



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

SECOND APPEAL NO. 222 OF 1992
WITH
CIVIL APPLICATION NO. 3133 OF 2024

Marathwada Wakf Board
through its Administrator, Aurangabad. ... APPELLANT

V E R S U S

Vijaykumar Satyanarayan Agroya
Aged 30 Years, Occu : Agriculturist; R/o
Latur, Tahsil and District Latur. ... RESPONDENT

Mr. S. S. Kazi, Advocate for Appellant.
Mr. B. R. Waramaa, Advocate for Respondent.

CORAM : SANDIPKUMAR C. MORE, J.
JUDGMENT RESERVED ON : SEPTEMBER 30, 2024.
JUDGMENT PRONOUNCED ON: DECEMBER 05, 2024.

JUDGMENT

. The Appellant, who is original Defendant in Regular Civil Suit No. 593/1981, has preferred this Appeal being dissatisfied with the Judgment and Decree passed by the learned 3rd Additional District Judge, Latur (*hereinafter referred to as 'the learned first appellate court'*) on 23/10/1991 in Regular Civil Appeal No. 149/1985. Under the impugned Judgment, the learned first appellate court has reversed the finding of the learned Joint Civil Judge Junior Division, Latur (*hereinafter referred to as 'the learned trial court'*) in the

aforesaid Regular Civil Suit and allowed the said suit by granting permanent injunction against the present Appellant/Defendant for not to disturb or interfere the peaceful possession of the present Respondent i.e. Original Plaintiff over the suit land i.e. land admeasuring 10 Acres 12 Gumthas having Survey No.1/A situated at Latur.

2. The background facts leading to this Appeal are as under :

The Respondent/Plaintiff has filed the aforesaid Regular Civil Suit for restraining the Appellant/Defendant from disturbing peaceful possession over the suit land. It was contended that he purchased the suit land from one Muniroddin Mohammad Kazi of Latur, who was the erstwhile owner of the same. According to the Respondent/Plaintiff, after the abolition of Inams under Hyderabad Abolition of Inams and Cash Grants Act, 1954 (*for short, 'the Act of 1954'*), the suit land was re-granted to Muniroddin Kazi, who by virtue of registered Sale Deed dated 14/8/1975 sold the same to him for consideration of Rs.79,000/-. According to the Plaintiff, the Collector, Osmanabad had held that the suit land was not the service Inam land it was declared as Khalsa from 1/9/1960 under the provisions of Section 3(1) of the Act of 1954. He then contended that the Appellant/Defendant i.e. Marathwada Wakf Board, under notice dated 14/6/1976, made false claim

that the suit land was Wakf land. He further contended that the said notice was replied by him on 25/6/1976, but the Appellant/Defendant continued to intimidate him and started proceeding against him for possession of the suit land under Section 36/B of Wakf Act, 1954 illegally by sending notice dated 26/3/1980. Though the Respondent/Plaintiff requested the concerned Officer of Appellant/Board, but the illegal interference of the Appellant continued. Thus, he was constrained to file suit for perpetual injunction as mentioned above.

The Appellant/Defendant, by filing written statement, denied the ownership of the Respondent/Plaintiff over the suit land and claimed that it was service Inam land and it was in possession of Muniroddin Mohammad Kazi for rendering services to Jamma Masjid, Latur. The suit land was given to Muniroddin Kazi as Royal Grant for Khitabat vide Muntakhab No.653 dated 1298 Fasali. It is claimed by the Appellant/Defendant that the suit land was now belonging to Marathwada Wakf Board and Muniroddin Kazi was only the legal heir of original service Inamdar Badiuddin Naziruddin Kazi. Thus, it is claimed by the Appellant/Defendant that it was service Inam land, and therefore, the enquiry initiated by the Appellant/Board was appropriate. Thus, the Appellant/Defendant had prayed for dismissal of the suit on the ground that the suit land is now the property of Wakf Board.

