SUPREME COURT OF INDIA

A.P. State Wakf Board Hyderabad

Versus

All India Shia Conference (Branch) A.P. & Ors.

(M. Jagannadha Rao and Y.K. Sabharwal, JJ.)

Civil Appeal No. 1805 of 1989.

02.03.2000

JUDGMENT

M. Jagannadha Rao, J. - Delay condoned.

2. Application for substitution is allowed.

3. This appeal is preferred by the Andhra Pradesh Wakf Board against the judgment of the High Court of Andhra Pradesh in CCC Appeal No. 41 of 1980, dated 15.3.1988. By that judgment, a Division Bench of High Court of Andhra Pradesh confirmed the declaration granted by the Third Additional Judge, City Civil Court, Secunderabad, in O.S. No. 96 of 1963, on 31st August, 1979. The suit O.S. No. 96 of 1963, in which the declaration was granted by the said Civil Court was decreed in favour of the three plaintiffs, the first plaintiff being the All India Shia Conference (Branch) Andhra Pradesh, the second plaintiff being Syed Hassan Pasha and the third plaintiff, being Askar Nawaj Jung, being the President of All India Shia Conference. In the suit, the State of Andhra Pradesh and the Andhra Pradesh Muslim Wakf Board were impleaded as defendant Nos. 1 and 2. But subsequently, at the instance of the Wakf Board, defendant Nos. 3 to 52 were impleaded as defendants.

4. The suit was filed by the plaintiffs (respondents in this appeal) for a declaration that all the institutions going by the name `Panjas, Alams, Ashrukhanas, Asthanas and Imambadas are Shia Wakfs and that the necessary corrections be directed to be made in the concerned notifications and Registers of Endowments by showing the above said institutions as Shia Wakfs. Lists of endowed property from time to time are published in the Gazette. Such a list was published in the Gazette on 28.6.1962. It was averred that while preparing the said list, the Commissioner of Endowments had described some of the above said Shia Wakfs as Sunni Wakfs. It is the case of the plaintiffs that all Panjas, Alams, Asthanas, Ashrukhanas and Imambadas were wrongly classified as Sunni Wakf instead of Shia Wakf in the list published by the Andhra Pradesh Wakf Board. They cannot be Shia in origin inasmuch as they are connected with Muhurrum celebrations and pertain exclusively to Shia faith. It is pleaded that the Sunni section of the Mulsims does not use these institutions nor are they interested in the same. The Alams, Panjas, Asthanas, Ashrukhanas and Imambadas have some of the important features of Shia Sect distinguishing them from the Sunni Wakfs. The Notifications also referred to celebrations on Muharrum,

which is a function exclusively connected with the Shias. The suit was preceded by a notice under Section 56 of the Muslim Wakfs. Act. It is stated that the defendants are likely to repeat mistakes in future Notifications and that the plaintiffs are interested in having rectification made in the Notifications and the Register of Wakfs be modified by showing the above said institutions as Shia Wakfs and not Sunni Wakfs.

5. A written statement was filed by the Wakf Board denying the plaint allegations and contending that the Notifications showing these institutions as Sunni Wakfs was correct and did not require any modification. It was also contended that Panjas, Alams, Ashrukhanas or Imambadas do not exclusively pertain to Shias nor were they exclusively connected with the Muharrum festival observed by Muslims. Sunnis also observe Muharrum in their own way and these institutions were rightly endowed as Sunni Wakfs in the Gazette Notifications dated 19.4.1962 and 28.6.1962.

6. In the suit, the learned Government Pleader appeared for the State and another counsel represented the 2nd defendant, the Muslim Wakf Board. The mutawallies representing defendant Nos. 3 to 52 remained *ex parte*, except defendant Nos. 36 and 41. Therefore, only defendant Nos. 36 and 41 were represented by counsel and therefore the rest of the defendants were set *ex parte*.

