

**IN THE HIGH COURT OF JUDICATURE AT HYDERABAD
FOR THE STATE OF TELANGANA AND THE STATE OF
ANDHRA PRADESH**

CIVIL REVISION PETITION No.2472 of 2016

Between

Mr.Syed Jalal S/o. Mr.Syed Ali,
Age: 55 years, Occu: Business,
R/o. H.No.10.1.39,
Ganta Palan, Ongol Prakasham District, A.P.

... Revision Petitioner

and

Mr. Madroom Sri Ram Chabdra Murthy,
S/o.Mr.Sundar Ramya, aged: 45 years, Occu: Business,
R/o.H.No.25-1-44, Kalawanth Nagar, Nellore District,
Andhra Pradesh and five others.

... Respondents

DATE OF JUDGMENT PRONOUNCED: 07-09-2016

THE HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

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|---|--|--------|
| 1 | Whether Reporters of Local newspapers may be allowed to see the Judgments? | Yes/No |
| 2 | Whether the copies of judgment may be marked to Law Reports/Journals | Yes/No |
| 3 | Whether Their Ladyship/Lordship wish to see the fair copy of the Judgment? | Yes/No |

- 2 -

***THE HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY**
+CIVIL REVISION PETITION No.2472 OF 2016

% Dated 07.09.2016

Between:

Mr.Syed Jalal

..Revision petitioner

And

\$ 1. The Govt. of AP
rep. by its Principal Secretary
to Government, Social Welfare
(CV2) Department,
Secretariat,
Hyderabad and another.

.... Respondents

! Counsel for the Revision petitioner : Sri Abdul Muqeeth Qureshi

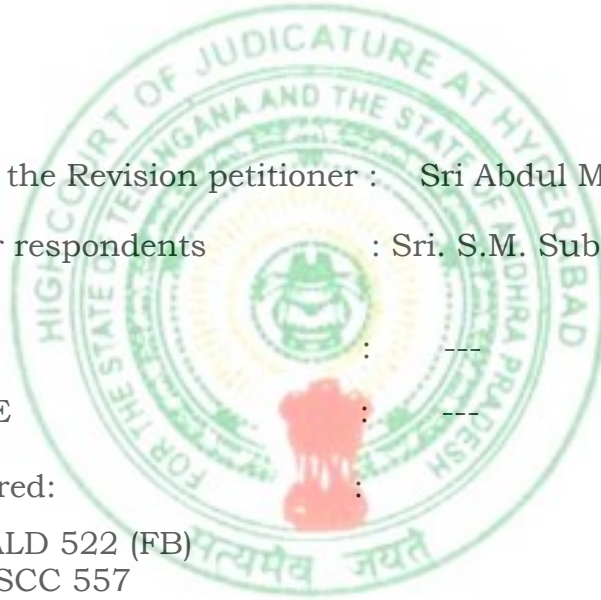
^ Counsel for respondents : Sri. S.M. Subhani

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>HEAD NOTE

? Cases referred:

01. 2011(5) ALD 522 (FB)
02. (2003) 1 SCC 557
03. AIR 2002 SC 402
04. 2012 (6) ALD 36 (SC)
05. 2010(3) ALT 544
06. 2002(2) ALT 534 (DB)
07. AIR 2005 MAD 241
08. 1977(4) SCC 467
09. (1989)2 SCC 163
10. 2014(6) ALD 218
11. 2015(3) AALT 14(SC)



THE HON'BLE SRI JUSTICE M. SATYANARAYANA MURTHY

CIVIL REVISION PETITION No.2472 OF 2016

ORDER:

This revision petition, under sub-Section 9 of Section 83 of the Wakf Act, 1995 (for short, 'the Act'), is filed challenging the Order dated 08.03.2016 in I.A. No.458 of 2015 in O.S. No.59 of 2013 passed by the Andhra Pradesh State Wakf Tribunal at Hyderabad, (for short, 'the Tribunal'), whereby the application filed under Rule 11 of Order VII of the Code of Civil Procedure, 1908 (for short, 'CPC') read with Section 87 of the Act was allowed rejecting the plaint filed before it on the ground that the plaint does not disclose cause of action for the suit.