The learned trial court, after conducting the trial and considering the oral and documentary evidence, dismissed the suit of Respondent/Plaintiff by observing that it was the Wakf property. However, the learned first appellate court has reversed the said finding and by holding the suit land as 'Khalsa land', restrained the Appellant/Defendant from disturbing peaceful possession of the Respondent/Plaintiff over the suit land. Hence, this Second Appeal.

3. The learned Counsel for Appellant/Board, in addition to submissions at Bar, filed written notes of arguments and also relied upon various Judgments as mentioned below :

1. Judgment of Division Bench of this Court in the case of Rama son of Dashrath & others V/s Nuruddin son of Kazi Nasiruddin and another, 1986 SCC OnLine Bom. 302;
2. Judgment of the Hon'ble Apex Court in the case of Santosh Hazari V/s Purushottam Tiwari (Deceased) by L.Rs. (2001) 3 Supreme Court Cases 179;
3. Judgment of the Co-ordinate Bench of this Court in the case of Sambhugir Sansthan Trust, Dhotardi and Ors. V/s Gopal Tulshiram Vidhate and Ors. 2012(1) AIR Bom R 798;
4. Judgment of the Co-ordinate Bench of this Court in the case of Vaijnath Yeshwant Jadhav since deceased by L.R. & Ors. V/s Afsar Begum Nadimuddin Kazi Since deceased by L.Rs. 2010(4) ALL MR 906;

5. Judgment of the Co-ordinate Bench of this Court in the case of Mohammad Khairuddin Mohd. Habibuddin & Ors. V/s Moinuddin Pachulal Shaikh & Ors. in Writ Petition No. 2462/1996 along with other connected Petitions dated 4/7/2008;
6. Judgment of the Full Bench of Allahabad High Court in the case of Moattar Raza and others V/s Joint Director of Consolidation, U.P. Camp at Bareilly and others, 1969 SCC OnLine All 249;
7. Judgment of the Hon'ble Apex Court in the case of Mahila Bajrangi (dead) through L.Rs. And others V/s Badribai Jagannath and another, (2003) 2 SCC 464;
8. Judgment of the Hon'ble Apex Court in the case of Syed Mohd. Salie Labbai (dead) by L.Rs. and Ors. V/s Mohd. Hanifa (dead) by L.Rs. and Ors. AIR 1976 SC 1569;
9. Judgment of the Division Bench of Andhra Pradesh High Court in the case of Allauddin Charities and Zakath Wakf V/s Hameed Ali and others, 2001 SCC OnLine AP 952;
10. Judgment of the Hon'ble Apex Court in the case of Anathula Sudhakar V/s P. Buchi Reddy (dead) by L.Rs. And others, (2008) 4 Supreme Court Cases 594;
11. Judgment of the Co-ordinate Bench of this Court in the case of Export Credit Guarantee Corporation of India Ltd. V/s Annamma Philip & Ors. (2007) 3 Bom CR 766;
12. Judgment of the Co-ordinate Bench of this Court in the case of Shivajirao Eknathrao Kovale and others V/s Syed Mehmood Syed Nizamoddin and others, 2007(5) Mh.L.J. 641; and
13. Judgment of the Division Bench of this Court in the case of Shreyas Infrastructures & Anr. V/s The State of Maharashtra & Ors., in Writ Petition No. 4258/2007 dated 9/10/2017.

4. Shortly, according to the learned Counsel for Appellant/Defendant, the suit land is a Wakf property, and therefore, the Appellant is having every right to initiate proceedings under the provisions of Wakf Act for possession of the same.

