

CASE NO.:
Appeal (civil) 16897 of 1996

PETITIONER:
Karnataka Wakf Board

RESPONDENT:
State of Karnataka & Anr. Etc.

DATE OF JUDGMENT: 30/04/2003

BENCH:
S. RAJENDRA BABU, K.G. BALAKRISHNAN & G.P. MATHUR

JUDGMENT:

J U D G M E N T

With

Civil Appeal No. 16898/1996

K.G. Balakrishnan, J.

Both these appeals raise common questions of law; hence they were heard jointly and are being disposed of by a common judgment. Under Section 4 of the Wakf Act, 1954, the Survey Commissioner of the State of Karnataka conducted a survey of Wakf properties existing in the State of Karnataka. After the survey was over, a list of properties of Wakf was prepared under Section (5) of the Act and the same was published in Official Gazette by Notification on 8.7.1976. In the said notification, property comprising CTS No. 34B in Ward No. VI of Bijapur city was included as an item of Wakf property. So also, property bearing Survey No. CTS 34/A2 situated in Ward No. VI in Bijapur city with a building thereon was included as an item of Wakf property. After this notification, the Department of Education, represented through Deputy Director of Public Instructions of the State of Karnataka, filed Original Suit No. 1/1981 on the file of the Additional Civil Judge, Bijapur, against the present appellant Karnataka Wakf board and four others, for declaration that the inclusion of the property bearing CTS No. 34B in Ward No. VI of Bijapur city as Wakf is illegal and void and also for consequential injunction to restrain the defendants from obstructing the plaintiff's possession over this property. Plaintiff had prayed that the notification of the said property as a Wakf property be declared illegal and void. As an alternative relief, the plaintiff sought for declaration of title by adverse possession.

As regards property and the building comprising CTS No. 34/A2 in Ward No. VI of Bijapur city, the Department of Agriculture, represented through Director of Agriculture of the State of Karnataka filed Original Suit No. 4 of 1981 on the file of the Principal Civil Judge, Bijapur praying for a declaration of the title of the plaintiff over this property and sought for further declaration that the notification published on 8.7.1976 was illegal and void. The plaintiff also sought for injunction restraining the defendants from obstructing the plaintiff's possession over the suit property.

In both these suits, the Karnataka State Wakf Board was the first defendant. The other defendants in both the suits are also common. At first, we shall take up the case relating to property comprised in Survey No. CTS No. 34B situated in Ward No. VI of Bijapur city, which is claimed by the Education Department of the Karnataka State. We shall refer to the parties as arrayed in the original suit. The plaintiff contended that this property originally belonged to

the then Government of Bombay. Then the District Local Board, Bijapur purchased this property and the value was fixed at Rs.16,325/-. Later on, the District Local Board handed over this property to the District School Board. In the year 1961, District School Board constructed an office building on that property. After the re-organisation of the States and coming into existence of the State of Karnataka, the District School Board merged into the Department of Education and thus, the property came to belong to the Department of Education, Government of Karnataka and the plaintiff came to know of the notification showing this property as a 'Wakf property' and the plaintiff alleged that it was done at the instance of defendant nos. 2A and 2B and no notice was served on the plaintiff before the publication of such notification.

The first defendant, the Karnataka Wakf Board denied the allegations of the plaintiff. It was contended that the suit property was declared as 'Wakf property' by the State Government and, therefore, the plaintiff is estopped from challenging the validity of that notification and that the plaintiff was given sufficient opportunity to dispute any claim, when the Assistant Commissioner conducted the survey of Wakf properties. Defendants 2A and 2B in their first written statement contended that one Arab preacher 'Peer' Mahabare Khandayat came as a missionary to Deccan area in A.D. 1304 and erected Mecca Masjid at Bijapur. It is alleged that the whole area is known as 'Arkilla area' and the suit property has been treated as 'Wakf property' and is being managed and maintained by 'Sajjadanashin' and defendant nos. 2A and 2B are the 'Sajjadanashins' and managing 'Mutawalli' in respect of the suit property.