02. The parties hereinafter be referred to as arrayed in the suit before the Tribunal, for convenience of reference.

03. The defendants 1 to 5 filed a petition in I.A. No.458 of 2015 before the Tribunal under Rule 11 of Order VII of CPC read with Section 87 of the Act alleging that the plaintiff filed suit in O.S. No.59 of 2013 for cancellation of sale deed dated 12.01.2013 conveying the property in Sy.No.113 admeasuring Ac.4.72 cents situated at Pernamitta Village, Santhanuthalapadu Mandal, Prakasam District, Andhra Pradesh, without any basis, only to harass them. The said suit is filed as if the property is a wakf property. It is further contended that the plaintiff falsely stated that the land in Sy.Nos.112 and 113 of an extent of Ac.18.88 cents situated in Pernamitta Village was notified in the official gazette dated 28.06.1962 at serial No.966, it was also surveyed by the

Commissioner of the Wakf under the provisions of the Act by suppressing the real facts. In the official gazette dated 28.06.1962 published by the State of Andhra Pradesh at Serial Nos.949 and 966, it is made clear that the lands in Sy.No.113 of Pernamitta Village, of an extent of Ac.18.88 cents were never been declared as Wakf properties. In fact Serial No.949 in the gazette dated 28.06.1962 pertains to land in Sy.Nos.159,164, 192 and the land mentioned at serial No.969 is situated in Kolachanakota Village in Sy.No.5. Thus, it is evident that the land in Sy.Nos.112 and 113 situated at Pernamitta Village is not covered by the official gazette dated 28.06.1962. Kolachanakota and Pernamitta are different Villages and the distance between the said two villages is about 40 kilometers. The defendants 1 to 5 have purchased the suit property for a valuable consideration from the 6th defendant, who is the absolute owner of the said property, and it is not the wakf property.

04. It is further contended that when the Sub-Registrar, Santhanuthalapadu Village, refused to register the sale deeds obtained by the petitioners, they approached this Court by filing W.P.No.34155 of 2012 and the same was disposed on 09.11.2012 directing the Sub-Registrar to make enquiry to find out the whether the property is a private property or wakf property to register the sale deeds. In pursuance of the direction, the Sub-Registrar registered the sale deed executed by the 6th defendant in favour of the defendants 1 to 5. Thus, the plaint does not disclose cause of action and there is no *prima facie* case in favour of the plaintiff and prayed for rejection of the plaint.

05. The 6th defendant did file no counter and remained *ex parte*.

06. The plaintiff/revision petitioner herein filed counter denying material allegations made in the affidavit annexed to petition, mainly contending that the suit schedule property was attached to the wakf institution of Ashoorkhana, Raja Vari Peerla Chavidi Manyam, situated at Pernamitta Village, Santhanuthalapadu Mandal, Prakasam District, Andhra Pradesh, published in the Andhra Pradesh gazette dated 28.06.1962 at Serial Nos.949 and 966 and the said property is the subject matter of the suit and whether the cause of action mentioned in the plaint is correct or not is to be decided only after trial, but not at this stage. Therefore, the plaint shall not be rejected at this stage and prayed for dismissal of the petition.

07. Upon hearing both the counsel, the Tribunal allowed the petition rejecting the plaint holding that the plaint does not disclose cause of action.

08. Aggrieved thereby, the plaintiff preferred the present revision petition on various grounds, mainly contending that at this stage the cause of action disclosed in the plaint is true or not, cannot be decided and when the plaint discloses cause of action, the plaint shall not be rejected under Rule 11 of Order VII of CPC. Thus, the order passed by the Tribunal is erroneous and prayed for dismissal of the petition under Rule 11(a) of Order VII of CPC allowing this revision.

09. During hearing, Sri Abdul Muqeeth Qureshi, learned counsel for the plaintiff/ revision petitioner, mainly contended that

when the plaint does not disclose cause of action, the plaint can be rejected under Rule 11(a) of Order VII of CPC, but when the plaint disclosed the cause of action, the truth or otherwise in the cause of action cannot be enquired into while deciding the application under Rule 11(a) of Order VII of CPC. On this ground, the Order is liable to set aside. Yet, he further contended that a petition under sub-Section 9 of Section 83 of the Act is maintainable when the suit is dismissed or rejected and therefore, the present revision petition is maintainable.

