

IN THE HIGH COURT AT CALCUTTA
Civil Revision
Appellate Side

Present:

The Hon'ble Justice Md. Shabbar Rashidi
C.O. 602 of 2017

Md. Johiruddin Mallick & Others

Vs.

Akbar Ali @ Sk, Akbar & Another

For the Petitioner :Mr. Syed Shamsul Arefin

:Ms. Nadira Abedin

Hearing concluded on : May 16, 2024

Judgment delivered on : May 22, 2024

Md. Shabbar Rashidi, J

1. The instant Revisional Application is directed against order No. 30 dated July 18, 2016 passed by

learned 4th Civil Judge (Junior Division), Burdwan in Title Suit No. 96 of 2013.

2. By the impugned order, the learned trial court rejected the application filed by the revisionist/defendant seeking rejection of plaint under Order VII Rule 11 of the Code of Civil Procedure.
3. The Opposite parties as plaintiffs, filed a Suit being Title Suit No.96 of 2013 against the revisionists/defendants, for declaration his right and title over specifically demarcated 16 ½ decimals out of 96 decimals in plot No. 163 appertaining to LR Khatian No. 76/1, 324/3, 270/1, 231 etc.
4. According to the case made out in the plaint, the plaintiffs/opposite parties purchased 16 ½ decimals in the suit plot from the legal heirs of its erstwhile owners namely Khaleda Bibi @ Maleka Bibi, Abdul Majid and Amna Bibi. After such purchase, the opposite parties got the suit properties recorded in the LR record of rights and have possessed the same by paying rent thereof. They also installed a mill over the suit plot and acquired

electric connection, trade licence in respect of such mill. The plaintiffs/opposite parties also alleged that the opposite parties claiming the suit properties to be owned by 'Pir' denied the title of the plaintiffs/opposite parties. They also erected bamboo poles creating obstructions in the peaceful enjoyment of the suit properties by the plaintiffs/opposite parties. Hence the Title Suit.

5. The revisionists enter appearance in the suit and took out an application under Order VII Rule 11 of the Code of Civil Procedure seeking rejection of the plaint of the plaintiff/opposite parties on the score that the suit was barred in a civil court in terms of the provisions of Section 85 of the Waqf Act, 1995.

6. It was the case of the petitioners that the suit plot originally belonged to Moulabi Talkai, Kazi Ismail, Kazi Abdul Ohab and Amina Bibi. Their names were duly recorded in the CS record of rights. It was further case of the petitioners that while in possession, the aforesaid owners dedicated the suit properties to 'Allah' abdicating all their secular rights over the suit properties. The

aforesaid owners also applied before the Commissioner of Waqf, West Bengal under the Waqf Act, 1934. After observing all formalities, the suit properties along with some other properties were recorded as Waqf properties in the name of Pir Gangal Shah Ismile Waqf Estate under EC Nos. 5172, 5475 and 5292.

7. The petitioners also submitted in the petition that as there was no specific provision for appointment of successive Mutawallis, the Board of Waqf appointed a Mutawalli Committee for the management of the Waqf properties. The petitioners/defendants were the members of such Mutawalli Committee and were performing their duties as such. The name of aforesaid Waqf Estate was also recorded in the LR record of rights.

8. By taking out the petition, the petitioners/defendants submitted that since, the suit properties were Waqf properties, in terms of Section 85 of the Waqf Act, 1995, civil courts have no jurisdiction to entertain a suit concerning waqf, waqf properties or other matters which is required under the provisions of Waqf Act, 1995, to be

determined by the Waqf Tribunal. Hence, by taking out a petition under Order VII Rule 11 of the Code of Civil Procedure, the petitioners approached the learned trial court for rejection of the plaint in Title Suit No. 96 of 2013.

9. The opposite parties/ plaintiffs contested the said application by filing written objection thereto. They denied that the suit properties ever formed part of Waqf properties. However, the opposite parties/ plaintiffs admitted in their written objection that 29 decimals in the suit plot was recorded in the name of Pir Ismail. It was also recorded in the Waqf register. It was specifically stated that the remaining 67 decimals of the suit plot continued to be secular property out of which the opposite parties were possessing specifically demarcated 16 ½ decimals. The opposite parties/ plaintiffs also contended that the erstwhile owner of the properties never dedicated the suit properties to waqf.

10. It was further contention of the opposite parties/ plaintiffs that the claim of the petitioner/defendants to

the effect that the suit properties are Waqf properties were negated in several litigations in the form of proceedings under Section 144 of the Code of Criminal Procedure.

11. By filing the written objection, the opposite parties/ plaintiffs prayed for rejection of the petition under Order VII Rule 11 of the Code of Civil Procedure filed on behalf of petitioners/defendants.

12. Upon hearing the learned advocate for the parties, the learned trial court noted in the impugned order that the defendant/petitioners filed documents i.e. LR record of rights to show that the suit plot was recorded as waqf property and certain document showing pendency of proceedings before the Waqf Tribunal. On the other hand, the plaintiff/opposite parties also filed LR record of rights as well as the title deeds through which the plaintiffs acquired the suit properties. The impugned order also noted that the trial court found certain discrepancies in the LR record of rights filed on behalf of defendant/petitioners and thereby relying upon the

documents filed on behalf of plaintiff/opposite parties, rejected the petition under Order VII Rule 11 of the Civil Procedure Code.

