

HIGH COURT OF MADHYA PRADESH: JABALPUR

SB: HON'BLE SHRI JUSTICE M.K. Mudgal, Judge

First Appeal No.673/2005

Smt. Yashoda Devi and others.....Plaintiffs

Versus

State of M.P. and others.....Defendants

Shri Vishal Dhagat, learned counsel for the appellants.
Shri Devendra Shukla, learned Panel Lawyer for the respondent
No. 1 & 2.
Shri Shamim Ahmed, learned counsel for the respondent No. 3.

JUDGMENT

(16th December, 2014)

The appellants/plaintiffs have filed this appeal under Section 96 of the Code of Civil Procedure being aggrieved by the judgment and decree dated 11-05-2005 passed by the Court of District Judge, Satna in Civil Suit No. 102-A/02 dismissing the suit filed by the appellants/plaintiffs for declaration of title and permanent injunction holding that the Civil Court has no jurisdiction to entertain the suit as the property in dispute is related to waqf. In this appeal the appellants are referred to as the plaintiffs and the respondents as the defendants.

2. Facts in brief of the case are that the plaintiffs filed the suit regarding agricultural land referred to in Para-2 of the plaint alleging that earlier Sitaram Marvadi who was the owner of the disputed land sold it to Hari Dutt s/o Ishwar Prasad vide registered sale deed dated 08-03-1956 on which basis the purchaser Hari Dutt became owner of the land. Hari Dutt executed a registered gift deed dated 26-12-1974 in favour of the plaintiffs No. 2 to 10. After the death of Hari Dutt, the plaintiffs became Bhoomi Swami of the land and they are in possession of the said land. The said land was unauthorizedly and illegally declared waqf Property vide State Gazette notification dated 25-08-89. No notice was given to the plaintiffs either by Survey Commissioner before converting the disputed land into waqf property or by the Revenue Authority before recording the said property as waqf Property. Hence, the suit for the aforesaid relief was filed before the trial Court.

3. The defendants denying the allegations of the plaint have submitted that the disputed Survey No. 715 is a waqf property which was declared by M.P. State in State Gazette dated 25-08-1989. The said land is entered in the Khasra as Kabristan and it is used for the same purpose. The

defendants have further pleaded that the Civil Court has no jurisdiction to entertain the suit as per Section 85 of the waqf Act 1995 hereinafter is referred to as the Act as the said land belongs to the waqf property.

4. Learned trial Court framed issues and Issue No. 4 was decided as preliminary issue holding that the Civil Court had no jurisdiction to entertain the suit. Hence, in this appeal only one question is being considered whether the trial Court had jurisdiction to entertain the suit or the suit is barred by the provisions of Section 85 of the waqf Act, 1995.

5. Learned counsel for the appellants placing reliance upon Para-20 & 21 of the Hon'ble Apex Court's judgment in the case of **Ramesh Gobindram (D.) through L.Rs. Vs. Sugra Humayun Mirza waqf 2011 (2) SCCD 717 (SC)** and inviting the attention of this Court to the Section 6 & 7 of the Act as well as judgment of this Court in the case of **Amil Hakimuddin and others vs. Abbas Hussain and others 2002 (2) M.P.L.J. Page 50** has submitted that the question in dispute in the instant case can be entertained by the Civil Court as when the disputed property was surveyed by the survey commissioner as per Section 4 and it was declared by the State Government as waqf property vide gazette notification dated 25-08-89 no information or opportunity of hearing was given by the authority to the appellants resultantly the plaintiffs are entitled to challenge the status of the said waqf property before the Civil Court. Learned counsel further emphasizing Para- 20 & 21 of the Hon'ble Apex Court judgment in the case of **Ramesh Gobindram (D.) through L.Rs.(supra)** has argued that in the said case the Hon'ble Apex Court has held that the Civil Court has jurisdiction to entertain a suit pertaining to a waqf property. The learned trial Court did not properly considered the aforesaid provisions and has committed error in dismissing the suit holding that the suit filed by the appellants is barred by Section 85 of the Act.

6. Learned counsel for the respondents opposing the submissions made on behalf of the appellants have submitted that the disputed property was declared as waqf property in the M.P. State Gazette dated 25-08-89 and the plaintiffs did not challenge the said notification then and there. In the instant suit the question of title of the said property is involved. The plaintiffs have filed the suit for declaration of title and permanent injunction whereas the disputed property had also been declared the waqf property as stated earlier. In the said circumstances, the Tribunal has only jurisdiction to settle the dispute. Since, the Tribunal has also power of Civil Court to decide any dispute as mentioned in Section 83 and 85 of the Act. Learned counsels further plead that the judgment of the Hon'ble Apex Court in the case of **Ramesh Gobindram (D.) through L.Rs.**

(supra) does not help the appellants in this case as the said suit was related to a tenancy on the basis of which the Hon'ble Apex Court has held that the Civil Court has jurisdiction to entertain the suit. The said judgment has been considered by the Hon'ble Apex Court in the case of Board of waqf West Bengal and another vs. Anis Fatma Begum and another 2010 (14) SCC 588 and held in Para-17 that the said decision is related to eviction proceedings which can only be decided by Civil Court and not by waqf Tribunal. Counsel further argues that the Hon'ble Apex Court in the case of Board of waqf West Bengal and another(supra) having considered the provisions of Section 83, 3 (r) and 84 of the Act has unequivocally held that where once a property has been found to be waqf property all matters pertaining to that property have to be agitated before the waqf Tribunal. In this manner, the question of dispute in this case is squarely covered by the said judgment. Therefore, the learned trial Court has not committed any error in dismissing the suit holding that the Court had no jurisdiction to entertain the same.