10. Per contra, Sri S.M. Subhani, learned counsel for the defendants 1 to 5/ respondents 1 to 5, mainly contended that the rejection of plaint is a Decree within the meaning of Section 2(2) of CPC, and no revision is maintainable either under Section 115 of CPC or under Article 227 of the Constitution of India and placed reliance on the Judgment of this Court in **MOLUGU RAM REDDY AND OTHERS v. MOLUGU VITTAL REDDY AND OTHERS**¹. He further contended that the plaint allegations if taken into consideration coupled with the gazette publication, it is clear that the plaint does not disclose cause of action, on that ground, the court can reject the plaint by exercising power under Rule 11(a) of Order VII of CPC. In support of his contention, he placed reliance on various Judgments of the Apex Court and this Court viz., **SALEEM BHAI AND OTHERS V. STATE OF MAHARASHTRA AND OTHERS**², **TAMIL NADU WAKF BOARD v. HATHIJA AMMAL (DEAD) BY LEGAL REPRESENTATIVES**³, **CHURCH OF CHRIST CHARITABLE TRUST AND EDUCATIONAL**

¹ 2011(5) ALD 522 (FB)

² (2003) 1 SCC 557

³ AIR 2002 SC 402

CHARITABLE SOCIETY v. PONNIAMMAN EDUCATIONAL TRUST⁴. Based on the law declared in the above Judgments, it is contended that when the plaint does not disclose the cause of action clearly, the court can reject the plaint and prayed for dismissal of the present revision petition confirming the Order passed by the Tribunal.

11. Considering the rival contentions, perusing the material available on record, the point that arise for consideration is,

01. Whether a revision petition under sub-Section 9 of Section 83 of the Act is maintainable when the plaint was rejected by the Tribunal?

02. Whether in an application filed under Rule 11(a) of Order VII of CPC truth in cause of action for the suit can be enquired to reject the plaint. If not, whether rejection of plaint on the ground that cause of action disclosed in plaint is false or in correct?

POINT No.1:

12. The first and foremost contention raised by the counsel for the defendants 1 to 5/ respondents 1 to 5 is that the present revision petition is not maintainable since rejection of plaint is a Decree within the meaning of sub-Section 2, read with sub-Sections 9 and 14, of Section 2 of CPC. Undisputedly, the Tribunal rejected the plaint on the ground that the plaint does not disclose any cause of action. The suit was filed before the Tribunal under the special enactment i.e. Wakf Act, 1995. Rule 11 of Order VII of CPC is a general provision of CPC for filing suits. However, it

⁴ 2012(6) ALD 36 (SC)

can be taken as a suit under the Act. Sub-Section 9 of Section 83 of the Act is the provision relating to Order against which the present revision petition is filed and it is extracted hereunder for better appreciation:

“(9) No appeal shall lie against any decision or order whether interim or otherwise, given or made by the Tribunal”

13. Therefore, whatever the Order passed by the Tribunal is not appealable, consequently the present revision petition is filed under the proviso to sub-Section 9 of Section 83 of the Act permits the High Court on its own motion or on the application of the Board or any person aggrieved, call for and examine the records relating to any dispute, question or other matter which has been determined by the Tribunal for the purpose of satisfying itself as to the correctness, legality or propriety of such determination and may conform, review or modify such determination or pass such other orders as it may think fit. Thus, the proviso to sub-Section 9 of Section 83 of the Act enables revision petitioner/ aggrieved person to file an application before the High Court and that the present revision petition is filed only in terms of proviso to sub-Section 9 of Section 83 of the Act, but not a petition either under Article 227 of the Constitution or under Section 115 of CPC. Learned counsel for the plaintiff/revision petitioner, in support of his contention, placed reliance on the Judgment of this Court in **SYED SHAH MOHAMOOD HUSSAINI AND ANOTHER V. MOHAMMED RAFIUDDIN KHAN AND OTHERS**⁵ wherein this Court declared that the Tribunal is deemed to be a civil court and

⁵ 2010(3) ALT 544

shall have all powers under the Code of Civil Procedure, 1908, can decide the question of its jurisdiction to try the suits filed against the property not being a registered wakf and the aggrieved person can file an application under sub-Section 9 of Section 83 of the Act to set aside any such order passed by Tribunal. In the same Judgment, this Court relying on **ALLAUDDIN CHARITIES AND ZAKATH WAKF V. HAMEED ALI**⁶ and **SALAM KHAN v. TAMIL NADU WAKF BOARD**⁷ wherein the Division Bench of Madras High Court and this Court held that the Tribunal can adjudicate such issues or questions or the correctness of such an order, because the intention of Parliament in enacting Wakf Act, 1995 is that any dispute or matter pertaining to Wakf should go before the Wakf Tribunal, though the wakf is not a registered as wakf. But the principles laid down by the Division Bench of the Madras High Court and this Court are not much relevant to decide the present issue. However, the law declared by this Court is, a petition under the proviso to sub-Section 9 of Section 83 of the Act, against the Order passed either interim or final is maintainable.

