

25.4.2022
14
Ct. no. 652
sb

C.O. 1740 of 2021

**Sk. Abdur Raquib & Ors.
Vs.
Md. Sahiful Islam & ors.**

Mr. Rwitendra Banerjee
Ms. Salma. S. Shah
Mr. Debdutta Pathak ...for the petitioners

Mr. Sukanta Chakraborty
Mr. Zubair Ahmed
...for the opposite parties

Sk. Md. Galib
Ms. Tanwishree Mukherjee
...for the Board of Auqaf

The present revisional application has been directed against the order no. 18 dated 3.12.2019 passed by the learned Wakf Tribunal, West Bengal in Suit no. 69 of 2016.

By the impugned order, the learned court below was pleased to reject the defendant's application under Order VII rule 11 of the Code of Civil Procedure with a cost of Rs. 5,000/-. The petitioner contended that the opposite party no. 1 herein filed aforesaid suit for declaration of his right title and interest over the suit properties as joint Mutawalli in respect of Khan Bahadur Anwar Chowdhury Wakf Estate and also for declaration that the name of defendant nos. 1 to 3 and the father's name of defendant no. 4 in the L.R. record of rights as

Bargadar is erroneous and not binding upon the plaintiff and also for permanent injunction.

The petitioners/defendants herein appeared in the said suit and filed written statement. In the written statement, the defendant's contention is that they are in possession in the suit property and under such circumstances, no relief lies against the defendant. The defendant/petitioners filed an application under Order VII rule 11 of the Code of Civil Procedure and in the said application, the defendant/petitioners contended that the suit is barred under the provision of West Bengal Land Reforms Act, 1955 and also under the Wakf Act, 1993. The other grounds taken is that no notice under Section 80 of the Code of Civil Procedure has been served upon Government, though in the plaint, the plaintiff admitted that the State has vested the suit property and the order of vesting requires to be challenged before different forum established under the Land Revenue Laws.

The Wakf tribunal had taken up the said application and after contested hearing by order dated 3.12.2019, had rejected the said application. Being aggrieved and dissatisfied by the said order of rejection. Learned counsel for the petitioners submits that the tribunal acted illegally and with material irregularity in exercising the jurisdiction vested in it while rejecting the application seeking rejection of plaint and he failed to consider that the suit is not maintainable in view of the

provisions of Land Reforms Act, 1955 and also under Wakf Act, 1993. He further submits when it is clearly admitted in the plaint that the State has vested a part of the suit property and the order of vesting requires to be challenged in different forum, then the suit is not maintainable before the Wakf tribunal. The court below also failed to consider that the record of rights created presumption that the petitioners are in possession of the suit property and the defendants/petitioners are Bargadars in respect of schedule mentioned property. plaintiff has made prayer for declaration that defendants/petitioners are not Bargadars such question can only be decided by proscribed authority and Wakf tribunal has no power to decide the same. Furthermore challenge to the order of vesting cannot be decided by Wakf Tribunal. Accordingly, the petitioner has prayed for setting aside the order impugned.

Learned counsel for the opposite party nos. 1 and 5 submits that the tribunal was justified in rejecting the application under Order VII rule 11 of the Code filed by the plaintiff in view of the fact that the Wakf tribunal has only jurisdiction to decide the issue whether plaintiff has right title interest over the suit properties as Joint Mutawalli or not and as such impugned order passed by the Wakf tribunal does not call for any interference.

Considered the submissions made by both the parties. On perusal of the amended plaint of suit no. 69 of

2016, it appears that the suit property has been described as Wakf properties pertaining to Khan Bahadur Anwar Chowdhury Wakf Estate by the proforma defendant and the plaintiff's name have been recorded as joint Matwali by a resolution dated 11.2.2022 passed by proforma defendant and he further submits that the suit properties have been mutated in the R.S. and L.R. record of rights as Wakf. The plaintiff in his plaint has also claimed that he is in possession of the suit property as Matwali. However, the plaintiff's further case is that the defendant nos. 1 and 2 by practicing fraud have managed to get their names recorded as Bargadars in the L.R. record of rights. The plaintiff further stated in his plaint that by the order of the tenancy tribunal, the order of vesting has been set aside and BL and LRO was directed to take necessary action.

Section 85 of the Wakf Act deals with bar of jurisdiction of civil court, which provides that no suit or other legal proceeding shall lie in any civil court in respect of any disputed question or other matter relating to any Wakf on Wakf property or other matter which is required by or under the Act to be determined by tribunal. The question involved in the suit as to whether plaintiffs are joint Mutawalli in respect of suit property or not, is a question of both law and fact and also a question or dispute relating to Wakf which is empowered to be adjudicated under the Wakf Act by the Tribunal.

Paragraph 14(a) of the plaint clearly reveals that the plaintiff has prayed for declaration that the plaintiff has right title and interests over the suit properties as joint Matwali in respect of Khan Bahadur Anwar Chowdhury Wakf Estate. It is well settled that for the purpose of adjudicating an application under Order VII rule 11 of the Code, the averments made in the plaint are Germane and are taken to be true. An application for rejection of plaint can be filed, if the allegations made in the plaint taken to be correct as a whole on its face value show that suit to be barred by any law. If that be so and if the averments made in the plaint are taken to be true then obviously under Section 85 of the Wakf Act, jurisdiction to decide such question lies to the Tribunal only and civil court does not have jurisdiction to decide as to whether the plaintiff is a Mutawalli in respect of suit properties or not. By no stretch of imagination from the statements made in the plaint, it can be said that the suit is barred by any law, more specifically under the West Bengal Land Reforms Act, 1955 or under the Wakf Act.

In view of above, tribunal has not committed any mistake in rejecting the defendant's prayer for rejection of plaint under Order VII rule 11 of the Code.

C.O. 1740 of 2021 is accordingly dismissed.

Urgent photostat certified copy of this order, if applied for, be given to the parties upon compliance of all requisite formalities.

(Ajoy Kumar Mukherjee, J.)