

Mohammad Ghouse Sahib and Others

Vs

Muhammad Kuthubudin Sahib and Others

Civil Appeal No. 693 of 1971

(O. Chinnappa Reddy, R. B. Misra JJ)

05.02.1985

JUDGMENT

CHINNAPPA REDDY, J. -

1. The defendants who had failed in a suit brought under Section 92, CPC are the appellants in this appeal. The appeal however is not against the decree passed in the suit under Section 92, CPC but is directed against the order overruling the defendants' objections in execution proceedings. The objection was that though the suit under Section 92, CPC was filed before the passing of the Wakf Act, the decree had been passed subsequent to the coming into force of the Act and was therefore, void. We see no force in the objection raised by the defendants. It is true that while the Wakf Act came into force in the State of Tamil Nadu in 1956, the decree framing the scheme for the Wakf was passed in 1961 but that does not render the decree void and unenforceable. As we said, this suit had been instituted prior to the coming into force of the Wakf Act. Section 55 of the Wakf Act shows that suits under Section 92 of CPC continue to be maintainable even after the passing of the Act, except that the consent of the Board has to be obtained for the institution of such a suit if the suit is filed by some person other than the Board. Section 57(1) provides that in every suit or proceeding relating to title to wakf property or the right of mutawalli, the court shall issue notice to the Board at the cost of the party instituting such suit or proceeding. Section 57(3) however provides that in the absence of the notice under sub-section (1), any decree or order passed in the suit or proceeding shall be declared void, if the Board within one month of its coming to know of such suit or proceeding, applies to the court in this behalf. Section 59 however provides that in any suit on proceeding in respect of Wakf or any Wakf property by or against a stranger to the Wakf or any other person, the Board may appear and plead as a party to the suit or proceeding. These provisions make it clear that a suit under Section 92, CPC instituted prior to the coming into force of the Wakf Act does not abate on the coming into force of the Act. On the other hand the court is required to issue notice of such a suit to the Board and in the absence of a notice it would be open to the Board to have the decree declared void within one month of the Board's knowledge of the decree. Nothing of this nature has been done. The decree passed in the suit under Section 92, CPC in 1961 has not been questioned by the Board all these years and we do not see how the defendants can possibly object to the execution of the decree now. The appeal is, therefore, dismissed with costs.

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