

THE HON'BLE SRI JUSTICE M. SEETHARAMA MURTI

CIVIL REVISION PETITION No.5993 of 2016

ORDER:

This Civil Revision Petition, under Article 227 of the Constitution of India, by the unsuccessful defendants 1, 2, 5, 8 to 13/ petitioners, is directed against the order, dated 16.09.2016, of the learned VII Senior Civil Judge, City Civil Court, Hyderabad, passed in I.A.No.795 of 2014 in O.S.No.1688 of 2011.

2. I have heard the submissions of Ms. Sameem Ara Begum, learned counsel appearing for the Revision Petitioners/ defendants 1, 2, 5, 8 to 13, and of Sri Syed Naimullah Shakeel, learned counsel for the 1st respondent/ plaintiff-Trust. The other respondents, who are the defendants in the suit, are stated to be not necessary parties. I have perused the material record.

3. The facts of the case, which are necessary to be stated as a prelude to this order, in brief, are as follows:-

The first respondent/ plaintiff-Trust (hereinafter referred to as 'plaintiff-Trust') brought the suit in O.S.No.1688 of 2011 against the defendants, including the Revision Petitioners/ defendants, on the file of the learned VII Senior Civil Judge, City Civil Court, Hyderabad, for eviction from the suit schedule shops and for mesne profits and other reliefs. The petitioners/ defendants 1, 2, 5, 8 to 13 (hereinafter referred to as 'defendants') are resisting the suit. While so, the defendants filed the afore-stated interlocutory application under Order VII Rule 11 of the Code of Civil Procedure, 1908, requesting to reject the plaint on the ground that the civil Court has no jurisdiction to entertain and decide the suit on merits. The said application was resisted by the plaintiff-Trust by filing counter. On merits and by the orders impugned in this Revision, the trial Court dismissed the petition of the defendants. Therefore, the defendants are before this Court.

4. The case of the defendants, in support of the afore-stated request and the submissions made on their behalf, in brief, are as follows:-

The plaintiff-Trust is a registered Wakf. The suit schedule property was originally let out in the year 1948 to one Hussain Zabith and his partners in business. The Wakf Board already initiated proceedings against Habeeb Alladdin, who is presently representing the plaintiff-Trust/Wakf. Several criminal cases were registered against him and they are pending before various Courts. The said Habeeb Alladdin is not a competent person to represent the plaintiff-Trust/Wakf and prosecute the suit. Therefore, the suit filed by him as a representative of the plaintiff-Trust is not maintainable. The management of the plaintiff-Trust has been taken over and the plaintiff-Trust is now under the direct management of the Wakf Board and the suit schedule property is a Wakf property. As per the amended provisions of the Wakf Act, particularly, the provision of Section 85 of the Wakf Act, which came into force with effect from 01.11.2013, a suit for eviction against tenants in occupation of the Wakf property has to be filed before the Wakf Tribunal and the Wakf Tribunal is having exclusive jurisdiction to try such suit for eviction like the present suit, in view of the said amended provision of the Wakf Act, which came into force with effect from 01.11.2013. Therefore, the plaint is liable to be rejected. The learned Judge of the trial Court failed to appreciate the change in the legal position and the ouster of jurisdiction of the civil Courts after the amended provision of the Wakf Act came into force on 01.11.2013. The learned Judge of the trial Court ought to have seen that the person presently representing the plaintiff-Trust is no longer having *locus standi* to represent the plaintiff-Trust and, therefore, the learned Judge of the trial Court ought to have considered the request of the defendant and ought to have rejected the plaint.