14. The main endeavour of the counsel for the respondents 1 to 5/ petitioners is that the present petition is not maintainable in view of the Judgment of this Court in **MOLUGU RAM REDDY** referred to supra, wherein the full Bench of this Court held that rejection of plaint is a Decree and the appeal lies against such an Order, not a petition for revision under Article 227 of the Constitution of India or under any other provision in CPC. No doubt the law declared by the full Bench of this Court is not in

⁶ 2002(2) ALT 534 (DB)

⁷ AIR 2005 Mad 241

quarrel that applies to ordinary suits. But when a special enactment provides a remedy to challenge either interim or final order passed by the Tribunal under the proviso to sub-Section 9 of Section 83 of the Act, the principle laid down by the full Bench of this Court cannot be applied, since the special remedy is provided under the special enactment making it clear that no appeal lies against any order passed by the Tribunal. When no appeal is maintainable, the question of filing the appeal as held by the full Bench of this Court referred to supra would not arise. Therefore, the principle laid down in the above Judgment of this Court and the full Bench Judgment of the Madras High Court cannot straight away be applied. Considering the law declared by this Court in **SYED SHAH MOHAMOOD HUSSAINI** referred to supra with reference to special provisions contained in the Act, I am of the considered view that the contention raised before this Court that only appeal lies against such an order is without any substance and on that ground, the present revision petition cannot be dismissed.

15. Accordingly, the point is answered in favour of the plaintiff/ revision petitioner and against the defendants 1 to 5/ respondents 1 to 5.

POINT No.2:

16. The major contention of the defendants 1 to 5 before the Tribunal and this Court is that the schedule property at Pernamitta Village is not notified as wakf in the gazette publication at serial No.966, which the revision petitioner/plaintiff relying on. But the contention of the revision petitioner/plaintiff is that it is a

wakf property, whether it is notified or not, registered or unregistered, such question cannot be decided at the stage while deciding the petition under Rule 11(a) of Order VII of CPC.

17. Whereas the counsel for the defendants 1 to 5/ respondents 1 to 5 contending that the material produced along with the plaint clearly disclosed that the property purchased by the defendants 1 to 5 under registered sale deed, which is subject matter of the suit, is in Pernamitta Village and it is not notified as Wakf in the gazette, but the land in Kolachanakota village, which is at a distance of 40 kilometers and the said land is notified as wakf. In such case, the cause of action mentioned in the plaint is false on the face of record and consequently the plaint can be rejected and accordingly, the Tribunal rejected the plaint exercising its power under Rule 11 (a) of Order VII of CPC and supported the Order in all respects.

18. Undisputedly, the property in dispute is covered by the sale deed obtained by the plaintiff dated 12.01.2013 bearing document No.102/2013 registered with sub-Registrar's Office pertains to the land in Sy.No.113 of Pernamitta Village of an extent of Ac.4.72 cents within the boundaries mentioned in the schedule annexed to the plaint, that apart at paragraph 5 of the plaint, it is specifically alleged that the plaintiff is the Mutawalli of Wakf institution of Ashoorkhana, Raja Vari Peerla Chavadi Manyam, situated at Pernamitta Village, Santanootalapadu Mandal, Prakasam District, is notified at serial No.966 in the official gazette dated 28.06.1962, and that apart the schedule land was surveyed by the Commissioner of Wakf as contemplated under Section 54 of

the Act and in gazette notification published at serial No.966. Therefore, the property covered by sale deed dated 12.01.2013 bearing document No.102/2013 is the wakf property.

19. Whereas in the written statement, the defendants 1 to 5 denied notification of the schedule property in gazette publication, notifying the same as wakf property, thereby the cause of action disclosed in the plaint is without any basis and the same is false in the face of the record.

