

SUPREME COURT OF INDIA

T. Kalamurthi

Vs.

Five Gori Thaikal Wakf

Civil Appeal No.4988-4991 OF 2000

(A.K.Mathur and Tarun Chatterjee)

01/08/2008

JUDGMENT

TARUN CHATTERJEE,J.

1. By judgment and decree dated 19th of November, 1999, the High Court of Judicature at Madras dismissed SA Nos. 972 and 973 of 1986. Subsequent to the dismissal of the second appeals, by an order dated 24th of April, 2000, two C.M.P. Nos. 3200 and 3201 of 2000 filed in S.A.Nos.972 and 973 of 1996 were also rejected.

2. Feeling aggrieved, the appellants have filed the aforesaid four appeals against the common judgment and decree dated 19th of November, 1999 of the High Court of Judicature at Madras and also against the order dated 24th of April, 2000 passed in C.M.P. Nos.3200 and 3201 of 2000. By the aforesaid common judgment, the High Court had dismissed three second appeals of the defendants/appellants and affirmed the judgment of the first appellate court which had set aside the judgment of the trial court dismissing the suit for recovery of possession and mesne profits filed at the instance of the plaintiffs/respondents. It may be kept on record that another Second Appeal

No.1242 of 1986 was also dismissed by the High Court by the same judgment passed against which no SLP has been filed in this Court and, therefore, no reference is made to the same in this judgment.

3. The brief facts leading to the filing of these appeals are stated here.

4. Iynthukori Thaikkal Wakf (5 Kori Durga Wakf) (in short "the Wakf") had instituted two suits in the Court of District Munsif, Vridachalam for a decree for recovery of possession of the suit properties as fully described in the plaint and for mesne profits. The Wakf/respondents claimed in their plaint that the suit properties belonged to them whereas the appellants before us alleged in their written statement that the suit properties were not Wakf properties but they were private properties of one Syed Kasim Saheb and others. After the death of Syed Kasim Saheb and others, their legal heirs and representatives had sold the suit properties to the appellants. The appellants further alleged that the suits were barred by limitation under Article 134-B of the Limitation Act, 1908. An additional plea was also taken by the appellants that they had also perfected the title in respect of the suit properties by way of adverse possession. On the basis of the aforesaid pleadings by the parties, the trial court, by a common judgment, held that the suit properties belonged to the Wakf/respondents. On the question of limitation and adverse possession, the trial court held that the suits of the Wakf/respondents were barred by limitation and appellants had perfected the title by adverse possession and on such findings, the trial court dismissed the suits filed by the Wakf/respondent. While dismissing the suit on limitation, the trial court held that in view of Section 31 of the Limitation Act, 1963, the claim could not be revived under the provisions of the Limitation Act, 1963. Feeling aggrieved by the common judgment of the trial court, appeals were filed before the first appellate court, which confirmed the findings of the trial court on the question whether the suit properties were Wakf properties or not. Therefore, two concurrent findings of the two courts below were arrived at on the question of the suit properties being Wakf properties. But on the question of limitation and adverse possession, the first appellate court had set aside the findings of the trial court holding that the suits were not barred by limitation under Article 96 of the Limitation Act, 1963 and also that the appellants had failed to prove that they had acquired title to the suit properties by way of adverse possession. On the aforesaid findings, the first appeals were allowed and both the suits were decreed.

Against the decisions of the first appellate court, the appellants preferred three appeals in the High Court, namely, Second Appeal Nos. 972/86, 973/86, and 1242/86. During the pendency of these second appeals, the Wakf Act, 1995 (in short, "Wakf Act") came into force with effect from 1st of January, 1996. Section 107 of the said Act provides that nothing contained in the Limitation Act, 1963 shall apply to any suit for recovery of possession of immovable property comprised in any Wakf or for possession of any interest in such property. The High Court in second appeals also affirmed the concurrent findings of the two courts below that the suit properties were Wakf properties. However, on the question of limitation, the High Court by the common judgment, which is under challenge in this Court, held that in view of coming into force of Section 107 of the Wakf Act, the bar of limitation no longer existed and also held that in view of Section 112 of the Wakf Act, such provision also applied to the pending proceedings and upon the aforesaid findings as