We heard learned senior counsel, Shri Salman Khursheed who appeared for the appellant Karnataka Wakf Board and also Mr. Sanjay R. Hegde who appeared for the respondents. As regards Original Suit No. 1 of 1981 filed by the Department of Education, there is satisfactory and convincing documentary evidence to show that this property belongs to the Education Department. Exh. 1 is the certified copy of the order passed by the Government of Bombay dated 29.5.1941 which shows that two acres of land in Bijapur was sanctioned by the Government of Bombay to the District Local Board, Bijapur. The occupancy price was fixed at Rs. 16,325/- and this occupancy price was exempted by the Government. Certain conditions were imposed on the District Local Board for the user of the said property. Exh. P2 is a letter addressed by the Collector of Bijapur to the President of the District Local Board. In both these documents, the property has been described as CTS No. 34B. Exh. P-3 is also an important document, which shows that the property was resumed from the District Local Board by the Government and the same was given to District School Board. Exh. P-4, the property register of 1941 also shows that it was described as the property belonging to the District School Board. These documents are clinching evidence to prove the title of the plaintiff. The defendants could not bring any counter evidence to question the credibility of these documents. Though the defendants had contended that the Arab religious preacher by name 'Peer' Mahabare Khandayat came to India in A.D. 1304 and occupied the entire Arkilla area, there are no documents to show that the suit property was ever in possession of Wakf Board and under the control and management of defendant nos. 2A and 2B.

It is true that the suit property was very close to the Arkilla area, but the defendants 2A and 2B could not produce any documents at least to prove the possession and enjoyment of this property. The second defendant produced Exh. D4 to show that in CTS records of the years 1980, the name of the second defendant was mentioned in respect of the suit property. Except this document, defendants 2A and 2B could not produce any other document. But that by itself is not sufficient to establish the possession of the defendants. The plaintiff by the various documents successfully proved its title and the trial Court rightly held that the plaintiff has got title to this property.

In respect of the property comprising CTS No. 34/4A-2 situated in Ward No. VI of Bijapur city, the State of Karnataka is represented by Deputy Director of Agriculture, who was the plaintiff. The Plaintiff No. 1 was initially designated as Deputy Director of Agriculture, Bijapur city. The Government of Karnataka changed the designation of Plaintiff No. 1 as Principal Agricultural Officer. It was

contended on behalf of the plaintiff that out of the property comprising CTS 34/A-1, an area admeasuring 1600 square yards had been granted by Deputy Commissioner Bijapur by Order No. RD-LBP-SR.167-63 dt. 12.4.1965 on the occupancy price of Rs. 25/- to the District Agricultural Officer. The Plaintiff No. 1 is the Executive Officer/Convenor of the Farmer's forum of Bijapur district. Plaintiff Nos. 2 and 3 are respectively the President and Secretary of the Farmer's forum. The office building was constructed on the suit property in 1964-65 by spending a huge amount. At the instance of defendants 2A and 2B, this property was included in the notification dated 21.4.1976 as 'Wakf' property. No notice was served on the plaintiff before the said notification. Defendants were never the owners in possession of this property and the inquiry under Section 67 of the Karnataka Land Revenue Act was not done properly. Plaintiff was given notice on 27.1.1979 and plaintiff no. 1 appeared and prayed for adjournment to produce the documents, but the Deputy Commissioner rejected his prayer and passed an order holding that the suit property was 'Wakf' property. Plaintiff had issued notice under Section 80 CPC read with Section 56 of the Wakf Act to the defendants before filing the suit.

In this case also, the Defendant No. 1 contended that the suit property was 'Wakf property' and it never belonged to the Department of Agriculture of the State of Karnataka. It was also contended that the plaintiff was not entitled to challenge the notification published by the State Government. Defendants 2A and 2B raised similar contention that religious preacher 'Peer' Mahabare Khandayat came to India in A.D. 1304 and occupied the whole 'Arkilla' area and erected Mecca Masjid and the entire area, including the suit property thus, became 'Wakf property' and for the past 7 centuries, it is being treated as 'Wakf property'.