20. The learned counsel for the plaintiff/ revision petitioner has drawn the attention of this Court to the Commissioner's report on the survey of Wakfs. In Column No.12 of the annexure, the property in Sy.No.113, Pernametta Village is a Wakf property, but whereas in gazette notification of State, at Serial No. 966 certain land in Ongole is notified as wakf property and it is situated at Kolachanakota, but not in pernamitta. At this stage, the learned counsel for the plaintiff/ revision petitioner contended that the name of the Village, pernamitta, is missed in the gazette and the same cannot be treated as private property on the basis of entries itself.

21. No doubt, the property at Pernamitta Village is not a notified wakf as per the official gazette, but as per the Commissioner's report on the survey, it is a wakf property. On reading the Commissioner's report on the survey of wakf and gazette, there is any amount of discrepancy, if the Commissioner's report is taken into consideration, the schedule property at pernamitta Village is a wakf property, if the gazette published

alone is taken into consideration it is not a wakf property. In such case, it is difficult to decide at this stage whether the plea of the revision petitioner/ plaintiff that the schedule property is a wakf property or not, since such disputed question of fact can be decided only after adducing evidence. If such question is decided at this stage, it amounts to pre trial decree and it is pre mature to come to such conclusion.

22. The Tribunal observed that the power under Rule 11 (a) of Order VII of CPC can be exercised at any stage of the suit relying on the Judgments of the Apex Court in **SALEEM BHAI's** case referred to supra, in **T. ARIVANDANDAM VS T. V. SATYAPAL & ANOTHER⁸**, and in **A.B.C. LAMINART PVT. LTD. & ANR v. A.P. AGENCIES, SALEM⁹** the Tribunal concluded that the plaint can be rejected at any stage, if the Tribunal or Court found that the plaint does not disclose any cause of action.

23. In **T. ARIVANDANDAM's** case, the Apex Court held that when the plaint does not disclose any cause of action, the learned Munsiff must remember that if on a meaningful-not formal-reading of the plaint, it is manifestly vexatious, and meritless, in the sense of not disclosing a clear right to sue, he should exercise his power under Order VII Rule 11 CPC taking care to see that the ground mentioned therein is fulfilled and, if clever, drafting has created the illusion of a cause of action, nip it in the bud at the first hearing by examining the party searchingly under Order X C.P.C. If that principle is applied to the present facts of the case, it

⁸ 1977(4) SCC 467

⁹ (1989) 2 SCC 163

is not appropriate stage to reject the plaint on the sole ground that plaint does not disclose any cause of action and that can be done only after examination of parties under Order X of CPC. It is no way concerned, when such exercise was not undertaken by the Tribunal. In such circumstances, the principle laid down by the Apex court in **T.ARAVINDANDAM**'s case cannot be applied. Even otherwise, the other two Judgments, specifically held that rejection of plaint at any stage, if the plaint does not disclose cause of action and none of the decisions conferred power on the Court to decide truth or otherwise in the allegations made in the plaint and the documents in support of the claim at the stage of deciding the petition under Rule 11 of Order VII of CPC.

24. The basis for the claim of defendants 1 to 5/ respondents 1 to 5 is the Order in Writ Petition No.34155 of 2012, wherein this Court issued a direction to the sub-Registrar after making enquiry as to the nature of property and whether it is a wakf or not and accordingly, the sub-Registrar after enquiry registered the document, but the enquiry undertaken by the sub-Registrar cannot be taken into consideration for deciding the real controversy.

25. Learned counsel for the plaintiff/revision petitioner contented that the plaint cannot be rejected, if it discloses cause of action and placed reliance on **K.N. REDDY v. DEFENCE PERSONNEL CO-OP HOUSING BUILDING SOCIETY LTD., SECUNDERABAD**¹⁰ wherein this Court held that that the plaint has narrated several events and dates on which cause of action

