

HONOURABLE SRI JUSTICE M.S.RAMACHANDRA RAO

CIVIL REVISION PETITION NO.1108 OF 2020

ORDER:

(Per Sri Justice M.S.Ramachandra Rao)

This Revision is filed under Article 227 of the Constitution of India challenging the order dt.09.01.2020 in I.A.No.615 of 2019 in O.S.No.1670 of 2019 of the XXI Junior Civil Judge, City Civil Court at Hyderabad.

2. The petitioners are defendants in the said suit.
3. The respondent/plaintiff filed the said suit against the petitioners for perpetual injunction restraining the petitioners from interfering with his peaceful possession and enjoyment of the plaint schedule Mulgi (shop).
4. He contended that he is a tenant of the plaint schedule shop under a lease granted by Mohammadia Masjid on monthly rent basis and he was running Kirana and General Stores in the name and style Md. Ghouse Kirana Shop. He claimed that he is paying monthly rent of Rs.3,300/- and he had also deposited Rs.20,000/- towards caution deposit with the Managing Committee of Masjid-E-Mohammadia. He alleged that the petitioners on 08.07.2019 tried to forcibly dispossess him from the suit schedule property. He claimed that the place over which the Mulgi is located was vacant and that he had spent Rs.3,00,000/- for construction of the Mulgi. He also alleged that on 10.07.2019, the petitioners tried to again forcibly dispossess him from the suit schedule property.

5. The petitioners herein, who were arrayed as defendants 1 to 3 in the suit, are the Managing committee of the Jama Masjid Mohammedi and 2 individuals.

6. They filed I.A.No.615 of 2019 to reject the plaint invoking Order VII Rule 11 CPC. According to them, the dispute in the suit relates to and concerns a wakf institution, that it is a wakf by user being a Mosque, and the Civil Court has no jurisdiction to entertain it in view of Section 85 of the Wakf Act, 1995.

7. In support of the plea of the petitioners, no material was filed before the Court below.

8. By order dt.09.01.2020, the Court below rejected the said plea and dismissed I.A.No.615 of 2019 on the ground that no document had been filed in support of the petitioners' contention that the suit schedule property is a wakf property. The Court below also held that to reject a plaint, only the contents of the plaint have to be looked into and not the defence and the likelihood of dismissal of the suit cannot be a ground for rejection of the plaint so long as the plaint discloses some cause of action.

9. Assailing the same, this Revision is filed.

10. Learned counsel for the petitioners sought to contend that the Court below erred in dismissing the Application for rejection of plaint, that it ought to have upheld the contention of the petitioners that the Civil Court has no jurisdiction, and rejected the plaint.

11. Under Section 6(1) of the Wakf Act, 1995, if any question arises whether a particular property *specified as wakf property in the list of wakfs* is wakf property or not or whether a wakf specified in such list is a Shai wakf or Sunni wakf, the Board or the mutawalli of the wakf or any person interested therein may institute a suit in the Wakf Tribunal for the decision of the question and the decision of the Tribunal in respect of such matter shall be final.

12. *It is not the case of the petitioners that the subject property is specified as wakf property in the list of wakfs.* According to them, it is a wakf by user. This fact has to be established by leading evidence in the suit. Admittedly, no material has been placed before the Court below in I.A.No.615 of 2019 in support of the pleading of the petitioners that the subject property is a wakf by user.

13. *So prima facie* the dispute in relation to the subject property cannot be said to fall within Sub-Section (1) of Section 6 or Sub-Section (1) of Section 7 of the Wakf Act, 1995, which deals with the question whether a particular property specified as wakf property in the list of wakfs is wakf property or not. Therefore, it cannot be said that Section 85 of the Wakf Act, 1995 gets attracted and bars the jurisdiction of Civil Court.

14. I also agree with the view of the Court below that in an Application to reject the plaint, only the contents of the plaint can be looked into and not the defence of the defendants.

15. It is open to the petitioners to file a written statement taking the above plea and if such a stand is taken in the written statement, the Court below shall frame an issue in that regard in the suit. Both parties are granted liberty to lead evidence on the said issue and the Court below shall then proceed to decide the same after considering the evidence on record in accordance with law.

16. I do not find any merit in the Revision and it is accordingly dismissed. No costs.

17. Pending miscellaneous petitions, if any, in this Revision Petition shall also stand dismissed.

M.S.RAMACHANDRA RAO, J

Date: 17-11-2020

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