

+IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 10.01.2017
PRONOUNCED ON 27.01..2017
CORAM

THE HON`BLE MR.JUSTICE N.SATHISH KUMAR

Application No.1311 of 2011 in C.S.No.136 of 2011

1. Mrs. Mahaboobsa Begum
2. Mr. Fisal Mohammed Khan
3. Mr.Bagath Mohammed Khan .. Applicants/defendants 1 -3

vs.

1. Soorsha Makkan Wakf
Represented by its Executive Officer
Having his office at
17, Venkatesan Street
Chepauk, Chennai -600 005 .. 1st respondent/plaintiff
2. V.Nedumaran
3. N.Renuka
4. M/s. Arihant Shelters (India) Ltd
Represented by Mr.D.Mahaveer
Having its office at 18, 21st Avenue,
Ashok Nagar, Chennai – 600 083
5. The Tamil Nadu Wakf Board
Represented by its Chief Executive Officer
Having his office at
1, Jaffer Syrang Street,
Vallal Seethakkadi Nagar,
Chennai – 600 001. .. Respondents/defendants 4to7

Application filed under Order XIV Rule 8 of Madras High

Court Original Side Rules read with Order VII Rule 11 of the Civil Procedure Code 1908 to reject the plaint in C.S.No.136 of 2011.

For applicant/D1 to D3 :Mr. Rathina Asokan

For R1/plaintiff : Mrs. Hema Sampath
Senior counsel for
M/s. A.Ajimath Begam

For R4 /D6 : Mr.S.Parthasarathy.
Senior Counsel for
Mr.T.Ravikumar

For R5/D7 : Mr.V.Lakshmi Narayanan

ORDER

The defendants 1 to 3 in C.S.No.136 of 2011 have taken out this application seeking to reject the plaint in the above suit on the ground that the suit property is a Wakf property.

2. The case of the applicants/original defendants 1 to 3 is that the original defendants 1 to 3 are the legal heirs of late Nawabzada Nawab Ali Khan, who was the absolute owner of the immovable property measuring a total extent of 3.68 acres. The said Nawab Ali Khan was directed by the Tamil Nadu Wakf Board,

by its proceedings dated 25.4.2000, to approach the Wakf Tribunal, to declare that the Suit properties are not a Wakf Property. Accordingly, the suit was filed before the Wakf Tribunal. When the matter stood thus, the 1st respondent/ original plaintiff herein filed a suit seeking permanent injunction against the original defendants 4 to 6. According to the applicants/original defendants 1 to 3, since the property is a Wakf property, Civil Court has no jurisdiction to entertain the suit. Hence, the applicants/original defendants 1 to 3 prays for rejection of the plaint in the said suit.

3. The first respondent/original plaintiff filed a counter affidavit contending that there is no relief whatsoever, sought against the applicants/original defendants 1 to 3 in the present suit. The captioned application is the result of collusion with the respondents 2 to 3/ original defendants 4 to 6 and hence, prayed for dismissal of the application.

4. The learned counsel appearing for the applicants/ original

defendants 1 to 3 submitted that the 1st respondent/ original plaintiff filed a suit for permanent injunction restraining the respondents 2 to 4/ original defendants 4 to 6, their men, agent from alienating or encumbering or in any way dealing with the suit schedule property. It is submitted by the learned counsel for the applicants/ original defendants 1 to 3 that the plaint pleadings itself clearly indicate that the suit property is a Wakf property and that no relief, whatsoever, sought against the applicants/original defendants 1 to 3. It is submitted that since the suit property is a Wakf property, the Civil Court has no jurisdiction to entertain the suit. It is the submission of the learned counsel for the applicants/ original defendants 1 to 3 that all the disputes relating to Wakf properties have to be decided only by the Wakf Tribunal constituted under the Wakf Act. 1995.

