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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Decided on: 25.05.2023

+ RSA 98/2014, CM APPL. 6303/2014 & CM APPL. 4818/2016

SH AQUEEL UD DIN THR SH SALEM UD DIN,
ATTORNEY

..... Appellant

Through: Mr. D.K. Rustagi and Mr. Vipul
Kumar Sharma, Advocates.

versus

DELHI WAKF BOARD

..... Respondent

Through: Mr. Wajeeh Shafiq, Standing
Counsel for Delhi Wakf Board
with Ms. Ramsha Shan,
Advocate.

CORAM:

HON'BLE MR. JUSTICE NAJMI WAZIRI

NAJMI WAZIRI, J (ORAL)

The hearing has been conducted through hybrid mode (physical and virtual hearing).

1. This Regular Second Appeal impugns the judgment dated 26.10.2013 passed by the learned Additional District Judge, Delhi in RCA No.18/11 whereby the suit filed by the Delhi Wakf Board was decreed in favour of the plaintiff (respondent herein) for recovery of possession against the appellant apropos suit property, which included a mosque and its land admeasuring 0.24 acres, known as Masjid Raqabganj, Block No. 110, Masjid Church Lane, New Delhi. According to the



plaintiff/Delhi Wakf Board, the defendant had unlawfully occupied the wakf property, a mosque and its land. As the Statutory Body established under the Wakf Act, 1984 it asserted itself as the rightful custodian of the suit property and as the successor-in-interest of the Sunni Majlis-e-Aukaf, Delhi, (established under "the Delhi Muslim Wakfs Act, 1943") handed over the property by way of Agreement dated 09.03.1945, by the then Governor General in Council through the Chief Commissioner of Delhi. The property was described and defined in Appendix-A and had for greater clearness been delineated in the Plan attached to the Agreement. The Agreement reads *inter-alia* as under:

“WHEREAS the first party is in control of the property described and defined in Appendix ‘A’ and which has for greater clearness been delineated and shown on the plan enclosed and is desirous of making arrangements so that the same may be conveniently used by Muslims as a mosque, and the second party is prepared to assume control to undertake those arrangements and to ensure that the property is used for the said purpose and for no other, this indentures executed on the day and year first above mentioned to witness the terms and conditions between the parties.

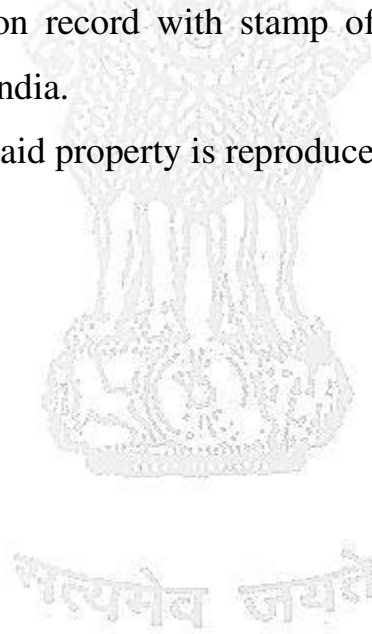
(1) This agreement will be deemed to have come into force on the day and year first above mentioned.

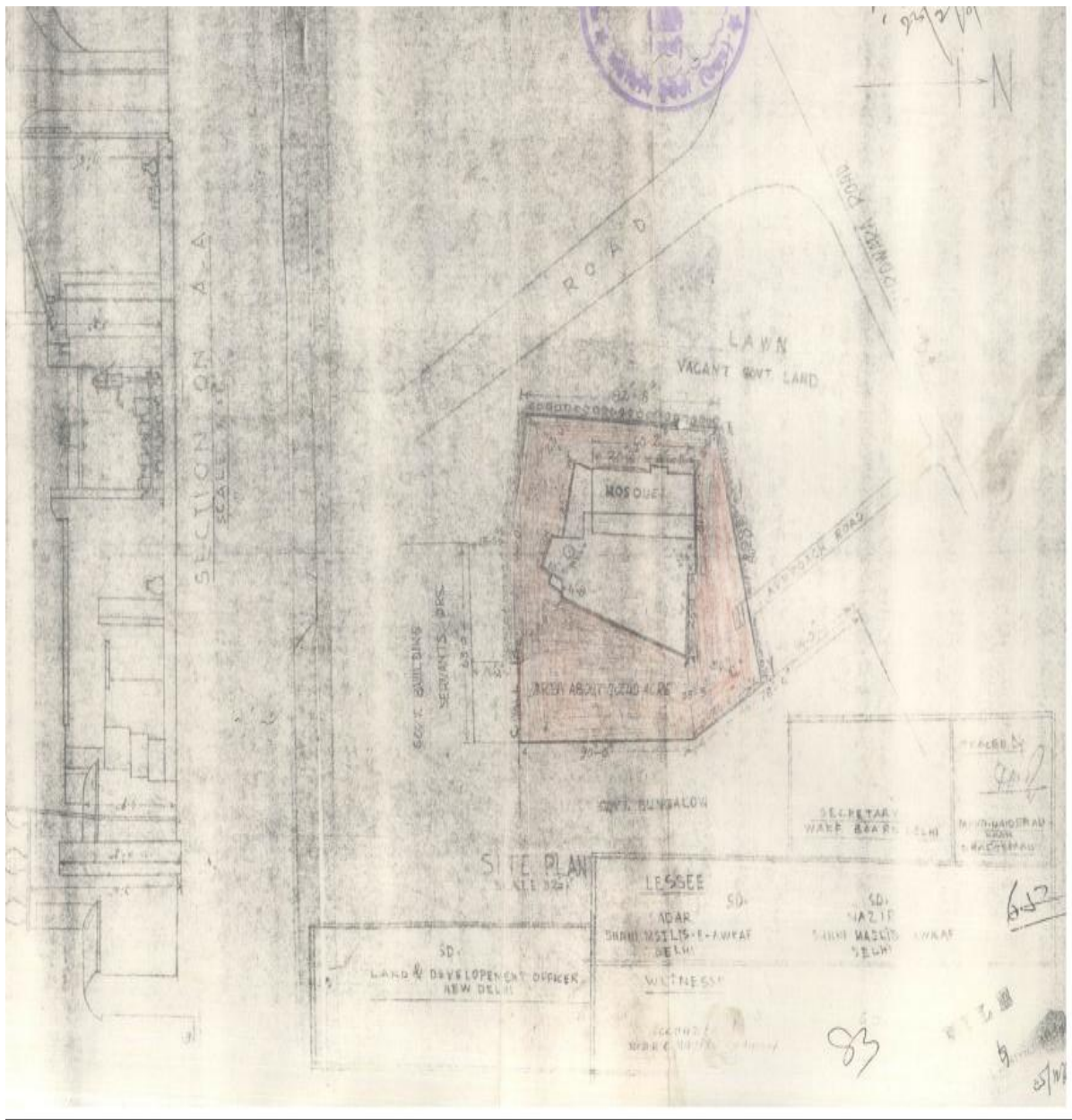
(2) That the second party shall use the said property for religious purposes only as a mosque and the second party shall not be entitled to make any alternations or to carry out any



