

HONOURABLE Dr. JUSTICE B.SIVA SANKARA RAO

C.R.P. No.3085 of 2017

ORDER:

The revision petitioner is the plaintiff in O.S.No.92 of 2006 (renumbered as O.S.No.85 of 2016) pending on the file of the Telangana State Wakf Tribunal, Hyderabad. There are five defendants in all in the suit. The plaintiff is by name Mohd. Habeeb Ahmed and the defendants 1 to 4 respectively are K.Damodar, William Edward, K.Lalitha and Jai Bharat Co-operative Housing Society Limited, represented by its Secretary. Defendant No.5 in the suit is the A.P. State Wakf Board, represented by its Chief Executive Officer, Hyderabad, referred as the formal party. Section 92 of the Wakf Act, 1995 says in any suit or proceeding in respect of a wakf or any wakf property the Board may appear and plead as a party to the suit or proceeding. The claim of plaintiff in the suit is in respect of the land in Survey No.18/1 admeasuring 2000 square yards situated at Tirumalagiri village, Rangareddy District within the boundaries described; part of the same Survey number on three sides of South, East & West and road on the North side, in seeking to grant permanent prohibitory injunction restraining the defendants 1 to 4 and their men from interfering or dispossessing the plaintiff from the suit schedule property with the claim that the plaintiff is the

lessee under defendant No.5 Wakf Board as per the Lease Agreement dated 20.09.2005. The said suit schedule property is the Wakf property of defendant No.5 and that the plaintiff as a lessee started the construction of marriage function hall by obtaining No Objection from defendant No.5 Wakf Board and completed the construction and named the said marriage function hall as MODERN PLAZA. While so, in September 2005 defendants 1, 3 and 4 filed a writ petition in W.P.No.20763 of 2005 before the High Court against the plaintiff and defendant No.5 for a Writ of mandamus impugning the lease proceedings, dated 12.08.2005, and the said writ petition was ended in dismissal on 08.12.2005 and the defendants 1 to 4 are still unlawful in trying to interfere with the plaintiff schedule property through their henchmen and unsocial elements and thereby they are to be restrained by way of perpetual injunction.

2. The defendants were served with summons and among them defendants 1 and 3 filed an application, under Order VII Rule 11 (D) r/w Section 151 C.P.C., in I.A.No.644 of 2006 (renumbered as I.A.No.79 of 2017) seeking rejection of the plaint with the averments that the Wakf Tribunal has no jurisdiction for the reason of the suit land is not the Wakf land as per the decree and judgment in O.S.No.87 of 1999, dated 12.04.2006, that became final. The plaintiff and the Wakf

Board filed separate counters, defendant No.2 remained *ex parte* and defendant No.4 filed no counter. As per the counter contest against the decree and judgment in O.S.No.87 of 1999, the Wakf Board preferred an appeal in the High Court, which is still pending, and thereby the decree and judgment in O.S.No.87 of 1999 supra no way became final. The plaintiff has taken the suit land on lease from defendant No.5 Wakf Board on 20.09.2005 and is in continuous possession as lessee under the Wakf Board only with reference to the Munthakhab No.1 dated 18.01.1951 and the Gazette publication dated 27.05.2004. W.P.No.16734 of 2006, filed against the Wakf Board and others, was disposed of on 25.09.2006 [subject writ petition was filed, by K.Damodar and K.Lalitha (defendants 1 and 3 in the present suit, who are the plaint rejection petitioners herein)], against the Wakf Board, the plaintiff Mohd. Habeeb Ahmed, the Chief Executive Officer of the A.P.State Wakf Board and the Station House Officer, Tirumalagiri, wherein it is observed that the writ petitioners' claim is purchase of plot Nos.7 to 10 and 39 to 41 admeasuring 2000 square yards in Survey Nos.18/ 1 and 18/ 2 situated at Tirumalagiri from M/s. Jai Bharat Cooperative Housing Society Limited under the agreement of sale dated 03.03.1983 and the A.P. State Wakf Board filed the suit in O.S.No.87 of 1999 for perpetual injunction alleging that it