5. The learned counsel for the applicants/ original defendants 1 to 3 further submitted that the original defendants 1 to 3, have filed a suit in O.S.No.4555 of 2000 before the First

Assistant City Civil Court, Chennai, (herein after referred as "Wakf Tribunal") for declaration that the property was not Wakf property and also for a direction to denotify the notification issued by the concerned authorities. The learned counsel for the applicants/original defendants 1 to 3 submitted that in view of the provisions contained in the Wakf Act, 1995, absolutely, the suit is not maintainable. The learned counsel also relied on the judgments of this Court reported in (2005) 1 MLJ 646 (***Salam Khan v. The Tamil Nadu Wakf Board***); 2006 (5) CTC 341 (***Abdul Suban v. Syed Tharu Hussain***) 2014 -2-L.W. 357 (***S.Dilshad & Others v. The Principal Secretary and Secretary to Government and others***) and 2016 (5) CTC 209 (***Dr.Abdul Rahman v. Mohamed Syed***)

6. The learned Senior counsel appearing for the respondent No.4/defendant No.6 submitted that the entire allegations in the plaint clearly shows that the property is a Wakf property. It is submitted by the learned Senior Counsel that the Wakf Tribunal

has already seized off the matter in O.S.No.4555 of 2000 and instead of filing application seeking injunction in the said suit, the present suit has been filed by the original plaintiff. Admittedly, there is a dispute over title of the suit property. Therefore, the suit filed against the respondents 2 to 4/ original defendants 4 to 6 is not maintainable, in view of the provisions contained in the Wakf Act, 1995. In support of his arguments, the learned Counsel seeks in aid the very same judgments, which have been relied on by the learned counsel for the applicants/ original defendants 1 to 3.

7. Countering the above arguments, it is the contention of the learned Senior Counsel appearing for the 1st respondent/ original plaintiff that the suit has been filed for permanent injunction against the defendants 4 to 6 alone and no relief, whatsoever, sought against the applicants/original defendants 1 to 3. Therefore, it is the submission of the learned Senior Counsel that the original defendants 1 to 3 have no *locus standi* to file

the captioned application. It is submitted by the learned Senior Counsel that the applicants/original defendants 1 to 3 are not necessary parties and they are impleaded only as formal parties. It is further submitted by the learned Senior Counsel that the applicants/ original defendants 1 to 3, during the pendency of the suit before the Wakf Tribunal, have sold the property in favour of the 4th respondent /original 6th defendant and thereby they have divested all the rights in the suit property. Therefore, without having any *locus standi*, now they cannot canvass the case.

8. It is the contention of the learned Senior Counsel for the 1st respondent/original plaintiff and the counsel appearing for Wakf Board that the present suit has been filed seeking relief only against the respondents 2 to 4/original defendants 4 to 6 not to encumber or alienate the suit property, which has been purchased from the applicants/defendants 1 to 3. The respondents 2 to 4/original defendants 4 to 6 are making all arrangements to encumber the suit property and in order to

prevent the respondents 2 to 4/original defendants 4 to 6, the suit has been filed. There is no issue whatsoever, involved in the suit, which is covered under the Wakf Act, 1995. The Wakf Board can maintain the Suit as against the third parties in order to protect the wakf property. It is submitted by the learned counsels that the Wakf Board has exclusive jurisdiction to decide the disputes, which are arising out of the Wakf Act and the present suit is not covered under such dispute. Hence, it is submitted by the learned Counsels that Civil Court jurisdiction cannot be ousted merely on the basis of such Act. Hence, the learned Senior Counsel and the counsel for Wakf Bord prayed for dismissal of the application.

9. The learned Senior counsel appearing for the original pliantiff has placed reliance on the judgments of this Court reported in 2008 (2) CTC 492 (***Salem Mohammedpura Parimala Sunnath Jammth Masjid Committee v. P.A. Kareem and others***) ; AIR 2001 Madras 431 (***A.M.Ali Akbar***

and another v. Keelakarai South Street Jamath Masjid Paripalana Committee and others) as well as the judgment of the Hon`ble Apex Court reported in (2010) 8 SCC 726 (**Ramesh Gobindram vs. Sugar Humayun Mirza Wakf**) to substantiate his contention.

10. In the light of the above submissions, now the short point arising for consideration in this application is as to whether this Court has jurisdiction to entertain the suit or not?

11. Admittedly, the present suit has been laid by the executive Officer of Soorsha Makkan Wakf, claiming permanent injunction restraining the defendants 4 to 6, their men and agent etc., from alienating or encumbering or in any way dealing with the suit property and also for consequential injunction restraining the defendants from in any manner altering the nature of the land by putting up any construction in the suit schedule property.

12. When the averments made in the plaint are carefully

read, it is seen that the suit property is a vacant land and it is a Wakf property. It is admitted fact that the applicants herein / original defendants 1 to 3 filed a suit in OS.No.4555 of 2000 before the Wakf Tribunal against the 1st respondent/original plaintiff and the 4th respondent/original 7th defendant seeking declaration that the property in question was not a Wakf property and also for a direction to the Wakf Board to denotify and delete the suit property from the proforma of the original plaintiff as well as from the records of the Board.