5. The case of the plaintiff-Trust and the submissions made on its behalf, in brief, are as follows:-

The petition filed seeking rejection of the plaint is misconceived. While considering the request for rejection of the plaint, the Court has to consider only the plaint averments and not the defence of the defendants. The suit was originally instituted in the year 2009 and was numbered as O.S.No.36 of 2009. Subsequently, it is renumbered as O.S.No.1688 of 2011. On the date the suit was instituted, the amended provisions of the Wakf Act were not on the statute book. As per the then prevailing legal position, a suit filed before a civil Court for eviction of the persons in occupation of the Wakf property is maintainable. The issue of *locus standi* of the person who filed the suit representing the plaintiff-Trust is a mixed question of fact and law and, therefore, the plaint cannot be rejected basing on the contentions of the defendant that the said person is no longer entitled to represent the plaintiff-Trust and on the ground that there are criminal cases pending against him. The plaint expressly discloses the cause of action and from the statements in the plaint it clearly appears that the suit before the trial Court is maintainable. As per the precedential guidance in the decision of the Supreme Court reported in 2010 (6) ALD SC 76, a civil suit is maintainable, as rightly held by the trial Court. There is no merit in the Revision. The Revision is liable to be dismissed.'

6. I have given detailed and solemn consideration to the facts and the submissions.

7. As already noted, the plaintiff-Trust brought the suit against the defendants for eviction *inter alia* stating that they are the tenants in the plaint schedule property, which is a Wakf property. In the plaint, apart from the relief of eviction, the other reliefs viz., recovery of rents and mesne

profits etcetera are also sought. The defendants, including the present revision petitioners/ defendants, are all resisting the suit.

8. The first ground on which the defendants are seeking rejection of the plaint is that the Wakf Board initiated certain proceedings against the person who is representing the plaintiff-Trust and that many criminal cases are pending against him and that the Wakf Board has taken over the management of the plaintiff-Trust and hence, he is no longer entitled to represent the plaintiff-Trust and prosecute the suit against the defendants. As rightly contended by the learned counsel for the plaintiff-Trust, as per the provision of Order VII Rule 11 of the Code, while considering the request for rejection of the plaint, the Court has to consider the averments in the plaint only and that if on a consideration of the averments in the plaint it appears to the Court that there is no cause of action or that the suit is barred by law of limitation or any other law for the time being in force, then only the plaint is liable to be rejected; and, while considering the request for rejection of the plaint, the Court is not required to look into the defence of the defendants. Further, the contention raising an issue – ‘whether Habeeb Alladdin is entitled to represent the plaintiff-Trust and prosecute the suit on behalf of the plaintiff-Trust’ - is a mixed question of fact and law and the said issue requires to be adjudicated only after full-fledged trial. Therefore, the plaint cannot be rejected based on the contentions of the defendant that the person representing the plaintiff-Trust is no longer entitled to represent the plaintiff-Trust or on the grounds that there are criminal cases pending against him and that he has no *local standi* to any longer prosecute the suit. Rejection of plaint on such contentions is not envisaged under the provision of law.

9. Dealing next with the contention of the defendants that the civil Court is not having jurisdiction, but only the Wakf Tribunal is having jurisdiction to entertain, try and dispose of the suit for eviction of the tenants from the Wakf property, it is to be first noted that on such contentions a plaint cannot

be rejected. If the defendants' case is that the civil Court is not having jurisdiction to entertain the suit, the defendants ought to have made a request for return of the plaint for presentation to a proper Court instead of making a request for rejection of the plaint. Be that as it may.

10. Admittedly, the plaintiff filed the suit against the defendants for eviction of the defendants from the suit schedule Wakf property *inter alia* alleging that the defendants are the tenants in the suit schedule wakf property having obtained the same on rent. Before proceeding further it is beneficial to extract infra Section 85 of the Wakf Act:

Section 85: Bar of jurisdiction of civil Courts, revenue Court and any other authority:

'No suit or other legal proceedings shall lie in any civil Courts, revenue Court and any other authority in respect of any dispute, question or other matter relating to any Waqf, Waqf property or other matter which is required by or under this Act to be determined by a Tribunal.'

It is also undisputed that the Supreme Court in the decision in *Ramesh Gobindram v. Sugra Humayun Mirza*¹ had held as follows: -

"A suit seeking eviction of tenants from what is admittedly wakf property, could therefore, be filed only before the civil court and not before the Tribunal. The contrary view expressed by the Tribunal and the High Court of Andhra Pradesh is not, therefore, legally sound. So also the view taken by the High Courts of Rajasthan, Madhya Pradesh, Kerala and Punjab and Haryana in the decisions referred to earlier do not declare the law correctly and shall to the extent they run counter to what we have said hereinabove stand overruled. The view taken by the High Courts of Allahabad, Karnataka, Madras and Bombay is, however, affirmed."