5. On the contrary, learned Counsel for the Respondent/Plaintiff supported the Judgment of the learned first appellate Court and claimed that there are ample documents on record to show that the suit land was not the Wakf property, but in fact a Khalsa land and not service Inam land. He pointed out that the Respondent/Plaintiff is in possession of the suit land since long and he has acquired valid and legal title over the same by way of registered Sale Deed. He also relied upon the following Judgments :

1. Judgment of the Hon'ble Apex Court in the case of Tamil Nadu Wakf Board V/s Hathija Ammal, 2001(8) SCC 528;
2. Judgment of the Division Bench of this Court in the case of Kazi Faizuddin Kazi Azimuddin V/s Kashinath Dada and Another, 1966 Mh.L.J. 178;
3. Judgment of the Hon'ble Apex Court in the case of T. V. Ramakrishna Reddy V/s M. Mallappa & Anr., in Civil Appeal No. 5577/2021 [@ Special Leave Petition (C) No. 10621 of 2020] dated 7/9/2021; and
4. Judgment of the Co-ordinate Bench of this Court in the case of Marathawada Wakf Board, through the Secretary V/s Rajaram Ramjivan Manthri & Ors. 2001(3) Mh.L.J. 73.

6. Heard rival submissions, also perused the documents on record along with the impugned Judgment and the citations relied upon by the learned Counsel for rival parties.

7. It is significant to note that the suit filed by the Respondent/Plaintiff is only for simplicitor injunction. The learned trial court has dismissed the suit mainly by observing that Muntakhab of 1298 Fasali disclosed that the suit land was service Inam land for the services of Khitabat and Jama Masjid, Latur. The learned trial court further observed that the documents on record in respect of proceedings before the Collector declaring the suit land as Khairati Inam Land and thereby Khalsa land, were not a genuine. However, the learned first appellate court, by discussing the documents in detail, has concluded that the suit land was not service Inam land, but it was Khalsa land and such dispute had already come to an end after the Government of Maharashtra upheld the decision of the Collector, Osmanabad in File No.78/Atiyat A-1, whereby the revision petition filed by Yasinbi against the Respondent/Plaintiff was dismissed.

8. Further it is also observed by the first appellate court that as to what are the requirements to hold any particular property as Wakf property. Thus, in the light of contrary findings in respect of nature of the suit land,

this Court found that only the following substantial question of law is involved:

“Whether the learned first appellate court not properly appreciated the definition of Wakf in respect of suit land which also includes Mashrut-ul-Khidmat grants?”

Therefore, in the light of documents on record, only this aspect is to be taken into consideration in the present Second Appeal.

9. It is not in dispute that the suit land was sold by Muniroddin Kazi to the Respondent/Plaintiff for the consideration of R.79,000/- under registered Sale Deed dated 14/8/1975. Further it is not at all in dispute that the Respondent/Plaintiff is in possession of the suit land. The question of law involved in this Appeal is only in respect of its nature, *‘whether a Wakf Property’* or *‘re-granted property’*, by declaring it as Khalsa land. The Judgment of Collector, Osmanabad at Exhibit-9 is in respect of the proceedings between the Respondent/Plaintiff and Smt. Yasinbi alias Chandbi w/o Ismailsaheb. Yasinbi had contended in the said proceeding that the Sale Deed executed in favour of the Respondent/Plaintiff was only a nominal one and illegal, since the suit land was service Inam land.

10. The Deputy Collector, Latur under the Telangana Atiyat Enquiries Act, 1952 had passed order dated 13/11/1978 and declared the suit land as

service Inam land. However, the Collector, Osmanabad in the appeal held that the suit land was Khalsa land under Government Circular and it was allotted to Muniroddin Mohammad Kazi on re-grant. It was also observed that it was a Khairati land and was not service Inam land, and therefore, declared to be Khalsa land with effect from 1/7/1979 under Section 3(1) of the Act of 1954.

11. It is significant to note that the order of Collector, Osmanabad was also challenged by Yasinbi by filing revision application before the Maharashtra Government, who under order dated 30/4/1983 held that the suit land was Khalsa land with effect from 1/9/1960 in pursuance of Section 3(1) of the Act of 1954. Thus, the Government of Maharashtra has put to an end to the dispute about nature of land, long back. The said decision remained unchallenged. Further, the revenue entries based on these documents are also there in the record of rights of the suit land. Therefore, these entire proceedings conducted according to law, cannot be declared as not genuine, as held by the learned trial court.

