

ikramuddln and Another Vs. Gurulingappa and Others

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Court : Karnataka Gulbarga

Decided On : Jul-02-2012

Judge : The Honourable Mrs Justice B.S. Indrakala

Appeal No. : Crp. No. 2005 of 2012

Appellant : ikramuddln and Another

Respondent : Gurulingappa and Others

Judgement :

(Prayer: This CRP is filed U/S. 115 of CPC, praying to set aside the Judgment and Decree passed in O.S. No.12/2003 dated 9/7/2010 by the Karnataka Wakf Tribunal Gulbarga Division Gulbarga.)

1. The petitioners herein filed O.S. No.12/2003 on the file of the Karnataka Wakf Tribunal, Gulbarga Division Gulbarga seeking judgment and decree of perpetual injunction against the defendants, restraining them from putting up any construction over the suit property.
2. For the sake of convenience, the parties herein are referred to by their respective rank as arrayed before the Tribunal in the original suit.
3. The plaintiffs inter-alia contending amongst other contentions that they are the persons interested in the subject matter of the suit contending that the respondents/defendants are interfering with the said property which is meant for

Burial Ground of Muslims which is also declared as Wakf property, filed the said suit.

4. Further it is also contended by the plaintiffs that they instituted the suit in the representative capacity, representing the disciples of Darga Hazrat Maulana Qayum Quadri located in Bandarwad area of Aland known as Qayam Pura.

5. The defendants 1 and 2 in their written statement amongst other pleas pleaded that the plaintiffs have no locus-standi to file the suit for bare injunction; the suit property is the Wakf property and except the Wakf Board, none else are entitled to file the suit; the plaintiff cannot sue in the representative capacity; the interest of the suit property is protected by the Wakf Board; the plaintiffs have created and concocted the documents and they have filed the suit only to grab the property etc.

6. Respondent No.3 namely, the Wakf Committee Gulbrga has not chosen to file any written statement, while defendant No.6 filed his written statement, which is duly adopted by the rest of the defendants, inter-alia pleading amongst other pleas that he is one of the owners of the suit land; the suit land is the ancestral property of the said defendants; one Hanmanthrao was his father, he died leaving behind him the defendant No.6 and other defendants; the land bearing Sy. No.403 situated at Aland is inherited by the defendants 4 to 9; it is in their possession and enjoyment; the said Hanmanthrao did not sell any portion of the property to any person neither to the plaintiffs nor to the defendants 1 and 2 etc. and has further pleaded that the suit is filed only to grab the property etc. and sought dismissal of the suit.

7. On the basis of the said pleadings, issues were framed and on framing of issues, the parties chose to adduce the evidence. On behalf of the plaintiffs, PWs.1 to 6 are examined and Exs.P1 to 12 are got marked; on behalf of the defendants, only one witness is examined as DW.1 and Exs.D1 to D14 are got marked.

8. On hearing the arguments of both the counsels, the Tribunal deemed it fit to hold that the plaintiffs did prove that they are in the lawful possession over the suit schedule property as on the date of suit and have also proved the alleged

interference by the defendants by answering issue Nos.1 and 2 framed in that regard in the affirmative. However, the Tribunal held that the plaintiffs are not entitled for decree of injunction as the procedure as contemplated under Order I Rule 8(2) of Code of Civil Procedure is not complied with and also further by observing that the plaintiffs have not explained as to why Wakf Board failed to take any action against the intruders and under what circumstances, they are compelled to file the suit etc. Aggrieved by the said judgment of dismissal of the suit in toto, the plaintiffs preferred this appeal inter-alia contending amongst other contentions that the Tribunal after giving the finding on issue Nos.1 and 2 in the affirmative has erroneously answered issue No.3 in the negative by giving strange and an unacceptable reasons. It is further contended that once the Court has permitted the plaintiffs to file the suit in representative capacity, the question of taking further steps by giving notice to public does not arise and in the absence of any direction given by the Court, the question of plaintiffs issuing the notice to public does not arise and has sought allowing of the petition.

9. Admittedly, the defendants have not questioned the finding given on issue Nos.1 and 2 in the said suit by preferring separate revision petition, nor they have chosen to file any objections in this proceedings. However, as the finding given on the said issue also involves point of law, there is no impediment to revise the said finding given on issue Nos.1 and 2 also.

10. Heard the learned counsel for the petitioners and the respondents.

11. In view of the submissions made, the points that arise for consideration are:

1) Whether the impugned judgment and decree dated 09.07.2010 passed in O.S.No.12/2003 on the file of the Karnataka Wakf Tribunal, Gulbarga Division Gulbarga, is liable to be revised ?

2) What order ?

12. Thus, it is seen that the plaintiffs filed the said suit seeking an order of injunction restraining the contesting defendants from putting up any construction in the land so belonging to the Wakf which is meant for the purpose of Burial Ground

of Muslims.