repairs, in the existing building or buildings or to make any grave or to build any new structure, even if it be purely of temporary nature, without first obtaining the sanction of the first party in writing and that the second party shall use the property only as a mosque in a reasonable manner.”

2. This agreement was registered on 21.03.1945 with the Sub-Registrar Delhi (Nazul), Sub District New Delhi between 11 & 12 hours, bearing Registration no. 271 in Additional Book no. 1, Vol. 95 on pages 19 to 21 on 28th day of March 1945. A copy of the same is on record with stamp of the L&DO, MOUD, Government of India.
3. The Plan of the said property is reproduced hereunder:







4. The aforesaid document: Agreement, Appendix and Plan clearly describe the property as a mosque, which by definition is a wakf as so described under the Act. However, by judgment and decree dated 13.07.2004, the suit was dismissed on the objections of the defendants that: i) it was instituted by a person who was not authorized to file it; ii) the requisite court fee had not been paid; iii) it was barred by limitation; iv) that no survey of the property had been done. Thirteen issues were framed in the suit of which issue nos. 1 to 4,6,7,10 and 12 were decided against the appellant and issue nos. 5,8,9 and 11 were decided against the defendant-the present appellant. The latter had not assailed the findings of the Trial Court nor has he filed any cross objections against the same. In other words, the defendant (the present appellant) has accepted the said findings. In the first appeal (RCA 18/11) against the said dismissal, the suit was decreed in favour of the Wakf Board, primarily on the ground that the dismissal was an error insofar as it did not fully appreciate the agreement between Governor General-in-Council in favour of Delhi Wakf Board's predecessor in-interest. This first appellate judgment, now impugned, has held *inter alia*, as under:

"12 The plaintiff has placed on records agreement dated 21.03.1943 executed by Governor General in Council in favour of Majlis-e-Aukaf Delhi, predecessor in interest of the plaintiff as EX.PW2/3. A perusal of the said agreement shows that Governor General of the Government of India has given 0.24 acre of land to Majlis-e-Aukaf for using the said property as Mosque. It



is provided in the said agreement that property shall not be used for the purpose of residence except with permission of first party in right. The agreement Ex.PW2/3 thus clearly shows that the property in question was allotted by the Government of India to predecessor in interest of the plaintiff for managing the Mosque and thus same was the Wakf Property under the law. The plaintiff has also placed on record certified true copy of the registration of Wakf Sunni Majlis-e-Aukaf with respect to suit property as EX.PW2/7. A perusal of translation of Ex.PW2/7 clearly shows that the property in question has been shown in the name of Sunni Majlis-e-Aukaf District Delhi.

13. The aforesaid fact thus clearly shows that the property in question was not only allotted by Governor General of India vide agreement Ex.PW2/3 but same has also shown in the name of predecessor in interest of the appellant vide EX.PW2/7. The Ld. Trial Court while deciding Issue No. 1 has held that the plaintiff has only proved that property in question was dedicated to Majlis-e-Aukaf by Governor General in Council but it has not been proved that property was notified as a Wakf Property. On that basis .Issue No. 1 has been decided against the plaintiff. The findings by Ld. Trial Court with respect to Issue No. 1 is not sustainable for the simple reason that plaintiff has proved on record by placing copy of the agreement dated 21.03.1945 Ex.PW2/3 that the property in question was allotted by the Government of India for the purpose of Mosque to the Predecessor in interest of the plaintiff and the said property has also been recorded in their name vide document Ex.PW2/7. The Ld, Trial Court has completely ignored the registration certificate Ex.PW2/7 wherein the property in question has been shown in the management of predecessor in interest of plaintiff.