12. Further, the learned first appellate court has also discussed the scope of Section 3 of the Wakf Act, while determining true nature of the suit land. It has been observed that as per Section 3(1) of the Wakf Act, there should be permanent dedication by a person professing Islam of any movable

or immovable property for any purpose recognized by the Muslim Law as pious, religious or charitable. Further the said definition also includes - (i) a Wakf by user; (ii) grants (including mashrut-ul-khidmat) for any purpose recognized by the Muslim Law as pious, religious or charitable; and (iii) a wakf-alal-aulad to the extent to which the property is dedicated for any purpose recognized by Muslim Law as pious, religious or charitable.

13. Thus, there must be a permanent dedication of property by any person professing Islam for the purpose recognized by the Muslim Law as pious, religious and charitable for declaring such property as Wakf property. It is further held that such permanent dedication must be from a living person and not a legal person or State or Nijam. The learned first appellate court, while discarding the contention of the Appellant/Defendant that the suit land is Wakf property, has specifically observed that the grant in respect of the suit land was made by Nijam in favour of the forefathers of Respondent/Plaintiff's vendor in their personal capacity and not as Mutawalli of Jama Masjid, Latur and it was a personal gift given by Nijam to the forefathers of Muniroddin Kazi i.e. Vendor of Plaintiff and the said personal Inam was re-granted in favour of Muniroddin Kazi after passing of the Act of 1954. Thus, it appears that the learned first appellate court has clarified as to how the Muntakhub fell short to establish that it was service Inam land including mashrut-ul-khidmat.

14. Not only this, the learned first appellate court, on the basis of documents on record, has also clarified that as to how the action initiated by the Appellant/Board under Section 36/A of Wakf Act is erroneous. It is clearly held that the Appellant/Board was under obligation to hold an enquiry under Section 15 of the Wakf Act and to give finding that the suit land was Wakf property and then it should have registered the suit land as Wakf property under Sections 25 and 26 of the Wakf Act by incorporating the same in the register of Wakf properties maintained by the Wakf Board under Section 26 of the Wakf Act.

15. It is to be noted that the suit land is not registered in Wakf property register maintained by the Appellant/Board. It is extremely important to note that the Appellant/Board had examined one Mohammad Hasifoddin as its witness, who was in service with the Appellant/Board. However, this witness admitted that he had not seen the gazette of 1954, wherein Government of Maharashtra had published list of properties of Marathwada Wakf Board. He had specifically admitted that the suit land was not mentioned in the gazette of 1980. He further stated that except Form No. IX from revenue record and Muntakhub, there was no document to show that the suit land was service Inam land. Further, it is stated that when the suit property is not registered as Wakf property, the Appellant/Board was not having any

jurisdiction to initiate any action against the Respondent/Plaintiff under Section 36/B of the Wakf Act, 1954.

16. Thus, all these facts have clearly established the fact that the suit land was Khairati land and became Khalsa land under the Act of 1954 and not the service Inam land and thereby Wakf property. Therefore, the finding of the learned first appellate court in respect of nature of the suit land being khalsa land, which is based on the documentary evidence, cannot be faulted with. As such, the only substantial question of law involved in this matter has to be answered in negative.

17. It is established on the basis of documents that the suit land is not a Wakf property, as claimed by the Applicant/Defendant, and therefore, the citations relied upon by the Appellant/Board need no consideration, since they are not applicable to the present set of facts. In view of the same, Second Appeal stands dismissed along with the pending Civil Application No. 3133/2024.

(SANDIPKUMAR C. MORE, J.)

18. After pronouncement of Judgment, the learned Counsel for Appellant/Defendant submits that parties be directed to maintain *status quo* at least for the period of eight weeks, since the Appellant/Board is intending to

challenge the order passed today. However, no such arrangement was in existence during the pendency of Appeal. As such, request made by the learned Counsel for Appellant for maintaining *status quo* stands rejected.

(SANDIPKUMAR C. MORE, J.)

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