State of Gujarat

Vs

Allauddin Babumiya Shaikh

Civil Appeal No. 189(N) of 1976

(A. M. Ahmadi, N. M. Kasliwal Jj)

26.07.1990

ORDER

1. The State of Gujarat has questioned the order passed by the Division Bench of the High Court in L.P.A. No. 21 of 1966 whereby the Division Bench came to the conclusion that the disputed land belonged to the Wakf administered by the respondent. Two questions were urged before the Division Bench :

> (i) that the suit filed on the conclusion of the proceedings initiated under Section 37(2) of the Bombay Land Revenue Code, 1879 was not competent as the plaintiff had failed to exhaust all the remedies available under the Code before the institution of the suit; and
>
> (ii) that the presumption under Section 110 of the Evidence Act could not be raised in such cases where the claim is sought to be decided under Section 37(2) of the Code.

So far as the first contention is concerned, reliance was placed on Section 11 of the Bombay Revenue Jurisdiction Act, 1876 which runs as under :

> "11. No Civil Court shall entertain any suit against the government on account of any act or omission of any Revenue Officer unless the plaintiff first proves that previously to bringing his suit, he has presented all such appeals allowed by the law for the time being in force as, within the period of limitation allowed for bringing such suit, it was possible to present."

The contention of Mr. Sachthey was that when the Mamlatdar disposed of the proceedings under Section 37(2) of the Code, he was acting as the delegate of the Collector and, therefore, an appeal against his order could not lie to the Deputy Collector and later to the Collector; it ought to have been preferred directly to the Revenue Tribunal. He submitted that in the instant case against the order of the Mamlatdar, an appeal was preferred to the Deputy Collector and thereafter to the Collector and then to the Revenue Tribunal. It is, therefore, obvious from the above facts that the proceedings were carried to the higher forum of the Revenue Tribunal via the Deputy Collector and the Collector. According to Mr. Sachthey, the proceedings before the Deputy Collector and the Collector were not competent and, therefore, when the proceedings were carried to the Revenue Tribunal they were barred by limitation, since the said proceedings had been filed beyond the prescribed period of limitation. In our opinion, the contention raised by Mr. Sachthey, therefore, does not really fall within the scope of Section 11 of the Bombay Revenue Jurisdiction Act, but

turns on the period of limitation prescribed for filing an appeal to the Revenue Tribunal. No such contention was raised before the Division Bench of the High Court. The Division Bench was, therefore, right in coming to the conclusion that all the remedies provided under the Code were exhausted before the suit was instituted. We, therefore, do not see any merit in this contention.

2. We find from the order of the Division Bench that the land in question has been in the occupation of those in charge of the Wakf since before 1878. The first document on which reliance was placed is of May 24, 1878, Ex. 40. It shows an arrangement with Fakir Kalushah who was inducted on the Wakf property for the management of the mosque as well as the land appertenant thereto. Ex. 41 is a mortgage deed executed by the sons of said Fakir Kalushah on June 4, 1888 which was later redeemed by Ex. 79 dated April 11, 1907. The documents Exs. 42 and 43 are rent notes executed on April 19, 1927 and May 20, 1930. The accounts of the Wakf also show that rent was realised under the rent notes Exs. 42, 43 and 46 and credited to the Wakf. On the basis of this evidence, the Division Bench come to the conclusion that the date of the plaintiffs' entry in the land is shrouded in mystery meaning thereby that the actual date of entry is not known but could be any time before 1878. The Division Bench, therefore, held that the possession of the plaintiffs was long peaceful and lawful and that it lends presumption of title. It is, therefore, obvious from these facts that the plaintiffs were in possession of the land for more than sixty years prior to the institution of the proceedings under Section 37(2) of the Code in 1951. We, therefore, do not se any infirmity in the impugned order of the High Court.

3. In the result we see no merit in this appeal and dismiss the same with no order as to costs.

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