14. The Hon'ble Karnataka High Court in "Mohammad Ghouse Vs. Secretary Karnataka Board of Wakfs,



Bangalore and others", reported as AIR 1986 Karnataka 12 has held that:-

"Section 2 applies to the Act to all Wakfs save as otherwise provided whether created before or after the commencement of the Act. A Masjid or Mosque being a place of worship of God is not capable of human ownership or possession. It belongs to God and is dedicated to his worship. Therefore, a Mosque or Masjid is Wakf as defined in the Act whether it is or not registered or listed. The authority exercising the power under Section 4 and 5 of the Act is bound to register the Mosque as Wakf and enlist it"

15. The Hon'ble Supreme Court of India in Sayed Mohd. Salie Labbai vs. Mohd. Hanifa and Others, reported as 1976 (4) SCC 780 has held that:-

"A mosque becomes consecrated for public worship either by delivery or on the declaration of Wakf that he has constituted it into a Masjid, or on the performance of prayers therein even by one person. Even a vacant place may be dedicated as a mosque without having the appearance of a mosque. Also where a mosque has been in existence for a long time and prayers have been offered therein, the court will infer that it is not by leave and licence but that the dedication complete and the property no longer belongs to the owner."

16. The above legal preposition clearly shows that the existence of the Mosque itself shows that property is a Wakf property irrespective of the fact whether the said property has been registered or listed. The appellant, however, has placed on record document Ex.PW2/7 which clearly shows that the suit property has been shown in the name of Predecessor of the plaintiff. The appellant has also placed on record the copy of Gazette notification dated 19.01.1983 in which the property in question has been registered at serial No. 3. These facts



clearly shows that the Ld. Trial Court has erred in holding that plaintiff has failed to prove that the property in question is a Wakf property.

17. The Ld. Trial Court has also decided Issue No. 2 against appellant/plaintiff. The plaintiff has filed the suit for recovery of possession through Sh. Zahiruddin Siddiqui, Secretary of Delhi Wakf Board. In support of his authorization, plaintiff has placed on record, the Resolution passed by Delhi Wakf Board dated 26.12.1985 in favour of Sh. Zahiruddin Siddiqui as EX.PW2/1 who signed and verified the same and tender evidence. The plaintiff has also placed on record the extract of the meeting held on 22.01.1986 in the office of the plaintiff which was attended by the office bearer of the Delhi Wakf Board Ex.PW2/2. Perusal of the resolution EX.PW2/1 & EX.PW2/2 clearly shows that plaintiff has passed a resolution to file a suit with respect to the properties owned by it and the Board of the plaintiff authorized Sh. Zahiruddin Siddiqui to institute the said suit on their behalf.

18. The Ld. Trial Court has observed that the Resolution Ex.PW2/1 passed in favour of Sh. Zahiruddin Siddiqui is general in nature and no specific resolution has been passed. No doubt that Ex.PW2/1 confers general power to Sh. Zahiruddin Siddiqui to institute suit for and on behalf of Delhi Wakf Board, But that itself cannot be a ground for holding that Sh. Zahiruddin Siddiqui was not authorized to file the said suit. The Ld. Trial Court has further held that the said delegation of power unto Sh. Zahiruddin Siddiqui was not notified in Gazette. He has referred Section 15,16,22,67,68 of Wakf Act as well as Rule 10.

19. Section 22 of Wakf Act 1954 provides that the Board may by general or special order delegates its power to the Chairman or any other member or to the Secretary or other officer or servant of the Board subject to condition or as may be specified in order. Section 22 of the Act



nowhere provides that the said delegations is to be notified in the Gazette. The Ld. Trial Court has relied upon Rule 10 which talks about notification of such delegation. However, it is well settled law that the rules cannot be framed in derogation of the law. Section 22 of the Act nowhere provides that the delegation of power is required to be notified in the official Gazette. The counsel for the respondent has placed on record the Delhi Wakf Rules 1997. Rule 10 talks about election of mutawalli and same is not related to the power conferred by Section 22 of the Act.

20. The aforesaid fact thus clearly shows that the instant suit was filed by duly authorized person for and on behalf of the plaintiff who delegated its power in favour of Sh. Zahiruddin Siddiqui vide Resolution Ex. PW2/1 & EX.PW2/2 and on the strength of that resolution the instant suit was filed for and on behalf of the plaintiff and there is no infirmity in the same. The Ld. Trial has failed to appreciate that the instant suit was filed by a duly authorized person on behalf of the plaintiff on the strength of the Resolution Ex. PW-i/l & 2. The Id. trial court has erred in deciding issue no. 1 & 2 against the appellant.