7. Defendant No. 36 in his written statement stated that the defendant had filed a suit as O.S. No. 218 of 1963 on the file of the District Magistrate's Court, Tenali for a declaration that the properties were absolute properties of defendants No. 36 and that the suit was decreed on 24.12.1964. The said judgment became final and the suit may be dismissed against him.

8. The 41st defendant contended that the plaintiffs' contention regarding certain institutions being Shia Wakfs are not correct. These institutions are Sunni in origin and Sunni Muslims also observe Muharrum. The institutions, Ashrukhanas, Alams, Asthanas and Imambadas are endowed by the generous Sunnis and they are managed by Sunnis. The Ashkhana Takikonda of Guntur District is a Sunni Wakf which is endowed by ancestors of the present managers who have been performing Muharrum with great zeal.

9. On these pleadings, the trial Judge framed the following issues :

(1) Whether the plaintiffs are entitled to the declaration and correctness as prayed for ?

(2) Whether the said institutions are of significance to both Sunnis and Shias and whether they are not places of worship frequented by Shias as alleged by defendant No. 2 in para 9 of Written Statement ?

(3) Whether the classification of the said institution as Sunni Wakf does not affect the interest of the Shia community ?

(4) Whether the suit is bad on account of misjoinder of cause of action ?

(5) Whether the suit is barred by limitation ?

(6) Whether the notices dated 27.6.63 under Section 56 of the Muslim Wakfs Act is defective as alleged in para 8 of the Written Statement of defendant No. 2 ?

(7) Whether defendant No. 2 is entitled to any separate notice under Section 80 of the C.P.C. ?

(8) Whether the suit is not properly valued and the Court fee paid is insufficient ?

(9) To what reliefs the plaintiffs are entitled ?

(10) Whether the institutions known as Ashrukhanas, Imambadas, Asthanas, Panjas, Alams where Muharrum ceremonies are performed are governed by Sunni law or Shia Law ?

10. The plaintiffs examined five witnesses and marked Exts. A-1 to A-6 while the defendants examined 5 witnesses and marked Exts. B-1 to B-5. Except P.W. 2 who belonged to Machilipatnam, it appears that the other plaintiffs did not belong to any of these villages in Krishna or Guntur Districts where these institutions were located. The position on the side of the defendants does not appear to be any different.

11. The trial Court's finding on issue No. 1 was that the plaintiffs were entitled to a declaration and correction as prayed for; on issue No. 2, it was held that the institutions were of significance especially to Shias even though Sunnis also frequent them; on issue No. 3, it was held that the classification made already affected the interests of the Shia community, on additional issue framed on 2.8.1979, it was held that the institutions known as `Ashrukhanas, Imambadas, Asthanas, Panjas and Alams', where Muharrum ceremonies were performed were governed only by Shia Law and on issue No. 5 it was held that no finding was necessary. On issue Nos. 4 & 8, it was held that there was no misjoinder of causes of action and that the suit was properly valued. On issue Nos. 6 & 7, it was held that notice under Section 56 was not defective and on issue No. 7 that there was proper notice under Section 80 C.P.C. A final declaration was given under issue No. 9 in para 21 as follows :

> "For the various reasons set out in my discussion, the suit is decreed in favour of the plaintiffs granting the declaration to the effect that all the Imambadas, Ashrukhanas, Asthanas, Alams and Panjas are Shia wakfs in this State and they must be classified as such. Secondly, the registers should also be modified or altered to show the correct classification in pursuance of this declaration. This suit is dismissed against D-42 Merman Hussain, who seems to have died eight years earlier to 1977, on his behalf. The suit also is dismissed against D-36 since the plaintiff did not adduce any separate evidence to show that the properties claimed by D-36 are not his personal properties. Considering the prolonged period for which this suit remained pending, and also having regard to have this litigation, I consider the ends of justice would be met with by directing the parties to bear their own costs."

The said Judgment was affirmed by the Division Bench of the High Court.

