

THE HON'BLE SRI JUSTICE V. RAMASUBRAMANIAN

SECOND APPEAL No.1014 of 2016

JUDGMENT:

Aggrieved by concurrent judgments of both the Courts below directing eviction, the tenant of a Wakf has come up with the above second appeal.

2. Heard Mr. S.M. Subhani, learned counsel appearing for the appellant and Mr. Ravi Kumar Tholety, learned counsel appearing for the respondent.

3. The respondent is admittedly a Wakf. They filed a suit under Section 83(2) of the Wakf Act, 1995 for eviction. The suit was decreed by a judgment dated 21.02.2015. The appellant filed A.S.No.98 of 2016, but the same was dismissed by the first appellate Court by a judgment and decree dated 16.11.2016. Hence the present second appeal.

4. The substantial questions of law raised by the appellant are as follows:

1. Whether the Lower Appellate Court is right in not framing the detailed points for consideration as required under Order 40 Rule 31 CPC and also consider all the grounds raised by the Appellant herein in these Appeals as per the judgments of this Hon'ble Court reported in 2002 (2) ALT 589 and 2005 (3) ALD 813?
2. Whether the Lower Appellate Court is right in conforming the eviction order of the trial court directing the eviction of the Appellant/defendant from the suit schedule premises on the basis of eviction suit filed by the plaintiff Managing Committee without the consent and directions of the Wakf Board as required under Section 13(3) and Section 27 of the Wakf Act, 1995?
3. Whether the Lower Appellate Court is right in ordering of eviction of defendant from the plaint schedule premises by dismissing the appeal with cost confirming the eviction order of the trial Court without there being a statutory notice to the Wakf Board under Section 90(1) of the Wakf Act, 1995?

Question No.1:

5. It is true that the lower appellate Court could have framed detailed points for consideration as required under Order XLI Rule 31

C.P.C. The points taken up for determination by the first appellate Court are as follows:

1. Whether the eviction order by the trial Court under the impugned judgment is sustainable based on the material on record?
2. To what relief?

6. On point No.1 there has been a discussion by the first appellate Court. Therefore, this is not a case which can be treated as one that would fall foul of Order XLI Rule 31 C.P.C. Hence the first question of law is answered against the appellant.

Question No.2:

7. The second question of law is as to whether the Managing Committee of the Wakf would require the consent and directions of the Wakf Board under Section 13(3) and Section 27 of the Wakf Act, 1995.

8. Under Section 13(3), the Wakf Board is required to be a body corporate having perpetual succession. It has no correlation to the disputes of this nature. Insofar as Section 27 is concerned, the same speaks about the delegation of powers by the Board. Therefore, the same has nothing to do with the issues arising in this case.

9. There is no necessity for the Managing Committee of a Wakf to obtain the prior permission either of the Wakf Board or of the Chief Executive Officer to initiate action for recovery of possession from the tenants. Hence the second question of law is also answered against the appellant.

Question No.3:

10. The 3rd question of law revolves around Section 90(1) and (3) of the Act. Heavy reliance is placed by the learned counsel for the appellant upon the judgment of the Division Bench of the Calcutta High

Court in Sayed Hassan Ali v. Mahammed Sahidul Islam¹, wherein a Division Bench of the Calcutta High Court held that in the light of the prescription contained in sub-section (3) of Section 90 issuance of a notice before institution of the suit was mandatory.

11. But I do not think that the decision of the Calcutta High Court can be applied to the facts of the present case. Section 90 (1) requires the Court or Tribunal, in every case relating to title or possession of Wakf property or the right of a Mutawali or beneficiary, to issue notice to the Board. An obligation was imposed under Section 90(1) upon the Wakf Tribunal or Court. The consequence of non-compliance with the obligation under sub-section (1) is spelt out in sub-section (3). Sub-section (3) merely states that in the absence of a notice under sub-section (1), any decree passed can be declared as void if the Board applies to the Court in this behalf. Sub-section (3) of Section 90 does not confer a right upon the tenant to come up with a plea that if no notice is issued under Section 90(1), the decree becomes void. Therefore, it is not for the appellant to say that the failure to issue notice makes the decree void. It is for the Wakf Board to say that. In any case, the object behind Section 90 is to protect Wakf as well as Wakf property. The object behind the Managing Committee of a Wakf evicting a tenant is also to protect the interest of the Wakf. There is no conflict of interest between the respondent/plaintiff and the Wakf Board. Hence the third question of law is also to be answered against the appellant.

12. Based upon Section 54(1) of the Wakf Act, 1995 one more question of law was sought to be raised by the learned counsel for the appellant in the course of arguments. But obviously, Section 54 applies to

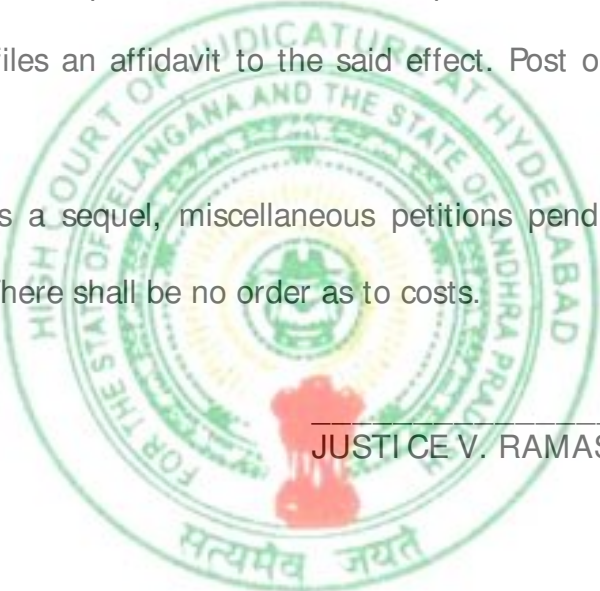
¹ AIR 2016 CALCUTTA 351

encroachers. When I made a pointed query to the learned counsel for the appellant as to whether the appellant is an encroacher, the learned counsel had no alternative except to deny the same. Therefore, what applies to an encroacher cannot be invoked by a person, who does not admit to be an encroacher.

13. Hence the substantial questions of law are answered against the appellant and the Second Appeal is dismissed.

14. The learned counsel for the petitioner, made a plea, after the dismissal of the second appeal, to grant six months time to vacate and handover the vacant possession. The said request would be considered, if the petitioner files an affidavit to the said effect. Post on 27.04.2017 for filing affidavit.

15. As a sequel, miscellaneous petitions pending, if any, shall stand closed. There shall be no order as to costs.



JUSTICE V. RAMASUBRAMANIAN

21st April, 2017
Js.

THE HON'BLE SRI JUSTICE V. RAMASUBRAMANIAN

SECON APPEAL No.1014 of 2016



Date: 21-04-2017

Js.