21. The Ld. Trial court has decided Issue No. 4, 7 and 10 against the appellant. While deciding Issue No. 4, the Ld. Trial Court has held that since plaintiff has failed to prove on record that the property in question is a wakf property, therefore, benefit of notification is not available to the plaintiff and defendants were occupying the suit property since 1948-49 have become lawful owner. As I have already observed while dealing with the issue no.1 that the appellant/plaintiff has proved on record that property in question is a wakf property being used for the purpose of mosque. Thus as per Section 107 of the Wakf Act, 1995 the Law of Limitation is not applicable with respect of the suit property...”

5. The impugned judgment has also concluded that i) the requisite





fixed court fee had been paid as applicable to the suit property in terms of the Notification dated 04.04.1964 issued by Government of India, ii) the onus of issue no. 6 was on the defendant who had pleaded that no surveyor report was prepared but the Trial Court had erroneously held that it was upon the plaintiff to prove that surveyor report was prepared, iii) similar error was committed in the judgment by the Trial Court in deciding issue no. 3 against the plaintiff because Resolution Exhibit PW-2/1 and PW-2/2, placed on record by the plaintiff, clearly showed that a Committee has been formed for instituting and pursuing the suit and it has lawfully done so. All the issues having been found in favour of the plaintiff-Wakf Board, the suit was decreed.

6. The appellant contends that: i) the suit property is not wakf property, ii) he has been in its occupation and unhindered use since 1920 and in any case in its possession since 1947, iii) the property is barred by limitation and iv) he had come in possession and ownership of the property by law of prescription under section 27 read with Article 64 & 65 of the Limitation Act, 1963. Section 27 reads as under:-

“...27. Extinguishment of right to property.—At the determination of the period hereby limited to any person for instituting a suit for possession of any property, his right to such property shall be extinguished...”

7. This appeal has been pending for 9 years. During the course of arguments a statement made on behalf of the appellant has been



recorded on 04.05.2018 as under:

“The learned Senior Advocate for the appellant addressed some arguments with reference to the orders passed by the Trial Court and the First Appellate Court, to contend that the respondent/plaintiff has failed to establish that the suit property is a Wakf. However, he states upon instructions, without prejudice to the appellant’s rights and contentions and fairly so, that the appellant and his predecessors have been taking care of the Mosque as its Mutwalli and have been serving the entire property for many decades and would like to continue to protect and serve the same; they desire that their services be recognized and they be allowed to continue to serve it and some accommodation be provided to for the Mutwalli and his family members. In the same vein, he also submits that as a devout practicing Muslim, the appellant would not question the fact that regular namaaz is carried out in the mosque and the area occupied by the appellant forms a part of the suit property attached to the mosque.

In view of the above, the learned counsel for the parties submit that they will explore possibilities in which the interest of the Wakf will best be secured. In this regard, a meeting of the appellant shall be held with the CEO of the respondent on 08.05.2018 at 4 pm.

List for further arguments on 11.05.2018.”

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(emphasis supplied)

8. What emanates from the above is that i) the appellant represents himself as a mutawalli of the property and not as its owner which it did in the Written Statement, ii) the LR’s of the appellant who pursue this second appeal desire that their services be recognized and they be allowed to continue living in the same accommodation, iii) there is clear admission that



regular *Namaaz* (prayers) was being carried out in the Mosque and iv) the area occupied by the appellant forms part of the suit property, i.e. the mosque. In view of the said admission, this appeal had in effect, become redundant as of that date. All that was left was for the parties to explore a settlement and how the interests of the wakf, i.e. the mosque, would be best secured. The subsequent settlement or lack thereof would not take away the afore recorded admission and its effect. The appellant has clearly admitted that the suit property including the land and the building thereon, i.e. the mosque was a wakf. In effect, the Wakf Board is acknowledged as the custodian and temporal owner of the property. Therefore, the logical sequitur and conclusion would be that, the Wakf Board had a right to file the suit.

9. However, now the appellant wishes to argue the appeal on its merit and says that in the first instance, issues in this appeal would need to be framed.
10. This has already been done on 04.04.2014, when notice was issued in the appeal on the sole ground:
Whether s.107 of the Wakf Act, 1995 would take away the appellant's rights in the suit property, which he claims to be vested in him from 1948-49?
11. The appellant contends that the impugned judgment has erred in holding that since section 107 of the Limitation Act is not applicable to the wakf property, hence, the appellant cannot claim ownership by way of adverse possession over the same,



and the law of limitation would not be applicable and the suit would not be considered as barred by limitation. It held as under:

“...22. Section 107 of The Wakf Act, 1995 reads as under:- Act 36 of 1963 not to apply for recovery of wakf properties— Nothing contained in the Limitation Act. 1963 shall apply to any suit for possession of immovable property comprised in any wakf or for possession of any interest in such property.

23. A perusal of Section 107 of the Act clearly shows that the provision of Limitation Act 1963 are not applicable qua the property of the wakf, hence, the defendant cannot claim ownership by way of adverse possession with respect to the wakf property. The Ld. Trial court has thus failed to appreciate that the suit property is a wakf property thus defendant cannot claim lawful ownership by operation of limitation. The Ld. Trial Court has thus wrongly decided Issue no. 4 in favour of the respondent. The Ld. Trial Court has also wrongly held that the suit is barred by limitation as the law of limitation is not applicable with respect to the suit property. Thus the finding of Ld. Trial Court with respect to Issue No. 7 are also not sustainable...”

