

THE HON'BLE SRI JUSTICE M.S.RAMACHANDRA RAO

CRP.No.1548 of 2019

ORDER:

1. This Revision is filed challenging the order dt.19.06.2019 in OS(SR).No.1327 of 2019 of the Telangana State Wakf Tribunal, Hyderabad rejecting the plaint filed by the petitioner as not maintainable, under Order VII Rule 11 CPC.

2. Petitioner herein filed the said suit under Section 83 of the Wakf Act, 1995 (for short 'the Act') for the following reliefs:

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1. to pass a decree of declaration that the Gift Deed bearing document No.2535/2014 dt.01.08.2014 as null and bad, and illegal, not binding on this Wakf property and consequently cancel the same;
2. to pass a decree of mandatory injunction directing the 1st and 2nd defendants to reconstruct the Ashoor Khana Dargah-e-Hazrath Abbas(A.S.) in as it is condition as the same was prior to demolition, to lay the roof of hall at an height of 15 feet from the floor of hall where the Alam of Shahzadi Sakina(S.A.) is being installed and to construct two rooms which is being used as “Nazar-o-Niyaz” rooms and for storing sacred items, and to reconstruct the Northern side wall of the said Ashoor Khana and also to recover the passage area by demolishing the new staircase made by the adjoining trespasser Abbas Tower,
3. to pass a decree of perpetual injunction restraining the respondents/defendants No.1 to 6, their men, agents etc. from interfering or dispossessing the plaintiff from the suit schedule property;
4. to declare the two un-registered documents titled as Agreement dt.01.08.2014 as null and void.
5. costs of the suit may be awarded to the plaintiff.

6. Any other or further relief or reliefs to which the plaintiff is entitled may be granted to the plaintiff.”

3. Petitioner contended that he is son of Joint Mutawalli of the above Ashoor Khana i.e., Dargah, which was founded more than 500 years back and contended that it is a Shia Wakf. He contended that he is an ‘interested person’ under Section 3(K) of the Act; that the total extent of the Ashoor Khana is more than 1400 sq. yards; that 2nd defendant without any sanction or approval from the Greater Hyderabad Municipal Corporation and other authorities has demolished old structures, usurped the dismantled wood, iron antiques and stones, and in collusion and connivance with neighboring builder, gave away access passage land and adjoining western side part of the property to respondents 4 to 6/defendants 4 to 6, who are neighbours, without any power vested in him and without obtaining any sanction from the Wakf Board; and that the 2nd respondent is proceeding with unauthorized construction in an illegal manner.

4. He alleged that the office bearers of the 1st respondent and the contractor, who is the 2nd respondent’s employee, have colluded with adjoining Developer/owner of Abbas Tower and Mutawallia i.e., 1st respondent, for monetary gain; that a passage of 25’ X 15’ at the entrance has been trespassed and grabbed by the neighbouring developer and respondents 1 & 2 have done nothing to protect the Ashoor Khana. He also alleged that the 2nd respondent reduced the height of the roof of Hall in which the Alam of Shahzadi Sakina (S.A.) has been installed

contrary to the religious sacrament, feelings, and it has become very difficult to install and move the Alam which is about 11 feet in height. He has also alleged that he (the petitioner) objected to the same, but the office bearers of the 2nd respondent are asking to install the said Alam in another hall, contrary to the prevalent custom, age old practice and tradition, which makes it difficult to conveniently perform religious duty of Alam-bardars.

5. According to him, two rooms used specially as Nazar-o-Niyaz and for storing sacred religious articles and items were also demolished along with the entire Ashoor Khana, and that the 2nd respondent narrowed the open yard due to which it has become very difficult to move around the Alams, when there are thousands of devotees; that the privacy of lady devotees has also been affected; that a document No.2535/2017 was executed by 1st respondent gifting 23 sq. yards of south-western side of the suit schedule property which is non-existent; that the 1st respondent has also created four shops/mulgies for her personal gain in the cellar on the southern side of the suit Wakf property which is illegal and above the said mulgies, sacred Alams had been installed; and that the respondents colluded and brought into existence the registered Gift Deeds dt.01.08.2014 in respect of the four mulgies without any justifiable rights.

6. He also claimed that he got a legal notice issued on 21.05.2018 under Section 89 of the Act to the 3rd respondent but the 3rd respondent did not do anything.

7. The Court below, after the plaint was presented, raised certain office objections that the petitioner has no *locus standi* to file the suit, that the suit is not within the limitation, and the documents in respect of Mutawalliship are not submitted, etc.

8. It stated in the impugned order that the petitioner did not comply with the said objections and so the matter was called on the Bench to hear on the maintainability.

9. The Court below then recorded the following reasons for rejecting the plaint:

“3. Head the learned counsel for the plaintiff and perused the material available on record which are clinchingly pointing out the basic defects:

- (a) that previously younger brother of Plaintiff herein had filed a suit vide O.S.No.21 of 2015 on the file of this Tribunal directing Defendants No.2 herein to reconstruct the Ashoor Khana etc., claiming other reliefs and the said suit was dismissed on 05.02.2019 as abated as the younger brother of Plaintiff, namely, Syed Hassan Askari Moosavi died on 30.0.2018 and since his legal heirs were not brought on record within the time.
- (b) that the suit is beyond the limitation prescribed under Sections 6 & 7 of the Wakf Act, 1995 and since the registered Gift deed was said to have been executed on 01.08.2014 in respect of four shops on account of collusion between Defendants No.s 1, 2 and 4 to 6;
- (c) that following the legal principles laid down in **BANWAR LAL V. RAJASTHAN BOARD OF MUSLIM WAKF – AIR 2014 SUPREME COURT 758 = 2013 AIR SCW – 5210** wherein inter-alia it was held by the Hon’ble Supreme Court that any suit for cancellation of registered document is triable by the Civil Court;
- (d) that defective description of the suit schedule property as it is not mentioned clearly what is the total extent

of the property and out of which what was the subject matter of the said Gift deed dt.01.08.2014 in respect of the four shops averred in the pleadings;