12. Aggrieved by the said judgment of the Division Bench, the Andhra Pradesh Wakf Board filed this appeal in this Court in the year 1989. In this appeal, we have heard learned senior counsel for the appellants Mr. M.S. Ganesh and learned counsel for the respondent Sri A. Subba Rao. We have also heard learned counsel for the State of Andhra Pradesh. Other respondents in the appeal have not appeared before us.

13. It may not be necessary to go into the matter in detail in view of the order we propose to make in this appeal. The general principles as applicable to Shia and Sunni Wakfs are set out in the Judgment of the Division Bench of the High Court and reference has been made to various standard works on the subject, such as `Mohammedan Law' by Amir Ali, `Principles of Mohammedan Law' by Mulla, `Muslim Law of India' by Dr. Tahir Mohmood, `Outlines of Mohammedan Law' by A.A. Fyzee, `The People of Mosque' by L. Bevan Jones, P.R. Ramanatha Aiyar's `The Law Lexicon' and also a book entitled `Muharram in Hyderabad City' published by Director of Census Operations, Andhra Pradesh.

14. It appears on a reading of the various passages from the above books that, *generally*, such institutions known by the above said names are Shia Wakfs, but it is not an absolute rule. There are certain exceptional cases where such institutions are also established by Sunni Sect and can be Sunni Wakfs. On a reading of the passages from the above said books, the highest that can be said in favour of the plaintiffs-respondents is that, generally such institutions can be Shia Wakfs, though it is possible that some of them can also be Sunni wakfs. But we are of the view that, on the basis of the above proposition, it cannot be straight away declared that every institution known as `Asthanas, Imambadas, Ashrukhanas or Alams' is a Shia Wakf and that it cannot be a Sunni Wakf. Whether any particular institution even if it is known by the above names, is *prima facie* a Shia Wakf or not is a matter upon which it will be necessary to lead evidence in relation to each one of the institutions. se institutions would have a *prima facie* status as Shia Wakfs, though some of them could also be Sunni Wakfs in exceptional cases. Inasmuch as such a declaration cannot be granted on the basis of the evidence led, the plaintiff has to adduce satisfactory evidence in relation to each of these institutions covered by the Notifications. In the above situation, it has not become possible to give any positive finding one way or the other and we have found difficulty in giving a satisfactory finding as to whether these defendant institutions are governed by Shia Law or Sunni Law. The question then is, what is the procedure to be followed in such a situation, particularly in the light of the fact that the suit had been filed in the year 1963 ?

17. We are of the view that instead of dismissing the suit, the justice of the case requires that the parties are to be given an opportunity to produce evidence so as to enable this Court to render a satisfactory judgment on the issue as to whether these institutions are Shia Wakf or Sunni Wakfs. In this context, the decision of this Court in ***K. Venkaramaiah v. A. Seetha Rama Reddy & Ors., AIR 1963 SC 1526*** is apposite. In that case, this Court observed that under Order 41, Rule 27(1)(b) of the C.P.C., whenever Court felt difficulty in deciding an issue, the Court could direct additional evidence to be adduced, treating the need for evidence as a `requirement of the Court' for pronouncing a satisfactory Judgment. It would be "other substantial cause" in Order 41, Rule 27(1)(b). This Court in that judgment observed as follows :