12. The conclusion is that the defendant could not claim ownership by way of adverse possession and the bar of limitation would not apply because the suit property was a wakf. Consequently, the findings of the Trial Court on issue no. 4 in favour of the defendant was held to be erroneous; the suit is not barred by limitation, therefore, the finding on issue no. 7 too was unsustainable.



13.If the appellant was asserting his right in the suit property on the basis of adverse possession, it was for him to, in the first instance itself, i.e. at the time of filing of the Written Statement, to stake a claim in the same on the said basis. However, in the written submission he had not done so. He has not claimed his right on the basis of adverse possession since 1920 or from 1947-48. The averments were made by the appellant only in his deposition, in evidence. In the Written Statement, the appellant has sought to assert rights in the suit property as its lawful owner and not on the basis of adverse possession, as under:-

“....2.That the Plaintiff has got no locus standi to file, sign and verify, institute and pursue the present suit and as such the present suit is liable to be dismissed with heavy costs. No Resolution to file, sign and verify the present suit/plaint has been passed by the Property Committee, of the Wakf Board, which committee has been formulated by the Wakf Board in this regard and which Committee only has got the power to file the suit. Moreover, the Plaintiff has got no right, title or interest of whatsoever nature in respect of the property in question, which is residential in nature for the residence of the family members of the Defendant No.1 including a small portion of the same being used and occupied by the Defendant for the purposes of worshipping “ALL MIGHTY ALAH” (sic), within his rights as its lawful owner. The said premises had been in continuous, uninterrupted and unauthorized use and occupation since the year 1920 of Sh. Shafiquddin – the father of the Defendant No.1, Sh. Aqeeluddin within his rights as its owner, and since then the defendant no.1 has been residing in the said premises in question previously with his aforesaid father Sh. Shafiquddin and after his death with his near relations like his own nephew and their family members...”



14. The appellant relies upon the dicta of Supreme Court in *Hemaji WaghajiJat v. Bhikabhai Khengarbhai Harijan* (2009) 16 SCC 517, with respect to rights of persons claiming adverse possession. It has held as under:

"...15. This Court in P. Lakshmi Reddy v. L. Lakshmi Reddy AIR 1957 SC 314, while following the ratio of DebendraLal Khan's case (supra), observed as under:

"4. But it is well settled that in order to establish adverse possession of non-co-heir as against another it is not enough to show that one out of them is in sole possession and enjoyment of the profits, of the properties. Ouster of the non-possessing co-heir by the co-heir in possession who claims his possession to be adverse, should be made out. The possession of one co-heir is considered, in law, as possession of all the co-heirs. When one co-heir is found to be in possession of the properties it is presumed to be one the basis of joint title. The co-heir in possession cannot render his possession adverse to the other co-heir, not in possession, merely by any secret hostile animus on his own part in derogation of the other co-heirs' title. It is a settled rule of law that as between co-heirs there must be evidence of open assertion of hostile title, coupled with exclusive possession and enjoyment by one of them to be knowledge of the other so as to constitute ouster."

The court further observed thus:

"...4. The burden of making out ouster is on the person claiming to displace the lawful title of a co-heir by his adverse possession."

16. In S.M. Karim v. Bibi Sakina AIR 1964 SC 1254, Hidayatullah, J. speaking for the court observed as under:-



"Adverse possession must be adequate in continuity, in publicity and extent and a plea is required at the least to show when possession becomes adverse so that the starting point of limitation against the party affected can be found. There is no evidence here when possession became adverse, if it at all did and a mere suggestion in the relief clause that there was an uninterrupted possession for "several 12 years" or that the plaintiff had acquired "an absolute title was not enough to raise such a plea. Long possession is not necessarily adverse possession and the prayer clause is not a substitute for a plea."

17. The facts of R. Chandevappa & Others v. State of Karnataka & Others (1995) 6 SCC 309 are similar to the case at hand. In this case, this court observed as under:-

"11. The question then is whether the appellant has perfected his title by adverse possession. It is seen that a contention was raised before the Assistant Commissioner that the appellant having remained in possession from 1968, he perfected his title by adverse possession. But the crucial facts to constitute adverse possession have not been pleaded. Admittedly the appellant came into possession by a derivative title from the original grantee. It is seen that the original grantee has no right to alienate the land. Therefore, having come into possession under colour of title from original grantee, if the appellant intends to plead adverse possession as against the State, he must disclaim his title and plead his hostile claim to the knowledge of the State and that the State had not taken any action thereon within the prescribed period. Thereby, the appellant's possession would become adverse. No such stand was taken nor evidence has been adduced in this behalf. The counsel in fairness, despite his research, is unable to bring to our notice any such plea having been taken by the appellant."



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31. Consequently, the appeal being devoid of any merit is accordingly dismissed with costs, which is quantified at Rs.25,000/-.

