

THE HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

CIVIL REVISION PETITION No.5768 of 2017

ORDER :

This Revision is filed under Section 83 of the Wakf Act, 1995 (for short 'the Act') challenging the order dt.01-04-2013 in O.S.No.13 of 2001 of the A.P. State Wakf Tribunal at Hyderabad.

2. Petitioners herein are **defendants** in the suit.

Plea of the Plaintiff/Respondent

3. The said suit had been filed by respondent A.P. State Wakf Board against petitioners for a perpetual injunction restraining the petitioners from interfering with the alleged peaceful possession and enjoyment of respondent over the suit schedule property; for a perpetual injunction restraining the petitioners from carrying out any type of construction or from fixing any type of erection either permanent or temporary by way of encroachment over the suit schedule property; and also for another perpetual injunction restraining the petitioners from alienating or transferring the suit schedule property or part thereof.

4. It is the contention of the respondent in the suit that there was a Qutub Shahi Mosque by name Dargah Shah Amenullah Saheb and Muslims grave yard with one well located in Sy.No.89 of Hameedullah Nagar, Shamshabad Mandal, Ranga Reddy District

having extent of Ac.16.05 gts. It is its contention that the said property is under the Management of the respondent, but the petitioners are trying to grab the said property and attempted to do so between October, 2000 and January, 2001.

Contentions of petitioners/Defendants

5. The 1st petitioner filed a written statement denying the said allegation. He contended that none of the documents filed by respondent contain the name of Qutub Shahi Mosque. He denied that the property was constituted as a wakf. He contended that Survey Commissioner's report submitted along with the plaint by respondent is an ambiguous document and is not based on authenticated record. According to him, the land in Sy.No.87 was owned and possessed by Mir Asif Ali, Mir Mehdi Ali, Mir Hussain Ali and Mir Mumtaz Ali. He contended that all the Government documents i.e. patta pass books, ownership rights certificate, Sethwar and Pahanies in respect of the said Survey Number show names of these persons and the plea of the respondent that it is a Wakf property is false.

6. He contended that through registered document No.2928/2000 dt.14-10-2000, which is an agreement of sale-cum-G.P.A. with possession, he was inducted into possession by the above persons and he is in possession thereof and the Revenue records support his contention.

7. He alleged that the previous pattedars and owners referred to supra were not made as parties by the respondent and so the suit has to be dismissed on the ground of nonjoinder of necessary and proper parties. They denied that they were attempting to encroach the suit schedule property and contended that respondent was never in possession of the suit schedule property and there is no cause of action for filing of the suit.

8. Before the Wakf Tribunal, the respondent examined P.W.1 and marked Exs.A-1 to A-3 while the petitioners examined D.Ws.1 to 4 and marked Exs.B-1 to B-10.

The order of the A.P.State Wakf Tribunal

9. By order dt.01-04-2013, the Wakf Tribunal decreed the suit giving an incidental finding that plaint schedule property is part of Wakf property attached to the Wakf institution known as Mosque Qutub Shahi Dargah Shah Amanullah Saheb and Muslim Graveyard.

10. The Wakf Tribunal relied upon the testimony of the Chief Executive Officer of the Wakf Board i.e. P.W.1 reiterating the contents of the plaint that the suit schedule property is a Wakf and was registered and notified after the Survey Commissioner's Report and published in the gazette dt.09-02-1989 (Exs.A-1 and A-2). It also referred to his deposition in respect of pahanis for the year 1955-56, 1956-57 and 1957-58 marked as Ex.A-3. It held that Ex.A-2 Gazette is dt.09-02-1989 and at Sl.No.3108, it contains particulars of the suit

institution and makes a reference to Mosque Qutub Shahi, Dargah Shah Amanullah and grave yard with one well in Ac.1.06 gts of land in Sy.No.89.

11. It then considered the evidence of one of the vendors of petitioner by name Mir Hassan Ali (D.W.2) and that of D.W.3, a resident of the suit village. It observed that Gazette published under Section 5(2) of the Act which contains particulars of wakf property referred and published carries a presumption of truth of entries under Section 81 of the Evidence Act.

12. It therefore held that there exists a Wakf institution surveyed and identified and gazetted by name Mosque Qutub Shahi in Sy.No.89 with Dargah Shah Amanullah Sahab and grave yard with one well in an extent of Ac.1.06 gts in Sy.No.89.

13. The Wakf Tribunal then recorded the claim of respondent/plaintiff that total extent of 37.25 gts was given as service inam for maintenance of the institution comprised in Sy.Nos.87, 88, 121, 55, 56, 57, 59 and 60 and that the plaint schedule property is Ac.16.05 gts in Sy.No.87 of the said village. It also referred to pahanis for the years 1956-57 and 1958-59 filed by 1st petitioner, which refers to extent Ac.16.05 gts as 'Mafi Inam' and indicate the name of three vendors of the 1st petitioner. It then observed that 'Mafi Inam' is a service inam for which payment of cist/tax is not necessary; and that the revenue records mentioned it as a service inam which has

to be understood as land given for service to a wakf institution. It also observed that in respect of Wakf properties, the Occupancy Right Certificate can be granted only to the institution under the Telangana Abolition of Inams Act, 1955 and though pattadar pass books have been issued by the Revenue authorities to the 1st petitioner, they do not prove his possession over the suit schedule property.