leased out the land to a third party and the writ petitioners did not allow to occupy the land by the lessee and also filed O.S.No.128 of 1999 for injunction; and both the suits were ended in dismissal by the Andhra Pradesh Wakf Tribunal on 12.04.2006 and the lessee also filed O.S.No.124 of 1999 for perpetual injunction, that was also dismissed for default. One Mohd. Habeeb Ahmed [plaintiff in the present suit O.S.No.85 of 2016 (old number-O.S.No.92 of 2006) filed the suit for injunction and sought temporary injunction in I.A.No.462 of 2006. The said interlocutory application was dismissed on 22.07.2006. Still respondent No.1 therein-Wakf Board is trying to lease out the land to the said Mohd. Habeeb Ahmed and respondent No.3 therein, which made them to file the writ petition to restrain them and not to interfere. The Wakf Board-respondent No.1 therein filed detailed counter and respondent No.2 to the writ petition (present plaintiff herein) also appeared through advocate. The Wakf Board did not dispute the earlier proceedings before the Wakf Tribunal, though asserted that the writ petitioners were never in possession of the land. This cannot be accepted at this juncture, when the suits filed by the Wakf Board and its lessee for injunction were ended in dismissal by the Wakf Tribunal holding that they are not in possession of the property and the contention that respondent No.2 therein is

still in possession as a lessee cannot be accepted because his application in I.A.No.462 of 2006 (in the present suit) for temporary injunction was ended in dismissal. In this scenario, unless and until the Wakf Board takes action in accordance with law and seeks declaration of title, they cannot be dispossessed. Against the common judgment, dated 12.04.2006, in O.S.Nos.87 & 128 of 1999 passed by the Wakf Tribunal, a Civil Revision Petition was filed before the High Court, to which the first writ petitioner K.Damodar is a party and therefore, unless and until the Wakf Board obtains appropriate orders in the said C.R.P. maintained against the two suits, the writ petitioners cannot be dispossessed, and for further grievance the writ petitioners may approach the Wakf Tribunal in pending O.S.No.92 of 2006 (present suit). The Tribunal therefrom, referring to exhibits P.1 to P.7 and R.1 to R.10 on the plaint rejection petition, observed that the contest of defendants 1 & 3 in the plaint rejection petition is that the schedule property is not the Wakf property and the Tribunal has no jurisdiction and the plaint is liable to be rejected, for which they placed reliance on exhibits P.1 to P.7 viz., certified copy of the order in I.A.No.19 of 2005 in O.S.No.87 of 1999, where the first petitioner was impleaded as defendant No.2 in O.S.No.87 of 1999 and there was common dismissal judgment and decree passed by the Wakf

Tribunal in O.S.Nos.87 & 128 of 1999 and the revisions preferred by the Wakf Board pending in C.R.P.Nos.4786 & 5235 of 2006 in the High Court and the High Court remitted back the matters to the Tribunal for fresh consideration in accordance with law and also filed copy of the order in W.P.No.16734 of 2006 and copy of the police complaint given by defendant No.1-petitioner and referred the writ petition order supra. Writ Appeal No.1297 of 1999 filed by the Wakf Board against the District Collector, Hyderabad District, Revenue Divisional Officer, Rangareddy District, and the Mandal Revenue Officer, Secunderabad Mandal, Hyderabad District respectively in respect of the land admeasuring Ac.71.30 guntas in Survey Nos.8, 10, 12, 17, 33, 37, 41, 42, 54, 62, 88, 144 and 115 situated at Tirumalagiri village, aggrieved by the order in W.P.No.17768 of 1996, shows there was observation of proper remedy to the Wakf Board is to establish its title by way of suit. As per the contest of plaintiff and the Wakf Board, the suit property is the Wakf property and the plaintiff has taken the suit land on lease from the Wakf Board under the Lease Agreement dated 20.09.2005 and claimed the possession to construct the marriage function hall and filed the photographs and negatives showing the construction of marriage function hall and also the Lease Agreement, the proceedings of the Wakf

Board, the letter of plaintiff to the Wakf Board, the letter to the Special Officer of the Wakf Board for No Objection Certificate for construction of marriage function hall and the order copy in W.P.No.20763 of 2005, the Gazette issued by the Wakf Board in favour of the plaintiff, the proceedings of the Wakf Board, dated 18.03.2011, renewing the tenancy for one year and the proceedings of the Wakf Board, dated 25.09.2013, renewing the tenancy for three years. The plaintiff claims possession of the lease hold rights over the schedule property from the Wakf Board and went unsuccessful in the application for temporary injunction, pending the suit, and also went unsuccessful in the earlier suit filed by the Wakf Board. Therefore, the relief claimed in the suit is barred in view of the earlier decision rendered in O.S.No.87 of 1999 and the plaint is accordingly to be rejected.