32. Before parting with this case, we deem it appropriate to observe that the law of adverse possession which ousts an owner on the basis of inaction within limitation is irrational, illogical and wholly disproportionate. The law as it exists is extremely harsh for the true owner and a windfall for a dishonest person who had illegally taken possession of the property of the true owner. The law ought not to benefit a person who in a clandestine manner takes possession of the property of the owner in contravention of law. This in substance would mean that the law gives seal of approval to the illegal action or activities of a rank trespasser or who had wrongfully taken possession of the property of the true owner.

33. We fail to comprehend why the law should place premium on dishonesty by legitimizing possession of a rank trespasser and compelling the owner to loose its possession only because of his inaction in taking back the possession within limitation.....”

15. The jurisdiction on adverse possession has been discussed in the above referred judgment. It is in favour of the Wakf Board because the appellant has failed to even assert his right in the suit property on the basis of adverse possession.

16. The appellant contends that the suit was barred by limitation because the benefit of section 107 of the Wakf Act, 1995 which became applicable from 01.01.1996, would not be available retrospectively for the suit which was filed on 02.01.1986. Reliance is placed upon the dicta of the Supreme Court in



T Kalamurthi and another v. Five Gori Thaikkal Wakf and others (2008) 9 SCC 306, which held that insofar as the right of the appellant is crystallized by way of adverse possession, section 107 cannot have the effect of reviving barred claims. The said judgment reads as under:

“...39. Section 107 lays down that nothing contained in the Limitation Act, 1963 shall apply to any suit for possession of immovable property comprised in any wakf or for possession of any interest in such property. Thus, it can be said that this section virtually repeals the Limitation Act, 1963 so far as the wakf properties are concerned. Therefore, it can be concluded without any hesitation in mind that there is now no bar of limitation for recovery of possession of any immovable property comprised in a wakf or any interest therein.

40. In this background, let us now see whether this section has any retrospective effect. It is well settled that no statute shall be construed to have a retrospective operation until its language is such that would require such conclusion. The exception to this rule is enactments dealing with procedure. This would mean that the law of limitation, being a procedural law, is retrospective in operation in the sense that it will also apply to proceedings pending at the time of the enactment as also to proceedings commenced thereafter, notwithstanding that the cause of action may have arisen before the new provisions came into force. However, it must be noted that there is an important exception to this rule also. Where the right of suit is barred under the law of limitation in force before the new provision came into operation and a vested right has accrued to another, the new provision cannot revive the barred right or take away the accrued vested right.



41. At this juncture, we may again note Section 6 of the General Clauses Act, as reproduced herein earlier. Section 6 of the General Clauses Act clearly provides that unless a different intention appears, the repeal shall not revive anything not in force or existing at the time at which the repeal takes effect, or affect the previous operation of any enactment so repealed or anything duly done or suffered thereunder, or affect any right, privilege, obligation or liability acquired, accrued, or incurred under any enactment so repealed.

42. From the above, it is clear that the right of action, which is barred by limitation at the time when the new Act comes into force, cannot be revived by the change in the law subsequently. In *Ram Murti v. Puran Singh* [AIR 1963 Pun 393], it has been held that Section 107 renders the Limitation Act, 1963 inapplicable to suits for possession of immovable properties comprised in any wakf or any interest therein but the right of a person to institute such a suit which is already barred at the commencement of this Act cannot revive. It was further held that his title is extinguished and a good title is acquired by the person in possession and that where the title of the true owner is extinguished in favour of the wrongdoer, it is not revived by that person again getting into possession. There is no remitter to the old title.

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48. The learned counsel for the respondent relied on *C. Beepathumma v. Velasari* Shankaranarayana Kadambolithaya [AIR 1965 SC 241] in support of his submission that law of limitation was only a procedural law and the provisions existing as on the date of the suit should be applied. Similarly, in *Rafiquennessa v. Lal Bahadur Chetri* [AIR 1964 SC 1511] it was held that where vested rights are affected by any statutory provision, the said provision should normally be construed as prospective unless the provisions related to a procedural matter. In *Mohd. Idris v. Sat Narain* [AIR





1966 SC 1499] it was held that the law affecting procedure was also retrospective. Similarly, in *Quadrat Ullah v. Municipal Board Bareilly* [(1974) 1 SCC 202] , it was held in respect of a provision that even if Section 6 of the General Clauses Act could be held as applicable, the provision was only procedural and hence applicable to pending proceedings. The ratios of the above authorities undoubtedly lay down the correct position of law. Before we express any opinion on the above argument of the learned counsel for the respondents, the ensuing discussion on some of the other aspects is very important.