13. Admittedly, at least a portion of the suit plot belongs to Pir Gangal and is recorded in the LR record of rights as well as waqf register as waqf properties.
14. It is the claim of the plaintiff/opposite parties that a portion of the suit plot belongs to waqf whereas, the remaining portion is secular property which the plaintiffs acquired by several deeds from the erstwhile owners. They have been possessing the suit plot by doing several acts of possession thereon. On the other hand the defendant/petitioners claim the entire suit plot was dedicated by the erstwhile owners and same was recorded as waqf property in the government records as well as records maintained by the board of waqf. The petitioners happen to be members of Mutawalli Committee appointed by the board and in such capacity they have been managing the properties.

15. The plaintiffs filed the original Title Suit on an allegation that the defendants have obstructed their peaceful enjoyment of suit property claiming it to be waqf property. The pleadings put in by the parties also demonstrate that there have been several litigations between the parties over the suit plot at different point of time. The plaintiffs initiated several proceedings under Section 144 of the Code of Criminal Procedure, 1973 being M.P. Case NO. 97 of 2012, M.P. Case NO. 171 of 2012 and M.P. Case NO. 191 of 2013.

16. Moreover, the plaintiffs claim their title over the suit plot through several erstwhile owners whereas the defendants have made out a case that the erstwhile owners of the suit plot whose names were duly recorded in the CS record of rights, dedicated the suit plot to waqf. It is also claimed that it is at their behest and request, the suit plot was recorded in the waqf register as waqf property vide EC Case Nos. 5172, 5475 and 5292. Some of such erstwhile owners are common, through whom,

both the plaintiff and the defendant claim title to the suit plot.

17. Section 85 of the Waqf Act, 1995, specifically ousts the jurisdiction of the civil courts in determining the issues relating to waqf in the following terms:

85. Bar of jurisdiction of civil courts.—No suit or other legal proceeding shall lie in any civil court, revenue court and any other authority in respect of any dispute, question or other matter relating to any waqf, waqf property or other matter which is required by or under this Act to be determined by a Tribunal.

18. The sum and substance of the pleadings put in on behalf of the plaintiff/opposite parties exhibits that as the portion of the suit plot claimed by the plaintiffs are secular properties the civil court has every jurisdiction to adjudicate the suit filed by them.
19. On the contrary, the defendant/opposite parties claim the entirety of the suit plot to be waqf property

having been dedicated by the erstwhile owners. As noted above, some of such erstwhile owners, through whom both the parties claim title to the suit plot, namely Amina Bibi, are common. There are claim and counter claim by the parties the entirety or portion of the suit plot was dedicated to waqf. In that view of the facts, a genuine question arises as to the status of suit property. Is it a waqf property or secular one and which is the authority to decide the status of the property, a civil court or the tribunal?

20. The answer to such questions has been specifically provided in Section 40 of the Waqf Act, 1995 which reads as follows:

40. Decision if a property is waqf property.—
(1) The Board may itself collect information regarding any property which it has reason to believe to be waqf property and if any question arises whether a particular property is waqf property or not or whether a waqf is a Sunni

waqf or a Shia waqf, it may, after making such inquiry as it may deem fit, decide the question.

(2) The decision of the Board on a question under sub-section (1) shall, unless revoked or modified by the Tribunal, be final.

(3) Where the Board has any reason to believe that any property of any trust or society registered in pursuance of the Indian Trusts Act, 1882 (2 of 1882) or under the Societies Registration Act, 1860 (21 of 1860) or under any other Act, is waqf property, the Board may notwithstanding anything contained in such Act, hold an inquiry in regard to such property and if after such inquiry the Board is satisfied that such property is waqf property, call upon the trust or society, as the case may be, either to register such property under this Act as waqf property or show cause why such property should not be so registered:

Provided that in all such cases, notice of the action proposed to be taken under this sub-section shall be given to the authority by whom the trust or society had been registered.

(4) The Board shall, after duly considering such cause as may be shown in pursuance of notice issued under sub-section (3), pass such orders as it may think fit and the order so made by the Board, shall be final, unless it is revoked or modified by a Tribunal.

21. Therefore, in view of the provisions of Section 40 of the Act of 1995, the board of waqf is exclusively infested with the jurisdiction to hold appropriate enquire and decide whether a property is or is not a waqf property which is conclusive if not altered by the waqf tribunal. If that be so, in terms of the provisions of Section 85 of the Act of 1995, determination of the question whether the suit property was a waqf property or not, was necessarily covered by the expression *“or other matter which is*

required by or under this Act to be determined by a Tribunal” stipulated in Section 85 of the Act of 1995.

22. By the impugned order, learned trial court assumed jurisdiction in the suit filed the plaintiff/opposite parties on the score that the plaintiffs claimed the portion of the suit properties allegedly owned and possessed by them, to be secular properties and not a waqf property, hence, it had the necessary jurisdiction to adjudicate the right and title thereto.

23. However, in view of the provisions contained in Section 85 of the Act of 1995, read with Section 40 thereof, the jurisdiction of civil court is specifically ousted in determining the issue whether a particular property is or is not a waqf property. Moreso, the impugned order also does not disclose the discrepancy noted by the learned court in the LR record of rights filed on behalf of the petitioners/defendants.

24. In the aforesaid circumstances, I am of the opinion that learned trial court erred in rejecting the petition under Order VII Rule 11 of the Civil Procedure Code filed

on behalf of the petitioners/defendants. It deserved to be allowed.

25. In the result, thus, the instant Revisional application being C.O. No. 602 of 2017 succeeds. The impugned order No. 30 dated July 18, 2016 passed by learned 4th Civil Judge (Junior Division), Burdwan in Title Suit No. 96 of 2013 is hereby set aside.

26. C.O. No. 602 of 2017 is accordingly disposed of.

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

Md. Shabbar Rashidi, J.