In Original Suit No. 4 of 1981 the plaintiff relied on P3 document. The Hon. Secretary of the District Farmer's Forum was examined as PW 1. He deposed that an extent of land measuring 1680 square yards was granted to District Farmer's Forum and in the year 1965, the forum constructed a building spending about two and a half lakhs rupees. Exh. P4 is an important document which shows that a grant was made in favour of the Farmer's forum for constructing a training-cum-meeting hall. Exh. P5 is the property register card relating to the suit property issued by the City Surveyor, Bijapur. This shows that the property was in the name of the first plaintiff in the year 1965. The defendants could not produce any satisfactory evidence to prove their title or possession of this property. The defendants sought to place reliance on a book written by T.W. Arnold which states about saint 'Peer' Mahabare Khandayat but the statements made in such books cannot be relied on unless supported by any contemporaneous records and the trial Court as well as the High Court rightly declined to take cognizance of the statements made in the said book. As regards suit property in O.S. No. 4 of 81 also, the plaintiff succeeded in proving the title and possession.

In both the appeals, the appellant has raised a common question that these suits were not maintainable in view of Section 6 of the Wakf Act, 1954 and it was contended that suits of this nature should have been filed within the period of one year from the date of publication of the list of wakf's properties under sub-section (2) of Section 5. The relevant Section 6 of the Wakf Act 1954 reads as follows:-

"6. Dispute regarding Wakfs : (1) If any question arises [whether a particular property specified as Wakf property in a list of Wakfs published under sub-section (2) of Section 5 is Wakf property or not whether a Wakf specified in such list is a Shia Wakf or Sunni Wakf] the Board or the mutawalli of the Wakf or any person interested therein may institute a suit in a civil court of competent jurisdiction for the decision of the question and the decision of the civil court in respect of such matter shall be final :

Provided that no such suit shall be entertained by the civil court after the expiry of one year from the date of the publication of the list of Wakfs under sub-section (2) of Section 5 :

[Provided further that in the case of the list of Wakfs relating to any part of the State and published or purporting to have been published before the commencement of the Wakf (Amendment) Act, 1969 (38 of 1969), such suit may be entertained by the civil court within the period of one year from such commencement.]

[Explanation.- For the purposes of this section and Section 6-A, the expression 'any person interested therein', occurring in sub-section (1) of this section and in sub-section (1) of Section 6-A, shall, in relation to any property specified as Wakf property in a list of wakfs published, under sub-section (2) of Section 5, after the commencement of the Wakf (Amendment) Act, 1984, shall include also every person who, though not interested in the Wakf concerned, is interested in such property and to whom a reasonable opportunity had been afforded to represent his case by notice served on him in that behalf during the course of the relevant inquiry under Section 4.]

(2)	x	x	x	x	x
(3)		x	x	x	x
(4)	x	x	x	x	x
(5)	x	x	x	x	x"

Under Section 6 of the Wakf Act, 1954, it is stated that if any question arises as to whether a particular property specified as Wakf property in the list of Wakfs published under sub-section (2) of Section 5 is Wakf property or not, or whether the Wakf specified therein is 'Shia' Wakf or 'Sunni' Wakf, the Board, or the Muttawalli, or any person interested therein may institute a suit in a civil court within a period of one year and the decision of the civil court shall be final.

According to the appellant's counsel, these suits, having been filed after a period of one year were not maintainable and they were barred by time. This plea was not accepted by the High Court, in our view, rightly, as the plaintiff in both these suits cannot be construed as 'persons interested in the Wakf.' It is pertinent to note that the Explanation to Section 6(1) was added by Act 69 of 1984. The Explanation is to the effect that the expression 'any person interested therein', occurring in sub-section (1) of Section 6 and in sub-section (1) of Section 6-A, shall, in relation to a property specified as Wakf property in the list of Wakfs published, include every person who, though not interested in the Wakf concerned, is interested in such property and to whom a reasonable opportunity had been afforded to represent his case by notice served on him in that behalf during the course of the relevant inquiry. At the time when these plaintiffs filed the suits, they were strangers and they were not interested in the Wakf as such. The Explanation added to Section 6(1) can operate against these plaintiffs only after the insertion of the same in Section 6 of the Act. Prior to the insertion of the Explanation, a third party claiming independent title over a property, which is illegally included as Wakf property was entitled to file a suit within the period provided for under the Law of Limitation. Therefore, the inhibition provided under

Proviso to Section 6 regarding the period of limitation was not applicable to the plaintiffs at the time when they filed the suits.

Both the appeals are without any merit and therefore, these are dismissed with costs.

JUDIS