- (e) that it is not pleaded what is the part of the property in possession of the Plaintiff is not mentioned in the schedule and in pleadings to seek the relief of perpetual injunction;
- (f) that the plaint does not disclose proper and valid cause of action; that the alleged trespasser-Abbas Tower is not made as a party to the proceedings;
- (g) that the relief claimed is not properly valued; and
- (h) that the suit is barred by limitation.”

10. Counsel for the petitioner contended that each of the reasons assigned by the Court below for rejection of the plaint is untenable.

11. As regards reason (a) Counsel contends that dismissal of suit O.S.No.21 of 2015 filed by the younger brother of the petitioner to direct the 2nd respondent to reconstruct the Ashoor Khana, etc on 05.02.2019 on account of the death of the younger brother of the petitioner on 30.10.2018, has nothing to do with the filing of this suit by the petitioner and merely because that suit is dismissed, the present suit cannot be dismissed. I agree with the said contention of the counsel for the petitioner.

12. As regard reason (b) given by the Court below that the suit is filed beyond period of limitation prescribed under Sections 6 and 7 of the Act is concerned, according to the counsel for the petitioner, the said contention is also not tenable because at the stage of numbering the suit, nobody has raised any dispute that the particular property mentioned in the plaint is wakf property

or not and the Court cannot imagine that there is such a dispute about the nature of the property to invoke the period of limitation fixed in *proviso* to sub-section (1) of Section 6.

13. Sub-Section (1) of Section (6) of the Act states that:

“Section 6:

(1) If any question arises whether a particular property specified as wakf property in the list of aukaf is wakf property or not or whether a wakf specified in such list is a Shia wakf or Sunni wakf, the Board or the mutawalli of the wakf or any person interested therein may institute a suit in a Tribunal for the decision of the question and the decision of the Tribunal in respect of such matter shall be final:

Provided that no such suit shall be entertained by the Tribunal after the expiry of one year from the date of the publication of the list of aukaf.”

A reading of the said proviso indicates that the limitation of one year would apply only to a suit where there is a dispute of title regarding the wakf property.

On a reading of the plaint, it appears that the suit schedule property is alleged to be wakf property, and nobody has raised any dispute about it being non-wakf property. So, the period of limitation prescribed under the proviso to sub-section (1) of Section 6 of the Act cannot be said to be attracted *prima facie*.

14. Section 7 of the Act also deals with suits where questions or disputes arise where a particular property is specified as wakf property in a list of aukaf is a wakf property or not. Therefore, Section 7 is also not attracted.

15. Again the observation in *reason (b)* of the Court below that a registered Gift Deed which is challenged is executed on 01.08.2014 makes the suit filed to be beyond limitation, is also not to be considered at the stage of registering of the plaint, since the petitioner, not being a party to the document can as well ignore the document and he is not bound to challenge it *prima facie*. Merely because he added a prayer challenging it, that does not make any difference.

16. Regarding *reason (c)* of the Court below that dispute as to cancellation of registered document is to be tried only by a Civil Court relying on the judgment in ***Banwar Lal v. Rajasthan Board of Muslim Wakf*** (referred above) is concerned, it was not proper for the Court below to express any opinion thereon at the stage of numbering of the plaint, particularly, when as pointed above, it was unnecessary for the petitioner to seek its cancellation.

17. As regards the *reason (d)* assigned by the Court below regarding defective description of the suit schedule property that the total extent of the property is not specifically mentioned in the schedule, it is not a ground to reject the plaint and at best the Court below can ask the party to submit the extent and incorporate the same in the plaint.

18. Regarding the *reason (e)* given by the trial Court that petitioner did not mention which part of the property is in his possession, that may be a matter to be gone into while

considering grounds of relief in the suit and it is not a ground to reject the plaint.

19. As regards reason(f) that the plaint did not disclose proper and valid cause of action is concerned, para 12 of the plaint deals with the same. It cannot, in my opinion, be said to be inadequate warranting rejection of the plaint at the stage of numbering of the suit.

20. Regarding the reason non-impleadment of the Abbas Tower is concerned, who is alleged to be the trespasser, his non-impleadment may be a ground to refuse relief to the petitioner but it is not a ground to reject the plaint.

21. As regards reason (g) and (h) are concerned, that the relief claimed is not properly valued, in what manner the relief claimed in the plaint is not properly valued according to the trial Court is not mentioned in the impugned order. Therefore, on the said ground also the plaint cannot be rejected.

22. For all these reasons, the Civil Revision Petition is allowed; the impugned order dt.19.06.2019 of the Telangana State Wakf Tribunal, Hyderabad in OS(SR).No.1327 of 2019 is set aside; and the said Tribunal is directed to number the plaint and proceed further in the matter uninfluenced by what is stated by it in the impugned order or of any observations made in this order by this Court on any of the points mentioned by it in the impugned order. It shall decide the suit with an open mind in accordance with law after the respondents enter appearance,

and proceed to decide the matter on merits. No order as to costs.

23. Consequently, miscellaneous petitions pending if any, shall stand closed.

M.S. RAMACHANDRA RAO, J

25th July, 2019.

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