13. It is the contention of the plaintiff that pending Civil Revision in CRP.(NPD) 1717 of 2013 and 3809 of 2008, which was filed as against the order of the Wakf Tribunal, the original 4th defendant is trying to encroach upon the suit property with political influence. According to the learned Senior Counsel appearing for the plaintiff, in spite of the pendency of the above proceedings, several agreements were executed in favour of third parties on various dates from the year 2003–2010. The

original 4th defendant, who claims to be the bonafide purchaser, being the realtor, trying to encroach upon the properties. Hence, the suit has been filed by the original plaintiff.

14. It is pertinent to point out that Section 4 of the Wakf Act, 1995 deals with the appointment of the Survey Commissioner of Wakfs and as many as Additional or Assistant Survey Commissioners of Wakfs by the Government. Similarly, Section 5 of the Wakf Act deals with the publication of list of wakfs. As per Section 5, after receipt of survey report, the State Government shall forward a copy of the same to the Board for publication in the official gazette. The Board shall examine the report forwarded to it and publish it in the Official Gazette. Likewise, Section 6 of the Wakf Act, deals with the disputes regarding wakfs. Section 6 stipulates that if any question arises whether a particular property specified as wakf property in the list of wakfs is wakf property or not or whether a wakf specified in such list is a Shia wakf or Sunni wakf, the Board or the

mutawalli of the wakf or any person interested therein may institute a suit in a Tribunal for the decision of the question and the decision of the Tribunal in respect of such matter shall be final. Further the above section also bars a suit, if such suit is filed after the expiry of one year from the date of publication of the list of wakfs. That apart, Section 7 of the Wakf Act also deals with the power of the Tribunal to determine disputes regarding wakfs. The said section denotes that if any disputes arises after the commencement of this Act, it should be raised before the Wakf Tribunal. Section 7 also gives one year period of limitation for filing such suit, after publication.

15. From the conjoint reading of provisions of Sections 4 to 7, it is very clear that any disputes arises with regard to the character of the Wakf property, such a disputes alone can be decided by the Wakf Tribunal, that too, if the suits are within the period of limitation. Particularly, under Sections 6 and 7 the institution of the suit in the Civil Court is barred only in regard to

the issues that are specifically enumerated therein. The bar is not complete so as extend to other questions that may arise in relation to Wakf property.

16. In the present case, when the typed set of papers filed by the applicants / original defendants 1 to 3 were carefully perused, it is seen that as required under Section 4 of the Wakf Act, the Government has notified the suit property as Wakf property vide G.O.MS.No.14, Public (Political) Department, dated 03.01.1969. This fact is not disputed. Further, the extract from the Town Survey Land Register shows that the property is a vacant land. The applicants / original defendants 1 to 3 have filed a suit in O.S.No.4555 of 2000 before the Wakf Tribunal only in the year 2000 seeking for a declaration that the property is not a Wakf property. Since the said suit is pending adjudication, I am not inclined to go into the merits of the said case.

17. The typed set of papers filed by the applicants / original

defendants 1 to 3 clearly indicate that the above suit was filed in the year 2000. Thereafter the applicants/original defendants 1 to 3 have executed various agreement to third parties. Even during the pendency of the suit proceedings, the applicants / original defendants 1 to 3 executed sale agreement in favour of one V.Nedumaran, the original 4th defendant on 15.11.2010 and on the same day, the said Nedumaran also executed Power of Attorney in favour of one D.Mahaveeer. Again another sale agreement was executed by one Renuka, in favour of the original 6th defendant on 30.11.2010. These facts are not disputed by both sides. Now the so called agreement holders are the original defendants 4 to 6, against whom, the permanent injunction is sought in the present suit.

18. As discussed above, a conjoint reading of Sections 4 to 7 of the Wakf Act, 1995 makes it clear that if any dispute arises with regard to the notification of the Wakf property, the same shall be decided by the Wakf Tribunal as per Section 85 of the

Wakf Act. In this context, it is useful to refer Section 85 of the Wakf Act, which reads as follows:

“.. .. 85. **Bar of jurisdiction of Civil Courts.** No suit or other legal proceeding shall lie in any (Civil Court, revenue Court and any other authority) in respect of any dispute, question or other matter relating to any wakf, wakf property or other matter which is required by or under Act to be determined by a Tribunal. ”

The above Section bars the suit before the Civil Court in respect of any dispute or question or other matter relating to the Wakf property. As per the above Section, only the matters, which are required to be decided by the Tribunal alone excluded from the Civil Court jurisdiction. Section 85 does not disclose ouster of Civil Court jurisdiction in total. Only the matters specifically covered under Wakf Act alone are excluded from the purview of the Civil Court jurisdiction.

