

THE HON'BLE SRI JUSTICE S.V. BHATT

CIVIL REVISION PETITION No.4080 of 2010

ORDER:

Heard Mr. M.V.S. Suresh Kumar, learned Senior Counsel for revision petitioners, and Mr. K. Ramakanth Reddy for respondent.

The Civil Revision Petition is filed under Section 83 of Wakf Act, 1995 against the decree and judgment dated 20.05.2010 in O.S.No.89 of 1999 on the file of A.P. State Wakf Tribunal, Hyderabad. The defendants are the revision petitioners.

For convenience, the parties are referred as plaintiff and defendants.

The plaintiff filed O.S.No.89 of 1999 for the relief of perpetual injunction restraining the defendants, their men, etc., from interfering with the possession and enjoyment of plaintiff over the suit schedule property and also restraining by perpetual injunction the defendants, their men, etc., from carrying out any type of construction over the suit schedule property. The plaintiff prayed for recovery of possession of portion of suit schedule property from the defendants and for the relief of mandatory injunction to pull down all the structures in existence in the plaint schedule property.

The description of suit schedule is prefaced and reads thus:

“Schedule of suit property

All the part and parcel of Regd. Wakf property attached to the Khazi Mosque at Khazi Street, Rajahmundry town, East Godavari District bearing T.D.No.2008, S.No.709 (including the Khazi Mosque) admeasuring 13503 sq. feet bounded by

One side : Khazi street & block No.8
 One side : S.No.710 & 711
 Other side: S.No.702, 703, 704, 708 & 698
 Other side: Block No.9”

The case of plaintiff is that a Mosque known as ‘Khazi Mosque’ is in existence in Khazi Street, Rajahmundry Town, East Godavari District. The property covered by TD No. 2008 admeasuring Ac.50.63 cents and 13503 sq. feet in Survey No.709 are attached to Khazi Mosque. It is important to note the categorical statement made in paragraph 2 of the plaint which reads that “S.No.709 ad. 13503 sq. feet will hereinafter called the suit property.”

The learned counsel appearing for parties have reiterated that the subject matter of the suit is 13503 sq. feet. According to plaintiff, the suit property is a registered wakf property notified in A.P. Government Gazette No. Part II dated 19.04.1962 at page No.456. The plaint refers to Gazette dated 19.04.1962, true copy of survey report of Commissioner of Wakf and extract from town survey register. The cause of action for filing the suit is the defendants, without right, title and entitlement, referring to the documents said to have been executed by strangers have either encroached into suit schedule or have made permanent structures. Hence, the suit for the reliefs referred to above.

The defendants deny each one of the averments in the plaint and say that they are in possession and enjoyment of the property more fully described in the schedule appended to the written statement which reads as follows:

“SCHEDULE PROPERTY OF DEFENDANTS

Item No. 1 (a): House bearing D.No. 9-14-41 situated in Rajahmundry Municipal Corporation, 6th Ward in Chandra Satram St., with all structures thereon within the following boundaries.

East: Path way 18	North: Main Road 19
West: Wall of the property of B. Mohanagi	South: Item No.1 (b)

Item No. 1 (b):

East: Path way 13	South: Vacant site of Khaja Rashid Khan 32
West: K.V.Rao's compound Wall 11	North: Wall property Mahanangi to some extent and item No. 1(a) to some extent

Structures thereon in Chanda Satram St., 6th ward.

Rajahmundry Municipal Corporation within the following boundaries

East: Path way 34.5	West: KV Rao's compound wall
---------------------	------------------------------

North: Khaju Jaharullah Khans compound wall 31	South: Vacant site of K. Ahmadullah Khan and others”
--	--

The defendants claim right, title and possession through registered deeds dated 22.03.1995 and 31.03.1995. The extent claimed through these sale deeds works out to 220 sq. yards. In other

words, the defendants are also not claiming the larger extent shown in the plaint schedule.

The Tribunal framed the following issues:

- (1) Whether the plaintiff is entitled for permanent injunction as prayed for?
- (2) To what relief?

The plaintiff examined P.Ws.1 and 2 and marked Exs.A1 to A4 and for defendants, D.Ws.1 and 2 were examined and Exs.B1 to B8 were marked.

On issue No.1, the Tribunal held the plaintiff has proved all ingredients for grant of perpetual injunction and therefore, the relief of perpetual injunction is granted. While considering issue No.2, the Tribunal directed the defendants to vacate the encroached land and handover peaceful possession to plaintiff.

Mr. M.V.S. Suresh Kumar contends that the judgment under revision is unsustainable both in law and fact. According to him, the Tribunal did not settle correct and proper issues for adjudication. The plaintiff made distinct and several prayers. The plaint schedule is an extent of 13503 sq. feet. The identity of the property with reference to either the averments in the plaint or the suit schedule is not established. Exs.A1 to A4 do not superimpose the property covered by those documents as the property covered by suit schedule. He lastly contends that the prayer is one for recovery of possession from defendants and the plaintiff establishes title to the property identified

which is stated to be in the possession of defendants and then delivery of possession is ordered. In the case on hand, everything is presumed in favour of the plaintiff Wakf Board. According to him, the defendants are in possession of house property bearing D.No.9-14-41 situated at 6th Ward in Chandra Satram Street, Rajahmundry Municipal Corporation. The plaintiff has to show either the door number by reference to which the possession is claimed by defendants or its correlation either in the town survey or through some independent record to the suit schedule property. The decree and judgment is unsustainable.

Mr. Ramakanth Reddy by relying on Exs.A1 to A4 tried to convince this Court that firstly there is no dispute about identity of the property and secondly that town survey clinchingly establishes the encroachment of wakf property by the defendants.

When the Court desired the learned counsel to pin point the exact encroachment of property as evidenced or covered by any of the exhibits with reference to the boundaries shown in the plaint, the learned counsel found it difficult. The plaintiff has to firstly establish that it has discharged the burden so that onus shifted to defendants. The judgment under revision has assumed state of affairs without evidence. In view of above consideration, the counsel appearing for the parties have consented to disposing of the Civil Revision Petition by this order. It is well settled that in a suit for recovery of possession based on title, it is for the plaintiff to prove his title and satisfy the

Court that the plaintiff in law is entitled to dispossess the defendant from his possession over the suit property and that the possession of suit property is restored with him. The essential distinction between burden of proof and onus of proof is that burden of proof lies upon the person who has to prove the fact that which never shifts. Onus of proof shifts such as shifting of onus is a continuous process in the evaluation of evidence. In the considered view of this Court, in the instant suit filed for possession based on title, the plaintiff creates a high degree of probability in establishing the identity of suit schedule and also its title to the property and thereafter the onus shifts on to the defendants. In the case on hand, from the documents exhibited, it cannot be concluded that the suit schedule property is identified through these documents and that the onus has shifted to defendants to discharge that the door number claimed by them does not form part of the Gazette, town survey etc.,

For the above reasons, the Civil Revision Petition is allowed. The order under revision is set aside. The suit is restored to file for consideration and disposal in accordance with law. The parties are permitted to adduce oral and documentary evidence either for discharging the burden of proof or onus of proof, as the case may be. The Tribunal considers and disposes of the suit as expeditiously as possible, preferably within three months from the date of receipt of a copy of this order. No order as to costs.

As a sequel, miscellaneous petitions pending if any shall stand closed.

JUSTICE S.V. BHATT

06.09.2018
v v