3. The contentions in the grounds of the Civil Revision Petition raised by the plaintiff against the plaint rejection order are that the Tribunal failed to see that the plaintiff is in possession of the suit schedule property beyond doubt pursuant to the orders of the Wakf Board with reference to the Lease Agreement and the proceedings of the Wakf Board referred as exhibits R.1, R.8 and R.9 and the Tribunal also failed to consider that the plaintiff constructed the marriage function hall by obtaining No Objection Certificate from the

Wakf Board having invested huge amounts and obtained the electricity connection and Ex.R10-photographs with negatives prove the same, and the Tribunal failed to see that the defendants 1 and 2 filed W.P.No.20763 of 2005 challenging the Lease Agreement, executed by defendant No.5 Wakf Board in favour of the plaintiff, and the said writ petition was dismissed directing the respondents 2 and 3 therein to approach the Wakf Tribunal, if at all they are aggrieved against the said lease, and what was held in O.S.No.87 of 1999 is the Wakf Board failed to establish the possession over the suit property and there is nothing to prevent lease out the property by the Wakf Board to the plaintiff or others. The Tribunal erred in observing there is nothing new and different to be heard and decide by the Tribunal and the suit claim is barred by law by virtue of judgment in O.S.No.87 of 1999 supra, even the suit schedule property is notified as the Wakf property by Gazette notification and there is also Munthakab showing the property belongs to the Wakf institution and the said Munthakab and the Gazette notification were not in challenge. The defendants 1 and 3 can ask for rejection of the plaint and the Tribunal has to adjudicate the suit claim and thereby the Civil Revision Petition is to be allowed by setting aside the impugned plaint rejection order.

4. Learned counsel for the revision petitioner reiterated the same, whereas the learned counsel for the revision respondents 1 and 2-defendants 1 and 3 supported the order of the lower Court by referring to the writ petition pleadings and the averments of the plaint rejection petition and by drawing attention to the documents relied by them before the Tribunal in support of their plea for rejection of the plaint.

5. Heard both sides and perused the material on record.

6. Order VII Rule 11 (d) C.P.C. speaks rejection of plaint where the suit claim is barred by any law. It is the plaint averments that are basis and not even the plaint rejection petition averments or the prospective defence of the defendants in seeking rejection of the plaint, that is the criteria as to the plaint is to be rejected or not. When the plaint averments show cause of action and jurisdiction and the suit for injunction with the claim of possession, if at all the plaintiff not in possession and even for that matter the Wakf Board is not in a position being defendant No.5 to hand over the possession to the plaintiff as lessee under it, that is a matter to be decided in trial, if necessary for the defendants to ask as a preliminary issue and not a ground for rejection in the absence of showing from the very plaint averments the suit claim is barred by law and the plaint is liable to be

rejected. Once such is the position of law from the settled expressions, the Tribunal gravely erred in going into the detailed enquiry referring to several documents of both sides that too when the Munthakab of 1951 shows the Wakf property, if at all in possession from any such right in the claim of entitlement, and whether it is the Wakf property or not and the plaintiff is in possession or not and is entitled to injunction or not, when matters on contest to decide, if at all as a preliminary issue from the contest, the rejection of plaint is unsustainable. Thereby it is of no necessity to go into the earlier writ petition orders or any direction to the Wakf Board to go and file a suit for title or any observation of the defendants 1 and 3 in claiming through defendant No.4 cannot be dispossessed except through due process of law. Those are all as a part of defence, if at all to consider including to decide a preliminary issue.

Accordingly and in the result, the plaint rejection order of the lower Court in I.A.No.79 of 2017 (old I.A.No.644 of 2006) in O.S.No.85 of 2016 (old O.S.No.92 of 2006) is set aside by allowing the Civil Revision Petition and the matter is remitted back to the Tribunal to decide the suit, which is of the year 2006. If issues not so far framed in the said suit, the Tribunal shall frame the same and, if necessary from any need, any preliminary issue on own merits as early as

possible. Consequently, miscellaneous petitions pending, if any, shall stand dismissed.

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Dr. B. SIVA SANKARA RAO, J

29.12.2017

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