trial in a suit for permanent injunction is limited and the Courts while exercising power cannot go into title of the parties attaching finality, but to a limited extent the Court can go into title to find out who is in lawful possession as on the date of filing suit. Therefore, it is made clear the trial Court is not required to record any finding as to the title to the property claimed by either plaintiff or defendant but permitted to go into,

incidentally to find out lawful possession at the time of filing suit.

The trial Court rightly decided that the Civil Court has got jurisdiction prima facie. However, it is open to the parties to agitate the same during trial inviting a finding at the end of trial on the jurisdiction also.

With the above direction the revision petition is disposed of.
No order as to costs.

Miscellaneous petitions, if any, pending in the Civil Revision petition shall stand closed.

M.SATYANARAYANA MURTHY, J

11.08.2016

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