13. Under Section 3(k)(i) of the Wakf Act, 1995 (for short 'the Act'), the plaintiffs hailing from Muslim religion have right to worship in the said Darga Hazrat Maulana Qayum Quadri of Bandarwad area of Aland and are the persons interested in the said wakf. Likewise, the property in question is enlisted as Wakf property as per Ex.P4, which is the certified copy of the corrigendum issued by the Karnataka State Board of Wakf dated 16.02.1999 describing the same as graveyard (Sunni) Moulana Khyamapura Dargah-aHazrath Moulana Qayam Aland in the property bearing Sy. Old No.403, present H.No.5.1.81, measuring 7100 sq. Yards as belonging to Wakf.

14. The Supreme Court in the case of Shree Gollaleshwar Dev and others v. Gangawwa Kom Shantayya Math and others, reported in AIR 1986 SC 231, at paragraph 10 of the judgement has observed as to who are the persons having interest, as hereunder: "2(10) "Person having interest" includes

(a)

(b)

(c) In the case of a wakf, a person who is entitled to receive any pecuniary or other benefit from the wakf and includes a person who has a right to worship or to perform any religious rite in a mosque, idgah, imambara, dargah, maqbara or other religious institutions connected with the wakf or to participate in any religious or charitable institution under the wakf;"

15. Thus, in the circumstances of the case, what is required to be considered is, as to whether the interested persons have got right to sue with regard to the property of the Wakf on their own in the representative capacity as contended to by the plaintiffs. In this regard it is necessary to look into Section 92 of the Act wherein, it is stated that in any suit or proceeding in respect of a wakf or any wakf property the Board may appear and plead as a party to the suit or proceeding, which in other words presupposes that without Wakf Board being a party, there can be a suit in relation to property belonging to the wakf. As there is no specific

bar as to prevent the persons who are interested in the wakf property from filing any suit to safeguard the interest of the wakf property, it cannot be said that the suit filed by the plaintiffs as persons interested, before the Wakf Tribunal is improper. Further, as already discussed supra, as Wakf Board which is also party to proceeding has not chosen to file written statement, which act of wakf only goes to show that there is a implied permission by the Board of Wakfs for instituting the suit.

16 With regard to the facts of the case, on perusal of the impugned orders it is seen that the Tribunal by considering the evidence placed on record has observed that the extent of land in Sy. No.403 is not in dispute, likewise, the ownership of the said property by one Hanmanthrao S/o Bandappa Biradar Patil and the sale of an extent of 2 acres 7 guntas in the said survey number in favour of one Srimanthrao S/o Shankarrao Patil and others under the registered sale deed dated 26.10.1964 is also not in dispute. The Tribunal has further observed that the boundaries of the property which was so sold as mentioned in the said sale deed discloses that the said property is bounded on to the East by Muslim graveyard and thereafter by public way.

17. Thus, by considering the said facts as placed before the Tribunal, the Tribunal has observed that there exists a Muslim graveyard towards eastern side of the land bearing Sy. No.403 measuring 2 acres 7 guntas. Further it is also observed by the Tribunal that as per the said sale deed marked as Ex.P3, it can be said that Hanmanthrao was the owner of the land bearing Sy. No.403, out of which he has sold 2 acres 7 guntas in favour of four persons as stated therein; however, towards the eastern side of the said land, Muslim graveyard is situated etc. The Tribunal has further observed that the plaintiffs have come up with a case that the said graveyard measures 7100 sq. yards i.e., 142x50 yards, but, they have not stated the boundaries of the said land in their plaint. In this regard, on perusal of Ex.P4 it is seen that the extent of land as well as the boundaries to the said extent of land is described as, bounded on to the East: by Government Road, West: by the land bearing Sy. No.403, North: by Government Road and to the South: by R.M. Maternity home. In the circumstances, it is seen that both the plaintiffs as well as the contesting defendants are agitating being oblivious of said boundaries

each claiming over the land of the another, though it is specifically seen that both the plots are lying adjacent to each other.

18. With regard to issue Nos.1 and 2 though it is seen that the findings given does not call for any interference, as the matter is being remanded for complying with the provisions of Order 1 Rule 8(2) of Code of Civil Procedure, it is also appropriate that the parties may be given further opportunity to substantiate their respective cases with regard to issue Nos. 1 and 2 also if they choose to do so. By giving such opportunity no prejudice will be caused to either of the parties and the dispute between the parties can be adjudicated upon more effectively.

19. Admittedly, the plaintiffs filed the above suit in representative capacity, as such, taking of notice to public at large is mandatory and the plaintiffs at their expenses are required to give notice of the institution of the suit to all persons so interested, either by personal service, or, where, by reason of the number of persons or any other cause, such service is not reasonably practicable, by public advertisement, as the Court in each case may direct. Hence, the matter needs to be remanded to the Tribunal to enable the petitioners to proceed with the suit in accordance with law by getting such notice published with the due permission of the Court regarding institution of the said suit to public at large who are also said to be the persons interested. Thus the revision petition is allowed. The impugned Judgement and Decree dated 09.07.2010 passed in O.S. No.12/2003 on the file of the Karnataka Wakf Tribunal, Gulbarga Division, Gulbarga, is hereby set aside and the matter is remitted to the said Tribunal to consider the entire case afresh by giving due opportunity to all the parties concerned to proceed with the case in accordance with law in the light of the observations made herein above.

In view of allowing of the main petition itself, I.A. 1/2012 filed for temporary injunction does not survive for consideration.

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