

HON'BLE SRI JUSTICE M.SATYANARAYANA MURTHY

SECOND APPEAL No.1388 OF 2018

JUDGMENT:

The present Second Appeal, under Section 100 of the Code of Civil Procedure, is filed by the appellants/appellants/plaintiffs challenging the judgment dated 01.11.2017 in A.S.No.3 of 2016 passed by the Senior Civil Judge, Narayanpet confirming the order dated 07.07.2008 in I.A.No.372 of 2015 in O.S.No.114 of 2005 passed by the Junior Civil Judge, Medak at Sangareddy, whereby the plaint was rejected on the ground that it is barred by law i.e. Section 14 of the A.P. (Andhra Area) Inams (Abolition and Conversion into Ryotwari) Act, 1956 (for short the 'Inams Act'), the jurisdiction of the Court is ousted.

2. The appellants filed suit for perpetual injunction claiming that they are in possession and enjoyment of the property and sought for perpetual injunction till they are duly evicted by due process of law. Whereas, the respondent claimed that the property is Inam land/Inam wakf and the jurisdiction of civil Court is ousted under Section 14 of the Inams Act. The Courts below rejected the plaint based on the judgment of this Court in **N.Manorama and others v A.P. Wakf Board**¹.

3. The present second appeal is filed on the ground that Section 14 of the Inams Act has no application to the property in dispute since the property is in Mahboobnagar District part of Telangana State. It is also contended that even assuming for a moment the contention of the respondent that it is a wakf property is correct, the suit for injunction is maintainable in view of law

¹ 2013(4) ALD 335

declared by this Court in **Chowk Mosque, Nandyal, by Mutavalli P.V.H. Abdul Razak Miah v P.V.H. Maqbul Basha and others**², but both the Courts below committed an error in rejecting the plaint.

4. During hearing, learned counsel for the appellants reiterated the contentions raised in the petition and requested to set aside the order of rejection of the plaint passed by the Court below and restore the suit to its file.

5. Whereas, learned counsel for the respondent contended that when the property is registered wakf, the civil Court jurisdiction is ousted under Section 83 of the Wakf Act as amended and placed reliance on the judgment of this Court in **Mahboob Khan v Mohd. Khaja and others**³ and on the strength of the principle laid down in the above judgment, he requested to confirm the order of the Court below dismissing the appeal.

6. The substantial questions of law that arise for consideration in this appeal are as follows:

- 1) Whether the trial Court and appellant Court have misconstrued the provisions of the Wakf Act and came to wrong conclusion that the civil Court lacks jurisdiction to try the case and erroneously rejected the plaint.
- 2) Whether the trial Court has misdirected itself and came to a wrong conclusion without properly understanding the provisions of the Wakf Act vis-à-vis Section 85 and 6 of the Act.
- 3) Whether the conclusion reached by the trial Court and the appellate Court that they lack jurisdiction is contrary

² 1999(1) ALD 396

³ 2005(1) ALD 839

to the law laid down by the High Court in **Ramesh Govind Ram (dead) by LRs v Sugra Humayun Mirza Wakf** reported in 2010(6) ALD 76 (SC).

7. When the suit is filed for permanent injunction claiming that the plaintiffs are in possession and enjoyment of the property to restrain the defendant from dispossessing them till they are duly evicted by due process of law, the scope of the trial in suit is limited and when the defendant is contending that the property is Inam Land governed by the Inams Act, the suit is maintainable. Though a vague allegation is made in para 18 of the petition filed under Order VII Rule 11 C.P.C. that the schedule property is Wakf Inam property, it was not raised before the Court below that the civil Court jurisdictions is ousted by Section 83 of the Wakf Act, but not by Section 14 of the Inams Act. The Court below while deciding application under Order VII Rule 11 C.P.C., took note of various judgments with reference to Section 83 of the Wakf Act and decided the petition treating the property as notified wakf and Section 83 of the Wakf Act ousted the jurisdiction of the Court. In fact, a bare reading of the affidavit filed along with the petition under Order VII Rule 11 C.P.C., disclosed the limited contention of the defendant, that the jurisdiction of the civil Court is ousted by Section 14 of the Inams Act.

8. Learned counsel for the respondent submitted that based on Inams Act, the plaint was sought to be rejected in view of Section 14. Section 14 of the Act says that no suit or other proceedings shall be instituted in any Civil Court to set aside or modify any decision of the Tahsildar, the Revenue Court, or the Collector under this Act, except where such decision is obtained by misrepresentation, fraud or collusion of parties.

9. The bar under Section 14 of the Act cannot be applied to the suit filed in civil Court at Mahboobnagar, which is part of Telangana Area and the Provisions of the Andhra Pradesh (Telangana Area) Abolition of Inams Act, 1955 alone are applicable where there is no express or implied bar against ousting the jurisdiction of civil Court. In the absence of any bar under the Telangana Inams Abolition Act ousting of jurisdiction of the civil Court, plaint cannot be rejected invoking Order VII Rule 11 C.P.C.

10. The other contention raised by learned counsel for the respondent is that when it is notified Wakf, the civil Court has no jurisdiction. But this contention was not raised in the petition except making vague allegation that the schedule property is Wakf Inam in para 18 of the petition. However, the ouster of jurisdiction is claimed based on Section 14 of the Inams Act. Therefore, when the civil Court jurisdiction is not ousted by the provisions of A.P. (Telangana Area) Inams Abolition Act, rejection of the plaint on the ground that it is barred by law and Section 14 of the Inams Act is an illegality committed by the Court below.

11. At the same time, rejection of plaint on the ground that the schedule property is a notified wakf is also an illegality committed by the Court below since it was not the contention before the Court below in the petition filed under Order VII Rule 11 C.P.C. and except making a vague allegation that the schedule property is wakf Inam, Inams Act is not applicable to the Mahboobnagar District, which is part of Telangana area. Therefore, I find that the order of the trial Court as confirmed by the first Appellate Court is illegal and the same is liable to be set aside.

12. As discussed above, when ouster of civil Courts' jurisdiction is pleaded by respondent, in view of Section 14 of the A.P. (Andhra Area) Inams Abolition Act, which is not applicable to Telangana area rejection of plaint in view of ouster of civil Courts' jurisdiction by Section 83 of the Wakf Act is an illegality, apart from that whether the suit property is a notified wakf or not is a disputed question of fact. Therefore, rejection of plaint by both the Courts below on the ground that civil Court jurisdiction is ousted is set aside, while leaving it open to raise such contention at appropriate stage. Thus, all the questions are answered in favour of the appellants and against the respondent.

13. In the result, the second appeal is allowed setting aside the order dated 07.07.2008 in I.A.No.372 of 2015 in O.S.No.114 of 2005 passed by the Junior Civil Judge, Medak at Sangareddy, as confirmed by the Senior Civil Judge, Narayanpet vide judgment dated 01.11.2017 in A.S.No.3 of 2016. However, it is left open to the appellants to raise any objection regarding maintainability of the suit during trial or by filing any appropriate application. I.A.No.372 of 2015 is dismissed. There shall be no order as to costs.

Miscellaneous Petitions, if any, pending shall stand closed.

M. SATYANARAYANA MURTHY, J

30.11.2018

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