49. Section 107 provides that nothing in the Limitation Act, 1963 would apply to any suit for possession of immovable property, comprised in any wakf or for any interest in such property. Therefore, for the application of Section 107, on 1-1-1996, the property must be comprised in the wakf or the wakf must have some interest in such properties. If however, the right to property stands extinguished, then Section 107 cannot apply. In the present case, any right which the Wakf had over the property stood extinguished under the Limitation Act, 1908. A similar question came up for consideration of this Court in *Yeshwantrao Laxmanrao Ghatge v. Baburao Bala Yadav* [(1978) 1 SCC 669] wherein this Court in para 5 observed as under:

“5. In our judgment, there is no substance in any of the points urged on behalf of the appellants. The possession of the purchasers was adverse in respect of all the properties at 1-A to 1-D and 1-F to 1-H from the very beginning. By such adverse possession those who had come in possession of these properties had acquired an indefeasible title under the Limitation Act, 1908. It is not necessary to decide in this case as to which of the articles in the First Schedule of the said Limitation Act applied to this case. Whether it was Articles 134, 134-A, 134-B,





142 or 144 the claim had become barred long, long before the year 1955. The effect of Section 28 of the Limitation Act was that right to the property was extinguished resulting in conferment of a title by adverse possession on the persons in possession of the properties concerned. It is well known that the effect of Section 28 of the Limitation Act is not only to bar the remedy but also extinguish the right. The right to the property itself was dead and gone. It could not be revived by a provision like the one contained in Section 52-A of the Act.”

50. In the present case, as noted herein earlier, the trial court had held that the suits were barred under Article 134-B of the Limitation Act, 1908 and, therefore, since the suits were barred under the 1908 Act, in view of Section 31 of the Limitation Act, 1963, Article 96 of the 1963 Act could not be applied. Section 31 was overlooked by the first appellate court. Therefore, in our view, when the right stood extinguished, Section 107 cannot have the effect of reviving the extinguished right/claim. This principle has also been followed in Karnataka Steel & Wire Products v. Kohinoor Rolling Shutters & Engg. Works [(2003) 1 SCC 76].

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53. In view of the above authorities, we are of the view that in the present case, once it is held that the suit for possession of the suit properties filed at the instance of the Wakf were barred under the Limitation Act, 1908, the necessary corollary would be to hold that the right of the Wakf to the suit properties stood extinguished in view of Section 27 of the Limitation Act, 1963 and, therefore, when Section 107 came into force, it could not revive the extinguished rights. The authorities relied upon by the learned counsel for the respondents in this regard in Sree Bank Ltd. v. Sarkar Dutt Roy & Co. [AIR 1966 SC 1953 : (1965) 3 SCR 708] , Dhannalal v. D.P.





Vijayvargiya [(1996) 4 SCC 652 : 1996 SCC (Cri) 816], New India Assurance Co. Ltd. v. C. Padma [(2003) 7 SCC 713 : 2003 SCC (Cri) 1709] and S. Gopal Reddy v. State of A.P. [(1996) 4 SCC 596 : 1996 SCC (Cri) 792] have no application to the facts of the case because in these cases, unlike the present case, there was no extinguishment of the rights.

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59. In view of the above discussions, we are, therefore, of the view that Section 107 cannot revive a barred claim or extinguished rights...”

17. Apropos the issue of limitation, the averments of the Wakf Board as made in its replication, was recorded by the Trial Court in its Order dated 13.07.2007. It reads as under:

“...Plaintiff filed replication to the written statement of Defendant No.1 and denied all the allegations contained in the written statement and reaffirmed the contents of the plaint as correct. It is stated that property committee formed by the Board vide its Resolution dated 22.01.1986 who has filed the present suit. It is stated that the property in suit along with Mosque is under the Management and control of the Delhi Wakf Board, as per the terms of the agreement made on 09.03.1945 between the Governor General in Council through the Chief Commissioner, Delhi and Sunni Majlis-e-Aukaf, the predecessor corporate body of the Delhi Wakf Board. It is stated that suit of the plaintiff is within time as same is protected under the provisions of the Public Wakf's (Extension of Limitation) Act and limitation was extended up to 31.12.1985 by the Parliament as the Courts remained closed from 25.12.1985 to 01.01.1986 and the present suit has been filed along with other suit on 02.01.1986...”



18.From the above, it is clear that the suit was filed within time.

The claim of adverse possession was not available to the appellant/defendant.

19.Insofar as the Government itself recognises that there was a mosque in existence and it was only handed over to the bodies under the statute which were the custodian and manager of wakfs.

20.Lastly, the appellant contends that the assertion of ownership in the property by way of adverse possession was not made and this issue was never determined because at that time the property was not held to be a wakf property. However, if now it is held as a wakf property, then the appellant has a right to have the issue of adverse possession adjudicated. The said contention was only made to be rejected because a person who asserts his right in a property by way of adverse possession must do so in the first instance, there can't be stages to a suit. The suit was filed by the Wakf Board on the basis of ownership as its statutory and lawful custodian and temporal owner of a religious property vested in the Almighty. While the erroneous judgment of the Trial Court was set aside by the impugned order, it was for the appellant to have proved his claim of ownership in the said property. Not having done so, there can be no occasion of revisiting the issue. In any case, as noted



hereinabove, the appellant has admitted in this appeal that the property is a wakf property; that it was and is a mosque; he only desired to be recognized as its mutawalli; that his services be acknowledged and he be allowed to stay in the premises.