14. It therefore held that Ex.B-10 registered agreement of sale-cum-G.P.A. with possession did not confer any right on petitioners since vendors of the petitioners have no title and property is Wakf property.

15. After recording that pattadar pass books Exs.B-2 to B-5 filed by petitioners show the names of their four vendors and show various sub-divisions of Sy.No.87, it observed that these documents do not show any registered document of sale under which petitioners' vendors obtained title to the property.

16. It then went on to hold that there is no document showing that petitioners are in actual possession of the property by the date of suit and that respondent has constructive possession of the suit schedule property because it was an institution i.e. Wakf Board. It further observed that since the petitioners are claiming through agreement of sale, under which no title to immoveable property would pass, they cannot claim title to the suit land. It therefore decreed the suit as prayed for.

17. Assailing the same, this Revision is filed.

Contention of Petitioners

18. Learned counsel for petitioners contended that no document has been filed by respondent to prove its possession over the suit schedule property on the date of filing of the suit and that even assuming that there is a Wakf institution called Qutub Shabi Mosque/Dargah, unless the possession of the suit schedule property is proved to be with the respondent and is established through Revenue records such as pahanis, the Court below could not have granted perpetual injunctions as sought for in the plaint.

Contention of respondent

19. Learned counsel for the Telangana State Wakf Board supported the reasoning of the Court below and sought for dismissal of the Revision.

20. I have noted the contentions of both sides.

The Consideration by the Court

21. Exs.A-1 and A-2 refer only to Ac.1.06 gts in Sy.No.89 as the Wakf property but do not mention any land in Sy.No.87 in respect of which the instant suit is filed by respondent against petitioners. In the absence of any Revenue record filed by respondent such as Occupancy Right Certificate issued under the Telangana Abolition of Inams Act, 1955 to it or pahani or Revenue records, it cannot be said

that the suit schedule property admeasuring Ac.16.05 gts in Sy.No.87 is wakf property land or that the respondent is in possession of the suit schedule property on the date of filing of the suit.

22. The Supreme Court in **Balkrishna Dattatraya Galande Vs. Balkrishna Rambharose Gupta and others**¹ held:

“11. Under Section 38 of the Specific Relief Act, an injunction restraining the Defendant from disturbing possession may not be granted in favour of the plaintiff unless he proves that he was in actual possession of the suit property on the date of filing of the suit.”

23. It is settled law that question of title is only incidentally gone into in a suit for injunction.

24. Exs.A-1 to A-3 marked by respondent are as under:

“Ex.A-1 certified copy of the Survey Commissioner Report concerning to the subject Wakf institution.

Ex.A-2 the certified copy of the Gazette dated 09-02-1989, under which the subject Wakf was notified containing the details of the properties attached to it, who was Mutawalli, and other details.

Ex.A-3 certified copy of the Pahani for the years 1955 to 1958.”

25. Admittedly, Ex.A-1 certificate relied upon by respondent is 20 years prior to Ex.A-2 Gazette notification dt.09-02-1989. Therefore neither Ex.A-1 nor Ex.A-2 nor 3 pahanies for the years 1955 to 1958 under Ex.A-3 prove the possession of respondent over the suit schedule property as on the date of filing of O.S.No.13 of 2001 on 06-02-2001.

¹ MANU/SC/0148/2019

26. On the other hand, pattadar pass books Exs.B-2 to B-5 were issued to the vendors of petitioners in respect of the suit schedule property in Sy.No.87 and Exs.B-6 to B-9 are title deeds which were issued in their names by the Revenue authorities.

27. *Prima facie* these documents would show the possession of vendors of petitioners over the suit schedule property prior to Ex.B-10 being executed by them in favour of the petitioners.

28. While it may be true that under Ex.B-10 agreement of sale-cum-G.P.A., petitioners did not acquire title to the property, that does not absolve the respondent to prove its title and possession to the land in Sy.No.87.

29. Merely because the pahanis filed by petitioners used the work 'Mafi Inam' in respect of the land in Sy.No.87, there cannot be any presumption that it is a service inam given to a Wakf institution as is being alleged by respondent. In fact P.W.1 himself admitted that the name of Wakf Board is not mentioned in any pahani.

30. I am of the considered opinion that the Court below was not right in refusing to rely upon Exs.B-2 to B-5 pattadar pass books and Exs.B-6 to B-9 title deeds issued to the vendors of petitioners by Revenue Authorities which categorically show the possession of petitioners' vendors over the subject property. In these circumstances, the impugned order cannot be sustained.

31. Accordingly, the Civil Revision Petition is allowed and the impugned order is set aside and the suit O.S.13 of 2001 is dismissed with costs.

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

JUSTICE M.S.RAMACHANDRA RAO

Date: 19-07-2019

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