¹⁰ 2014(6) ALD 218

purportedly arose. Therefore, ex facie, this is not a case where the plaintiff does not disclose any cause of action. Even assuming that the contents of the plaintiff relating to cause of action may not be correct, the Court will not embark upon a roving enquiry on this aspect while considering an application under Order VII Rule 11. All that the Court needs to examine at that stage is whether the plaintiff contains pleadings relating to cause of action. Once the Court is satisfied that the plaintiff contains such pleadings, it will not go further. He also relied on **P.V.GURU RAJ REDDY REP. BY GPA LAXMI NARAYAN REDDY AND ANOTHER v. P.NEERADHA REDDY AND OTHERS ETC.**¹¹ wherein, at paragraphs 5, the Apex Court held that when a petition under Rule 11 of Order VII of CPC is filed, exercising a drastic power conferred on the court to terminate a civil action at the threshold. The conditions precedent to the exercise of power under Order VII rule 11, therefore, are stringent and have been consistently held to be so by the Court. It is the averments in the plaintiff that has to be read as a whole to find out whether it discloses cause of action or whether the suit is barred under any law. At the stage of exercise of power under Order VII rule 11, the stand of the defendants in the written statement or in the application for rejection of the plaintiff is wholly immaterial. It is only if the averments in the plaintiff ex facie do not disclose a cause of action or on a reading thereof the suit appears to be barred under any law, the plaintiff can be rejected. In all other situations, the claims will have to be adjudicated in the course of the trial.

¹¹ 2015(3) ALT 14 (SC)

26. If the plaint ex facie discloses the cause of action the Court cannot exercise the power under Rule 11 of Order VII of CPC in view of the recent Judgment of the Apex Court in **P.NEERADHA REDDY's** case, the allegations made in the plaint alone has to be taken into consideration to decide whether the plaint disclosed the cause of action or not, but not in the contents of the written statement or the contents of the petition under Rule 11 of Order VII of CPC by the defendant. If that is the case, the plaint filed before the Tribunal ex-facie disclosed cause of action for filing the suit and at this stage, whether the plaint allegations are frivolous or vexatious cannot be decided while passing the order in a petition under Rule 11 of Order VII of CPC even in the Judgment of the Apex Court in **T. ARAVINDANDAM's** case, only after examining the parties under Order X of CPC the court may reject the plaint, if it is found vexatious.

27. In the present case, there is a complicated question of fact with regard to the notification of the property covered by the sale deed as wakf property in the official gazette in view of the Commissioner's report on survey of wakf and gazette publication. Such serious questions relating to notification of property as wakf and notified in the gazette has to be enquired into by the Tribunal and only at the termination of proceedings before the Tribunal, such finding can be recorded whether the cause of action disclosed in the plaint is true or not, but it is pre mature to conclude that the suit is frivolous, vexatious and meritless and the cause of action mentioned in the plaint is in correct.

28. Therefore, rejecting the plaint at the threshold based on the allegations made in the petition under Rule 11 of Order VII of CPC is erroneous on the face of the record, in view of the recent perspective pronouncements of the Apex Court in **P.NEERADHA REDDY's** case. But the Tribunal exceeding its power conferred on it under Rule 11 of Order VII of CPC, went on deciding the truth in the cause of action mentioned in the plaint and recorded finding that the cause of action is *prima facie* false and such finding is unwarranted at this stage and at best, the power of the court is to decide whether the plaint disclosed cause of action or not and recording any finding as to truth or otherwise in the allegations made in the plaint based on the contention raised by the defendants 1 to 5/ respondents 1 to 5 in the petition filed under Rule 11 of Order VII of CPC or in the written statement is unwarranted. Hence, the order passed by the Tribunal is liable to be set aside, since the order is illegal.

29. This court while exercising the power under sub-Section 9 of Section 83 of the Act and the proviso thereto, can decide the correctness or legality or propriety of such determination. After undertaking the exercise to decide the legality or propriety of the order under challenge in pursuance of the power conferred on this Court under the proviso to sub-Section 9 of Section 83 of the Act, I hold, without any hesitation, that the order under challenge is premature and the plaint disclosed the cause of action. Hence, the order is liable to be set aside. Accordingly, the point is answered in favour of the plaintiff/ revision petitioner and against the respondents/defendants.

- 18 -

30. In view of my findings on points 1 and 2, I find that the Order under challenge is prima facie erroneous at this stage. Accordingly, the impugned Order is set aside

31. In the result, the revision petition is allowed setting aside the Order dated 08.03.2016 in I.A. No.458 of 2015 in O.S. No.59 of 2013 passed by the Andhra Pradesh State Wakf Tribunal at Hyderabad and the Tribunal is directed to restore the suit to its original number in the suit register and proceed with the trial in accordance with law.

32. Miscellaneous petitions, if any, pending in this revision petition shall stand closed.

M. SATYANARAYANA MURTHY, J

Date:07-09-2016

Note: LR copy marked.

B/o. BV