19. In this regard, it is useful to refer the judgment of this

Court in ***Salem Mohammedpura Parimala Sunnath Jammth Masjid Committee*** cited supra, wherein this Court has held as follows:

.. .. 47. The Tribunal created under the Statute provides a remedial forum only for certain specific matter relating to administration and management of Wakf properties, which are regulatory in nature and it does not provide for a forum for adjudicating the common law remedies. Any person who has grievance that he has been wronged and the Civil right is affected, where no remedial measure is provided under the statute, he can approach the ordinary Civil Court on the principle of law that where there is a right, there is a remedy.

50. Courts have consistently held that a statute is an edict of the legislature and the conventional way of interpreting or construing a statute is to seek the intention of the legislature. While interpreting a provision, the Court has to give a purposive construction, so as to achieve the object behind the Act.

Reading of the Act in entirety makes it clear that the intention of the Act is to provide a machinery to supervise and maintain the wakf and its properties, and it is not intended to take away the powers of the Civil Court, where no remedy is provided under the Wakf Act.

51. The scheme of the Wakf Act and the provisions thereunder are not wide enough to determine any matter, which forms the subject matter of any Suit or proceeding, instituted or commenced in a Civil Court and it is confined only 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 the Tribunal. Suits or proceedings falling within the ambit of the Act, instituted after 01.01.1996 i.e., date of commencement of the Wakf Act, 1995 alone are to be transferred to the Wakf Tribunal.”

20. Similarly, in the case of ***A.M. Ali Akbar and another***

vs. Keelakarai South Street Jamath Masjid Paripalana Committee and others cited supra, this Court has observed as follows:

“The powers of the Tribunal are restricted only to the dispute specifically referred in Section 83 (1) of the Act to be adjudicated. Under Section 83 (1) of the Act, the Tribunal is empowered to determine the dispute, question or other matters relating to Wakf of Wakf property and not in respect of an application for permanent injunction. In this context, the words “or other matter which is required by or under the Act to be determined by the Tribunal” shall be referable only to Ss.6,7, 67 (4), 70(1) and (2) and S.94. None of the provisions of the Act either expressly or impliedly empowers the Tribunal to entertain, adjudicate upon and decide a petition for permanent injunction. Section 85 of the Act also does not specifically bar the jurisdiction of Civil Court to entertain a suit for Injunction. Therefore, it cannot be said that the word used “any dispute” shall also mean a dispute relating to the Managing Committee of the Jamath and the word

"any" used in S.83 (1) of the Act shall mean every and whatever the dispute relating to a Wakf and the said word "Wakf" does relate to the Managing Committee. Thus, in the light of the provisions of the Act and in the absence of any power for the Tribunal to determine the dispute as to the Constitution of the Managing Committee or the conduct of election to the Managing Committee, the petitions for permanent injunction and temporary injunction filed by the members of Jamath would not be entertainable by the Tribunal."

21. In the case of ***Ramesh Gobindram vs. Sugra Humayun Mirza Wakf*** cited supra, the Hon`ble Apex Court has **given the following dictum:**

" 12. The well settled rule in this regard is that the civil courts have the jurisdiction to try all suit of civil nature except those entertainment whereof is expressly or impliedly barred. The jurisdiction of the civil courts to try suits suits of civil nature is very expansive. Any statute which excludes such jurisdiction is, therefore, an

exception to the general rule that all disputes shall be triable by a civil court. Any such exception cannot be readily inferred by the Courts. The Court would lean in favour of a construction that would uphold the retention of jurisdiction of the Civil Courts and shift the onus of proof to the party that asserts that the civil court's jurisdiction is ousted."

"20. From a conjoint reading of the provisions of Sections 6 and 7 (supra) it is clear that the jurisdiction to determine whether or not a property is a wakf property or whether a wakf is a Shia wakf or a Sunni wakf rests entirely with the Tribunal and no suit or other proceeding can be instituted or commenced in a Civil Court in relation to any such question after the commencement of the Act. What is noteworthy is that under Section 6 read with Section 7 (supra) the institution of the Civil Court is barred only in regard to questions that are specifically enumerated therein. The bar is not complete so as to extend to other questions that may arise in relation to the wakf property."

