

THE HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

CRP. No.3210 of 2018

ORDER:

This Revision is filed under Article 227 of the Constitution of India challenging the order dt.02.01.2018 passed in I.A. No.322 of 2017 in O.S. No.672 of 2015 of the II Additional Junior Civil Judge, Warangal refusing to reject the plaint in the suit instituted by the 1st respondent against the petitioners and others.

2. The 1st respondent filed the said suit against the petitioners and others alleging that the plaint schedule property is Wakf property covered by a Gazette Notification; that it is in peaceful possession and enjoyment thereof; that prayers at the time of Ramzan and Bakrid are conducted therein; and petitioners and other defendants tried to interfere with its alleged possession and enjoyment of the property on 15.07.2015.

3. Written Statement was filed by the petitioners stating that the suit schedule property is their property; that there is a serious cloud on the title and the possession of the 1st respondent over the said property and false allegations are leveled by the 1st respondent in the suit in order to grab the petitioners' property.

4. While the suit was pending, petitioners filed I.A. No.322 of 2017 under Order VII Rule 11 (d) CPC to reject the plaint stating that according to the 1st respondent the suit schedule property is a Wakf property and so the suit is not maintainable because of specific bar of filing the suit in civil Courts under Section 85 of the Wakf Act, 1995. It is contended that as per the said provision of law only the Tribunal constituted under the Act has

jurisdiction and the civil Court cannot entertain any suit where there is a dispute or question relating to any Wakf property.

5. The Supreme Court in **Punjab Wakf Board Vs. Sham Singh Harike**¹ considered this issue and also the earlier judgments on the point and observed that if in any suit for injunction initiated by the Wakf Board in a civil Court against the defendant, if there is a plea raised that the suit property is not a Wakf property, then the question would have to be decided by the Wakf Tribunal constituted under the Act only and such a suit cannot be continued in an ordinary civil Court. It reiterated the principle in **Ramesh Gobindram Vs. Sugra Humayun Mirza Wakf**² that jurisdiction to determine whether or not a property is a Wakf property rests entirely with the Wakf Tribunal, and no suit or other proceedings can be instituted or commenced in a civil Court in relation to any such question after the commencement of the Act.

6. In the light of this settled legal position since there is a dispute about whether the suit schedule property is Wakf property or not, the said issue can only be decided by the Wakf Tribunal constituted under the Act and not by the Civil Court.

7. Accordingly, the Court below was not correct in refusing to reject the plaint on the ground of want of jurisdiction.

8. Consequently, this Revision is allowed; order dt.02.01.2018 passed in I.A. No.322 of 2017 in O.S. No.672 of 2015 of the II Additional Junior Civil Judge, Warangal is set aside; and the said I.A. is allowed. The plaint filed

¹ 2019(3) Scale 56

² 2010 (8) SCC 726

by the 1st respondent shall be returned to it for presentation before the appropriate Wakf Tribunal. There shall be no order as to costs.

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

JUSTICE M.S. RAMACHANDRA RAO

Date: 30.07.2019
LSK



