

Ct.
No.
652

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C.O. 2965 of 2016
Oriental Bank of Commerce
Vs.
Sk. Iftikaruddin & Ors.

Mr. Motiur Rahman
Md. Nasiruddin
Mr. Janbazuddin
Ms. Aleyah Qurashi **...For the Petitioner**

Mr. Shamit Sanyal
Mr. Arnab Nandi
Ms. Priyakshi Banerjee
Mr. Sabyasachi Roy **...For the Opposite Party No. 1**

Sk. Md. Galib
Mr. Abu Siddique Mallik **...For the Opposite Party/Auqaf Board**

Affidavit-of-service filed on behalf of the
petitioner is taken on record.

In pursuance of a certificate under Section 19(7) of
the Recovery of Debts Due to Bank and Financial
Institutions Act, 1993 (hereinafter called as Act of 1993) in
T.A. No. 184 of 1999 for recovery of a sum of Rs.
15,12,931.29, Recovery Officer started execution proceeding
being TRC 211 of 2001 and in pursuance of the said
proceeding, the immovable property being 42, Nandan Road,
Kolkata – 700 025, amongst other properties was attached
under Section 25 and Section 29 of the Act of 1993 on 11th
April, 2001.

Thereafter, in pursuance of the auction notices, the
sale was conducted on 4th May, 2012 and the property was
sold through public auction on 4th May, 2012 for a sum of

Rs. 87,25,000/- to the proforma respondent No. 1 herein and learned Recovery Officer under the said Act of 1993 was pleased to issue the sale certificate and confirmed the sale in respect of the suit property in favour of the said auction purchaser.

Thereafter, plaintiff/ Opposite party No. 1 as constituted attorney of Sk. Ifikaruddin filed an application before the learned Recovery Officer, DRT No. II, Kolkata but the said application was rejected on 20th November, 2012 on several findings.

Thereafter, the plaintiff/respondent No. 1, filed present suit being Suit No. 6 of 2013 before the Waqf Tribunal, West Bengal for declaration and injunction. In the said suit, the petitioner Bank being defendant No. 2 filed an application under Order VII, Rule 11 of the Code of Civil Procedure praying for rejection of the plaint on the ground that the suit is barred under the relevant provisions of the said Act of 1993 and also in conformity with the provisions of the second and third Schedule to the Income Tax Act, 1961 and Income Tax Rule, 1962 as the Recovery Officer exercised its jurisdiction under Section 25 to 29 of the said Act of 1993.

Learned Counsel appearing on behalf of the petitioner submits that under Section 18 of the said Act of

1993, no Court or other authority (except High Court and Supreme Court) are entitled to exercise any jurisdiction, power or authority in relation to the matters specified in Section 17 to adjudicate the issue in question in the above-mentioned suit and as such learned Tribunal has no jurisdiction to reopen the said issue which has already been decided by the learned Recovery Officer vide orders dated 4th June, 2012 and 20th November, 2012.

He further submits that under the provisions of Section 30 of the Act of 1993 if any person is aggrieved by any order of the Recovery Officer, the said aggrieved person may file an appeal to the Presiding Officer under the said provision but plaintiff/respondent No. 1 herein did not prefer any such appeal but he has filed a fresh suit which is barred by the said Act of 1993.

He further submits that the Waqf Tribunal has no jurisdiction to decide or intervene this suit because the jurisdiction of the Civil Court has been ousted under the said provisions and under Section 83(5) of the Waqf Act, 1995, the Waqf Tribunal shall be deemed to be a Civil Court.

In the plaint, there was no prayer for declaration that property in question is a wakf property at the time of passing impugned order, however thereafter plaintiff preferred an application for amendment of plaint to

incorporate a further prayer for declaration that the suit property belongs to the Waqf Estate namely Sk. Mainuddin Waqf Estate and such amendment was allowed to be incorporated in the plaint by the Tribunal below vide order dated 19th November, 2015.

Learned Counsel appearing on behalf of the opposite party Nos. 1, 9 and 10, who are represented today submits that the Court below was justified in passing the order impugned since the plaintiff/respondent has specifically pleaded in his plaint that the property in question is a Waqf property and under Section 6 of the Waqf Act, 1995, only the Waqf Tribunal has the jurisdiction to decide the question as to whether the property in question is a Waqf Property or not. In such view of the matter, the Tribunal has jurisdiction to try the suit and the order impugned does not call for any interference by this Court invoking jurisdiction under Article 227 of the Constitution of India.

I have considered the submissions made on behalf of the parties and I have also perused the plaint. Needless to reiterate that while adjudicating an application under Order VII, Rule 11, the averments made in the plaint and the documents annexed with the plaint in support of the plaint averments are germane. While adjudicating such application, the Court is not supposed to consider either

averments made in the written statement or any other document filed and relied by the defendant.

On perusal of the plaint it appears that the plaintiff has specifically pleaded in paragraph 4 onwards that the property described in the schedule to the plaint is a Wakf property and by way of registered Deed of Wakf dated 17.1.1930 the wakif appointed himself as the first Mutawalli to the aforesaid wakf estate and the line of Mutawalliship has been specifically mentioned in the said Deed of Wakf dated 17.1.1930, whereby at present the plaintiff by the order dated 10.11.1987, passed by the Board of Wakfs, West Bengal, being the direct descendant of the said Wakif, has been functioning and managing the said Wakf Estate as Recorded Mutawalli thereof.

I also find that along with the plaint, the plaintiff has annexed list of documents and such documents include certified copy of the deed of Wakf dated 17th January, 1930; certified copy of the order dated 10.11.1997, passed by the Board of Wakfs, West Bengal, recording the name of the plaintiff as Mutawalli to the wakf estate and certain other documents in support of the averments made by the plaintiffs in their plaint.

Having considered the facts and circumstances of the case and on the basis of the averments made in the plaint

as well as documents relied in support of the averments, I find that the plaintiff has raised issues in the plaint as to whether the property in question is a wakf property or not. Since such issue involved both questions of law and fact, I find that on the basis of averments made in the plaint and the documents relied by the plaintiffs in support of averments it can not be said without going into the facts of the case, that the suit is barred by law. While deciding the application for rejection of plaint, since I do not have any scope to go to the other documents or averments beyond the plaint, I find that the court below has not committed any gross mistake or illegality in rejecting the defendant's prayer for rejection of the plaint.

In such view of the matter, I do not find that this is a fit case where High Court is required to interfere in the order impugned invoking jurisdiction under Article 227 of the Constitution of India.

The revisional application, being C.O. 2965 of 2016 is thus stands dismissed.

However, this dismissal order will not preclude any of the defendants to prefer any application before the Tribunal below questioning maintainability of the suit or any other similar application subject to other provisions of law.

Suit is pending since 2013 and as such the Tribunal

is further directed to make every endeavour for expeditious disposal of the suit.

Urgent photostat certified copy of this order, if applied for, be supplied to the parties, on priority basis on compliance of all usual formalities.

(Ajoy Kumar Mukherjee, J.)