"21. We may at this stage usefully digress from

the core issue only to highlight the fact that Sections 6(1) and the proviso thereto has fallen for interpretation of this Court on a few occasions. In Board of Muslim Wakfs Rajasthan v. Radha Kishan and Ors. (1979) 2 SCC 468 one of the questions that fell for determination was, who are the parties that could be taken to be concerned in a proceeding under sub-section(1) of Section 6 of the Act. This Court held that under Section 6(1) the Board or the mutawalli of the wakf or any person interested therein is entitled to file a suit but the word "therein" following the expression "any person interested" must necessarily refer to the word "wakf" which immediately precedes it. The object underlying the proviso observed, this Court was to confine the power to file a suit to the mutawalli and persons interested in the Wakf. It did not extend to persons who are not persons interested in the wakf. Consequently the right, title and interest of a stranger, (a non-Muslim), to the wakf in a property cannot be put in jeopardy merely because that property is included in the list of wakfs. The special rule of limitation prescribed by the proviso to Section 6(1) was itself held inapplicable to him and a suit for declaration

of title to any property included in the list of wakfs held maintainable even after the expiry of the period of one year. ”

“25. Whenever a question arises whether "any dispute, question or other matter" relating to "any wakf or wakf property or other matter" falls within the jurisdiction of a Civil Court the answer would depend upon whether any such dispute, question or other matter is required under the Act to be determined by the Tribunal constituted under the Act. If the answer be in the affirmative, the jurisdiction of Civil Court would be excluded qua such a question, for in that case the Tribunal alone can entertain and determine any such question. The bar of jurisdiction contained in Section 85 is in that sense much wider than that contained in Section 6(5) read with Section 7 of the Wakf Act. While the latter bars the jurisdiction of the Civil Court only in relation of questions specified in Sections 6(1) and 7(1), the bar of jurisdiction contained in Section 85 would exclude the jurisdiction of the Civil Courts not only in relation to matters that specifically fall in Sections 6 and

7 but also other matters required to be determined by a Tribunal under the Act. There are a host of such matters in which the Tribunal exercises original or appellate jurisdiction."

28. Section 47 of the Act requires the accounts of the wakfs to be audited whereas Section 48 empowers the Board to examine the audit report, and to call for an explanation of any person in regard to any matter and pass such orders as it may think fit including an order for recovery of the amount certified by the auditor under Section 47(2) of the Act. The mutawalli or any other person aggrieved by any such direction has the right to appeal to the Tribunal under Section 48. Similar provisions giving powers to the Wakf Board to pass orders in respect of matters stipulated therein are found in Sections 51, 54, 61, 64, 67, 72 and 73 of the Act. Suffice it to say that there are a host of questions and matters that have to be determined by the Tribunal under the Act, in relation to the wakf or wakf property or other matters. Section 85 of the Act clearly bars jurisdiction of the Civil Courts to entertain any suit or

proceedings in relation to orders passed by or proceedings that may be commenced before the Tribunal. It follows that although Section 85 is wider than what is contained in Sections 6 and 7 of the Act, the exclusion of jurisdiction of Civil Courts even under Section 85 is not absolute. It is limited only to matters that are required by the Act to be determined by a Tribunal. So long as the dispute or question raised before the Civil Court does not fall within four corners of the powers vested in the Tribunal, the jurisdiction of the former to entertain a suit or proceedings in relation to any such question cannot be said to be barred.

32. There is, in our view, nothing in Section 83 to suggest that it pushes the exclusion of the jurisdiction of the Civil Courts extends beyond what has been provided for in Section 6(5), Section 7 and Section 85 of the Act. It simply empowers the Government to constitute a Tribunal or Tribunals for determination of any dispute, question of other matter relating to a wakf or wakf property which does not ipso facto mean that the jurisdiction of the Civil Courts stands completely excluded by reasons of such establishment.

33. It is noteworthy that the expression "for the determination of any dispute, question or other matter relating to a wakf or wakf property" appearing in Section 83(1) also appears in Section 85 of the Act. Section 85 does not, however, exclude the jurisdiction of the Civil Courts in respect of any or every question or disputes only because the same relates to a wakf or a wakf property. Section 85 in terms provides that the jurisdiction of the Civil Court shall stand excluded in relation to only such matters as are required by or under this Act to be determined by the Tribunal.