¹ 2010(5) ALT 36 (SC)

In the above precedent it has been clearly and categorically laid down that a suit seeking eviction of the tenant from what is admittedly a Wakf property could be filed only before a civil Court and not before a Tribunal. This decision was no-doubt rendered having regard to the legal position then obtaining, that is, before the amendment of the Wakf Act. Be that as it may. Subsequently, in the year 2013, the Wakf Act was amended by the Wakf (Amendment) Act, 2013 [Act 27 of 2013] and under the amended new provision of Section 83 (1) of the Act, a suit for eviction of the tenant from a wakf property is maintainable before a Wakf Tribunal. Section 83 (1) of the Act, which came into force on 01.11.2013 reads as under:

‘Section 83 (1): The State Government shall, by notification in the Official Gazette, constitute as many Tribunals as it may think fit, for the determination of any dispute, question or other matter relating to a waqf or waqf property, eviction of a tenant or determination of rights and obligations of the lessor and the lessee of such property, under this Act and define the local limits and jurisdiction of such Tribunals.’

A reading of the above provision would show that under the present law, as amended, the Wakf Tribunal is conferred with the jurisdiction to determine any dispute, question or other matter relating to wakf or wakf property including the dispute, question, or other matter in regard to eviction of a tenant. However, as on the date of the institution of the instant suit by the plaintiff, the Wakf Tribunal lacked inherent jurisdiction to entertain the suit in view of the then obtaining statutory legal position and also the precedential guidance in the decision of the Supreme Court.

11. Dealing further with the contention of the defendants that after the amended provisions of the Wakf Act came into force, the civil Court is not having jurisdiction to entertain and dispose of the suit for eviction of the tenants from the Wakf Property, it is apposite to note that as on the date the instant suit was instituted in the year 2009, the legal position as was then

obtaining makes it manifest that a civil suit for eviction of tenants from the Wakf property filed before a civil Court is maintainable and that a civil Court is having jurisdiction to entertain, try and dispose of such a suit. It is no doubt true that subsequently, that is, during the pendency of the instant suit, the provisions of the Wakf Act are amended and the amended provisions came into force from 01.11.2013. However, since the suit was instituted in the year 2009 as per the law prevailing as on the date of the institution of the instant suit, in the considered view of this Court, the subsequent change in the law does not make any difference to the case on hand and does not affect the jurisdiction that vested in the civil Court as on the date, the suit was instituted. Hence, the civil Court which had jurisdiction as on the date the suit was instituted is competent to continue to entertain the suit and dispose of the same on its merits. The settled rule of civil law is that the rights of the parties stand crystallised on the date of the institution of the suit and the adjudication must proceed in accordance with that law and the decree in a suit should accord with the rights of the parties as they stood at the commencement of the *lis*. Further, from a careful examination of the amended provisions of the Wakf Act it does not appear that the said provisions are retrospective in operation. The learned Counsel for the defendants did not also bring to the notice of the Court any precedent to show that the said provisions are retrospective in operation. It would be pertinent to mention that if a suit or proceeding is already pending in a civil Court before the coming into the force of the amended provisions of the Wakf Act in question, then such suit or proceedings before the Civil Court would continue and the Tribunal would not have any jurisdiction in such matters. Therefore, it can be safely held that the provisions of the Wakf Act dealing with the jurisdictional aspect, which came into force from 01.11.2013, are not attracted to the instant suit. Hence, the contention of the defendants

that the civil Court is not having jurisdiction to entertain and dispose of the suit on its merit is untenable, as rightly held by the trial Court.

12. On the above analysis and for the reasons afore-stated this Court holds that the order of the trial Court is justified and that the Civil Revision Petition is devoid of merit and is liable to be dismissed.

13. In the result, the Civil Revision Petition is dismissed.

There shall be no order as to costs.

Pending miscellaneous petitions, if any, shall stand closed.

11th August, 2017
Bv

M. Seetharama Murti, J