21. For any finding in this issue, the pleadings would have to lay the foundation. The appellant's pleadings/Written Statement are devoid of a foundation for claim of adverse possession. The appellant claims himself as the owner of the suit property but has filed no documents or admissible evidence in support of his claim. Simply because the erroneous Trial Court judgment had dismissed the suit because, according to it, the Wakf Board was not able to establish the property as a wakf property, it would not be assumed that the suit property was owned by or belonged to the appellant. His claim to the same has not been tested. This issue was decided in favour of the appellant only by default. The same would not necessarily mean that the property was never a wakf property in the first instance. There being no pleading, foundation or evidence for adverse possession, the erroneous judgment of the learned Trial Court has been rightly overruled by the impugned judgment.
22. The agreement of 9th March, 1945, the Appendix and the Plan do not show that the property is in possession of any third party, let alone the plaintiff and/or their predecessors. To assert his rights, if any, as being in possession of the property under adverse possession, the persons would need to take measures



against the State. A mosque by definition is a wakf. In this case the State itself had recognized the suit property-mosque and land admeasuring 0.24 acres as religious property and had handed it over to Sunni Majlis-e-Aukaf, Delhi, the predecessor-in-interest of the Delhi Wakf Board, as an arrangement “so that the same would be conveniently used by Muslims as a mosque and to ensure that the property is used for the said purpose and for no other in a reasonable manner”. Therefore, the fact of it being a wakf/mosque stood established and could not be questioned. This issue of adverse possession would become redundant.

23. Mr. Wajeeh Shafiq, the learned Standing Counsel for the Delhi Wakf Board submits that the aforesaid Agreement of 1945 was at best, an exercise attributable to the duty of the State under section 22 of the Religious Endowments Act, 1863 which reads as under:

*“22. Government not to hold charge henceforth of property for support of any mosque, temple, etc.—Except as provided in this Act, it shall not be lawful *** for [the Central Government or any State Government], or for any officer of any Government in his official character, to undertake or resume the superintendence of any land or other property granted for the support of, or otherwise belonging to, any mosque, temple or other religious establishment, or to take any part in the management or appropriation of any endowment made for the maintenance of any such mosque, temple or other establishment, or to nominate or appoint any trustee, manager or superintendent thereof, or to be in any way concerned therewith”*



24. The aforesaid registered document executed by the Government show that there was a mosque at the site. The nature of the property being wakf stands established. The nature and character of the mosque and its land, as acknowledged in March, 1945, is protected under the Places of Worship (Special Provision) Act, 1991. The same cannot be altered. Section 4 of the Places of Worship (Special Provisions) Act, 1991, declares, mandates and assures that the religious character of the place of worship, as it existed on the day of 15th Day of August, 1945, shall continue to be the same as it existed on that day. The said provision of law reads as under:

“4. Declaration as to the religious character of certain places of worship and bar of jurisdiction of courts, etc.

(1) It is hereby declared that the religious character of a place of worship existing on the 15th day of August, 1947 shall continue to be the same as it existed on that day.

(2) If, on the commencement of this Act, any suit, appeal or other proceeding with respect to the conversion of the religious character of any place of worship, existing on the 15th day of August, 1947, is pending before any court, tribunal or other authority, the same shall abate, and no suit, appeal or other proceeding with respect to any such matter shall lie on or after such commencement in any court, tribunal or other authority:



Provided that if any suit, appeal or other proceeding, instituted or filed on the ground that conversion has taken place in the religious character of any such place after the 15th day of August, 1947, is pending on the commencement of this Act, such suit, appeal or other proceeding shall be disposed of in accordance with the provisions of sub-section (1).

(3) Nothing contained in sub-section (1) and sub-section (2) shall apply to,—

(a) any place of worship referred to in the said sub-sections which is an ancient and historical monument or an archaeological site or remains covered by the Ancient Monuments and Archaeological Sites and Remains Act, 1958 (24 of 1958) or any other law for the time being in force;

(b) any suit, appeal or other proceeding, with respect to any matter referred to in sub-section (2), finally decided, settled or disposed of by a court, tribunal or other authority before the commencement of this Act;

(c) any dispute with respect to any such matter settled by the parties amongst themselves before such commencement;

(d) any conversion of any such place effected before such commencement by acquiescence;

(e) any conversion of any such place effected before such commencement which is not liable to be challenged in any court, tribunal or other authority being barred by limitation under any law for the time being in force.”



25. Insofar as the aforesaid agreement dated 9th March, 1945, the Government of India, itself accepts, asserts and recognises the suit property as a mosque, its religious character stands established and the said religious character cannot be changed. That being the position, the contention of the appellant that it is not a mosque is of no consequence and is rejected.
26. The court concurs with the appellant's contention that wakf property would be protected under section 108A of the Wakf Act, 1995 which has overriding effect on all other laws which are inconsistent with the Act. Section 108A reads as under:

“108A. Act to have overriding effect.--The provisions of this Act shall have overriding effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in any instrument having effect by virtue of any law other than this Act.”

27. In view of the above, the only question on which notice was issued in this appeal is answered against the appellant and in favour of the respondent/Delhi Wakf Board. The mosque at the site along with its land is a wakf property and its character stands protected under the Places of Worship (Special Provision) Act, 1991. There is no occasion for this court to interfere with the impugned judgment dated 26.10.2013 which has passed the decree of possession in favour of the Wakf Board.



28.The appeal is without merit and is accordingly dismissed.

NAJMI WAZIRI, J

MAY 25, 2023/ *RD/SS/RW*