34. The crucial question that shall have to be answered in every case where a plea regarding exclusion of the jurisdiction of the Civil Court is raised is whether the Tribunal is under the Act or the Rules required to deal with the matter sought to be brought before a Civil Court. If it is not, the jurisdiction of the Civil Court is not excluded. But if the Tribunal is required to decide the matter the jurisdiction of the Civil Court would stand excluded.

35. In the cases at hand the Act does not provide for any proceedings before the Tribunal for determination of a dispute concerning the eviction of a tenant in occupation of a wakf property or the rights and obligations of the lessor and the lessees of such property. A suit seeking eviction of the tenants from what is admittedly wakf property could, therefore, be filed only before the Civil Court and not before the Tribunal."

22. From the above judgments, it is very clear that only the dispute falling within four corners of the Tribunal's power alone cannot be adjudicated before the Civil Court. The Hon`ble Apex Court, considering the various provision of Wakf Act, has held that Section 85 does not exclude the jurisdiction of Civil Courts beyond the provisions of Section 6(5), Section 7 and Section 85 of the Act.

23. In the case on hand also, there is no dispute with regard to Wakf required to be decided by this Court.. The Wakf Board has filed a bare injunction against third parties, who claimed to be the agreement holders, from interfering with the possession of the suit property or making any construction in the suit property. It is to be noted that the applicants/original defendants 1 to 3 have already divested their rights to the third parties. Despite no relief, whatsoever claimed against them in the present suit, they are canvassing this application to reject the plaint.

24. These facts clearly indicate that the applicants/defendants 1 to 3 are only acting under the support of the original 4th defendant, who is said to be a realtor, to somehow or other to take the possession of the Wakf property. As on date, the properties are Wakf properties. Notification is also published in the official gazette. Though the suit has been filed by the

applicants / original defendants 1 to 3, for declaration that the suit property is not the Wakf property, it did not reach any finality. Therefore, the Court of justice being custodian of the Wakf properties and other trust properties, it is necessary, to protect the property from being snatched away by third parties. Having filed the suit before the Tribunal to adjudicate their right in the 2000, the applicants / original defendants have created various encumbrances over the property. The above conduct of the applicants/ defendants 1 to 3 clearly indicate that they made an attempt only to swallow the valuable properties, which is situated in the heart of city.

25. The judgments relied on by the learned counsel for the applicants/original defendants 1 to 3 as well as the original 6th defendant in the case of ***Salam Khan v. The Tamil Nadu Wakf Board*** cited supra, ***Abdul Suban v. Syed Tharu Hussain*** cited supra, ***S.Dilshad & Others v. The Principal Secretary and Secretary to Government and others*** cited supra and

Dr. Abdul Rahman v. Mohamed Syed cited *surpa* will not help the facts of the present case. In all the above judgments, it has been held that Civil Court has no jurisdiction with regard to any dispute relating to Wakf property. It is to be noted that various powers and provisions of Wakf Act has not been discussed in the above judgments. Whereas in the case of ***Ramesh Gobindram vs. Sugra Humayun Mirza Wakf*** cited *supra*, the Hon`ble Apex Court, by considering the various provisions of Wakf Act, has categorically held that the Civil Court's jurisdiction has not been ousted. It has been held that even for the eviction of tenants, the suit is maintainable only before the Civil Court and not before the Tribunal.

26. In the case on hand, admittedly, the suit property is a Wakf property and the applicants/original defendants 1 to 3 have divested their rights by way of executing various sale agreements. If their act is not prevented by this Court, the valuable properties would be put in to several encumbrances.

Therefore, merely because some suit has been filed in the year 2000, to declare the notification issued in the year 1969 is not valid, that itself cannot be a ground to hold that common law remedy is not available to the original plaintiff to prevent trespass or to preserve the valuable properties.

27. Therefore, this Court is of the view that the present application itself is the result of the collusion between the subsequent agreement holders and the applicants / original defendants 1 to 3. The averments in the plaint clearly indicate that disputes sought to be adjudicated in the suit is not a dispute arising under Wakf Act. Therefore, this Court holds that the Civil Court has jurisdiction to entertain the suit for bare injunction against third parties in order to prevent them from creating any encumbrance or alienating or putting up any construction in the Wakf properties.

28. Accordingly, this Court holds that the application filed for rejection of plaint cannot be sustained in law.

In the result,the captioned application is dismissed.

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Internet : Yes/No

N.SATHISH KUMAR, J

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Pre-delivery order in
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