7. Heard the arguments of both the parties and perused the record.
8. Indisputably, in this case the nature of property as waqf property is disputed and still it has not been determined by any competent Court that the said land is waqf property. On bare reading of Section 85 of the Act it is obvious that the section does not exclude the jurisdiction of Civil Court in respect of any or every question or disputes only because the same is related to a waqf or a waqf property. Section 85 in terms provides that the jurisdiction of the Civil Court shall stand exclude in relation to only such matter as required by or under this Act to be determined by the Tribunal. It is true that the Tribunal has exclusive jurisdiction to entertain any dispute, question or other matter relating to a waqf or waqf property. The Sub-Section 1 of Section 83 reads as under :-

The State Government shall, by notification in the Official Gazette, constitute as many Tribunals as it may think fit, for the determination of any dispute, question or other matter relating to a waqf or waqf property, eviction of a tenant or determination of rights and obligations of the lessor and the lessee of such property, under this Act and define the local limits and jurisdiction of such Tribunals.

9. On perusal of the said provision it transpires that normally, the Tribunal has jurisdiction to determine any dispute regarding waqf property. However, it has to be considered in conjunction with the Sections 4, 5, 6, 7 & 85 of the Act as being discussed hereafter.

10. To declare a property as waqf property the scheme has been laid down in Section 4, 5, 6, 7 & 40 of the Act. As per Section 4, a survey for declaration of waqf property shall be conducted by the survey commissioner. According to Sub-Section 4 of Section 4 of the Act, in the course of enquiry a notice shall have to be issued according to the dictates of natural justice to the person concerned before arriving at any conclusion. After making the enquiry, a report shall be submitted to the Board which shall examine the report and thereafter forward it to the State Government for its publication in the Official Gazette as per Section 5 of the Act.

11. As per pleadings of the plaint, the disputed land was purchased by ancestors of the plaintiffs in the year 1956 vide registered sale deed. The plaintiffs further averred that they were not given any notice by the survey commissioner or Board for declaring their property as waqf property and in this regard no enquiry was made in their presence. This Court in the case of *Amil Hakimuddin and others vs. Abbas Hussain and others (supra)* elaborately analyzing the provisions of Section 4, 5, 6, 7 & 40 of the Act has arrived at the conclusion in Para 5 to 11 that if a notice is not given to any person, interested in the property, by the survey commissioner before converting a property into waqf property, the limitation of one year from publication of the list of waqf property shall not be applicable to him for filing a suit before the competent civil jurisdiction. It is only if a notice has been served to him and an objection is raised by him and it is decided against him by the authority i.e. survey commissioner under Sub-Section 4 of the Section 4 & 5 of the Act and a report is made to the Board for converting the property into waqf property, he would have to approach the Tribunal for the redressal of his grievance within one year of the publication of the notification.

12. In the instant case, it has not been pleaded by the respondents that any notice was given to the plaintiffs by the survey commissioner before converting the disputed property into waqf property nor do they have to say that any objection had been raised by the appellants/plaintiffs and it was decided by the authority as per the provisions. The judgment of the Hon'ble Apex Court in the case of *Board of waqf West Bengal and another(supra)* cited by the respondents does not bear any relevance to the case of respondents as in the said case the nature of the property as waqf property was not disputed. Apart from this that suit was not filed to challenge the notification where the property was declared waqf property.

13. The learned trial Court having considered the pleadings of the parties has held in Para 8 to 14 of the impugned judgment that the conversion of the disputed land into waqf land having been declared by M.P. Gazette

notification dated 25-08-89 cannot be challenged before the Civil Court. The trial Court has not properly considered Sections 4, 5, 6, 7 & 40 of the Act in proper perspective in the light of the judgment in the case of *Amil Hakimuddin and others vs. Abbas Hussain and others (supra)*. Hence, the findings recorded by the learned trial Court cannot be held to be appropriate.

14. Having considered the aforesaid facts of the case and the relevant provisions of the Act, it is concluded that the Civil Court i.e. the trial Court has jurisdiction to entertain the instant suit. Therefore setting aside the impugned judgment, the case is remanded to the trial Court with the direction that after recording the evidence of both the parties the case be decided as per provisions of law.

15. The parties are directed to remain present before the trial Court on 19-01-2015.

16. Office is directed to sent back the record to the trial Court promptly along with the copy of the order and ensure that the record reaches the trial Court before the fixed date.

17. Both the parties shall bear their own cost.

**(M.K.Mudgal)
Judge**

MOHSIN/-