> "In view of what the High Court has stated in this passage it is not possible to say that the High Court made the order for admission of additional evidence without applying its mind. It seems clear that the High Court though, on a consideration of the evidence, in the light of the arguments that had been addressed already before it that it would assist them to arrive at the truth on the question of Seetharam Reddy's age if the entries in the admission registers of the school were made available. It was vehemently urged by the learned counsel for the appellant that there was such a volume of evidence before the High Court that it could not be seriously suggested that the Court required any additional evidence "to enable it to pronounce judgment." The requirement, it has to be remembered, was the requirement of the High Court, and it will not be right for us to examine the evidence to find out whether we would have required such additional evidence to enable "us" to pronounce judgment. Apart from this, it is well to remember that the appellate Court has the power to allow additional evidence not only if it require such evidence "to enable it to pronounce judgment" but also for "any other substantial cause". There may well be cases where even though the Court finds that it requires additional evidence "to enable it to pronounce judgment", it still considers that in the interest of justice something which can pronounced its judgment in a more satisfactory manner. Such a case will be one for allowing additional evidence "for any other substantial cause" under Rule 27(1)(b) of the Code".
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> Such requirement of the Court is not likely to arise ordinarily unless some inherent lacuna or defect become apparent on an examination of the evidence. It may well be that the defect may be pointed out by a party, or that a party may move the Court to supply the defect, but the requirement must be the requirement of the Court upon its appreciation of the evidence as it stands."

18. The further question then is whether we should remit the matter to the High Court or to the City Civil Court, Secunderabad by setting aside both the judgments which proceeded on the same line of reasoning. Inasmuch as the suit is of the year 1963, we are not inclined to send back the matter to the trial Court, but we could send back the matter to the High Court for a fresh decision in the matter after receiving further evidence as stated above.

19. But then inasmuch as the various defendants institutions are located in the Krishna and Guntur Districts of Andhra Pradesh, we do not think that this is a fit case where the City Civil Court, in Andhra Pradesh should be directed to receive evidence and give its finding under Order 41, Rule 25 C.P.C. to be sent upto the High Court. Instead, we think that one of the Sub Judges of Machilipattanam and similarly one of the Sub Judges in the Guntur District or one of the Additional District Judges in Guntur and Krishna could receive the evidence in this case under the provisions of Order 41, Rule 28 C.P.C. The provision reads as follows :

> "Order 41. Rule 28 : *Mode of taking evidence* : Wherever additional

> evidence is allowed to be produced, the Appellate Court may either take such evidence, or direct the Court from whose decree the appeal is preferred, or any other Subordinate Court, to take such evidence and to send it when taken to the Appellate Court".

The above rule permits the appellate Court to direct the trial Court or any Subordinate Court to record evidence and send up the evidence to the appellate Court.

20. Thus it is open to the High Court, being the Appellate Court to call for additional evidence from the City Civil Court, Secunderabad which decided the suit or call for such evidence from any other Court subordinate to the High Court. The said Court can submit the same to the High Court for the purpose of the decision on the issue in the CCCA No. 41\1980, in the High Court.

21. We, therefore, set aside the impugned judgment of the High Court and remit the matter to the High Court for fresh decision on the question as to whether each of the defendant-institutions was Sunni Wakf or Shia Wakf. For the aforesaid purpose the High Court is requested to pass an order under Order 41, Rule 28 C.P.C. directing the District Judges in each of these Districts of Krishna and Guntur, either by themselves or by transferring the matter to one of the Additional District Judges or Sub Judges in the respective Districts, to receive additional evidence oral or documentary, to be adduced by the plaintiffs and defendants on the question whether each of the institutions represented by the defendant Nos. 3 to 52 is a Shia Wakf or Sunni Wakf. Initially, the High Court may therefore call for this evidence from the concerned District Judges leaving it open to the District Judges to allocate this work to one of their Additional District Judges or to a Sub Judge in the respective District, as the case may be. It will be for the said Judges to whom the above function is allocated to receive the additional evidence as stated above and after receipt of such evidence, to forward the evidence so received to the High Court for use in the City Civil Court Appeal above mentioned.

We hope that the above exercise will be completed as early as possible. After receipt of the evidence from the said Court, the High Court is requested to dispose of the appeal in the light of the evidence already recorded and also such evidence as may be sent by the said Courts in the respective Districts, as stated above.

The appeal is allowed and the matter is remitted to the High Court as stated above. There shall be no order as to costs.

Appeal allowed.