noted herein above, the appeals were dismissed. So far as the plea of adverse possession is concerned, it was held by the High Court in the common judgment that the same was not available to the appellants. After the pronouncement of the judgment in SA Nos. 972 and 973 of 1996, two applications being CMP Nos. 3200 and 3201 of 2000 were filed before the High Court for bringing on record the legal heirs and representatives of one of the appellants V.T. Duraiswami, who had passed away during the pendency of the second appeals. The applications for bringing on record the legal heirs and representatives of the deceased, V.T.Duraiswami, one of the appellants, were rejected by the High Court. As noted herein earlier, against the common judgment and decree dated 19th of November, 1999 of the High Court passed in the aforesaid second appeals and the order dated 24th of April, 2000 passed in CMP Nos. 3200 and 3201/2000 rejecting the applications for setting aside the abatement, Special Leave Petitions, which after grant of leave, were heard by us in presence of learned counsel for the parties. Before the High Court, the following two questions were raised -

(i) Whether the suit properties were originally Wakf Properties or alternatively whether they ceased to be Wakf properties as the defendants/appellants and their predecessors had perfected their title by way of adverse possession?

(ii) Whether the suits filed by the Wakf/respondents were barred by limitation and, if so, whether Section 107 of the Wakf Act could have the effect of reviving a barred claim? So far as question No.1 is concerned, that is to say, whether the suit properties were Wakf properties or not, we find that the courts below concurrently held that the suit properties were Wakf properties. Accordingly, we need not dilate on question No.1 as the said findings of fact were concurrently found by three courts below and nothing has been brought before us to show that the said findings of fact were either perverse or arbitrary. Apart from that, the learned counsel appearing on behalf of the appellants did not raise any serious submission questioning the aforesaid findings of fact arrived at by the courts below.

5. In view of our observations made herein above and in the absence of any serious challenge to the aforesaid findings of fact, we do not see any ground to interfere with such concurrent findings of fact of the courts below.

6. Let us now come back to the important question that was raised in the form of question No.2, that is to say, whether the suits filed by the Wakf/respondents were barred by limitation and whether the plea of adverse possession was available to the appellants in the suit filed by the Wakf/respondents. So far as the question of limitation is concerned, we may reiterate, as noted herein earlier, that the trial court on consideration of the evidence and other materials on record, held that in the facts and circumstances of the present case and on the interpretation of Article 134-B of the Limitation Act, 1908 and Article 96 of the Limitation Act, 1963 and also relying on several decisions of this Court, rejected the contention of the Wakf/respondents and held that the suits were barred by limitation under Article 134-B of the Limitation Act, 1908. However, in appeal, the first appellate court had

taken a contrary view and held that the suits were filed within 12 years of the appointment of the last Muthavalli and accordingly, relying on Article 96 of the Limitation Act, 1963, it held that the suits were not barred by limitation. It was also held by the first appellate court that the alienations of the Wakf properties were by the persons who were holding them in trust and, therefore, on its understanding of the scope of Section 10 of the Limitation Act, 1963 held that the alienations did not meet the legal requirements for a plea of adverse possession against the trust. Keeping in mind the findings of the trial court and the appellate courts, we may note that the High court, in the impugned judgment, has not given its opinion whether Article 96 of the Limitation Act, 1963 would apply or Article 134-B of the Limitation Act, 1908 would apply in the present case. Without going into this, the High Court instead held that in view of the coming into force of the Wakf Act, the bar of limitation no longer exists and has held that the provision to that effect viz., Section 107 of the Wakf Act would also apply to pending proceedings.

7. In the backdrop of these findings arrived at by the courts below, let us now deal with the submissions made by the learned counsel for the parties before us.

8. According to the learned counsel for the appellants, the suits were clearly barred under the Limitation Act, 1908 and once it has been found that the suits already stood barred under the Limitation Act, 1908, Section 107 of the Wakf Act, which came into force w.e.f. 1.1.1996, could not have the effect of reviving the barred claim. Relying on Section 6 of the General Clauses Act, 1897 the learned counsel for the appellants argued that when Section 6(a) clearly spells out that repeal shall not revive anything not in force or existing at the time at which the repeal takes effect, the barred claim could not have been revived. He had drawn our attention to Section 112 of the Wakf Act and submitted that when Section 112 of the Act also lays down the provision similar to the one laid down under Section 6(a) of the General Clauses Act, the barred claim could not have been revived. The learned counsel for the appellants further contended that the High Court erred in merely advert to Section 107 of the Wakf Act holding that it applied to pending proceedings as well. On the other hand, he submitted that the High Court ought to have examined whether Section 107 had the effect of reviving a claim already barred under the Limitation Act, 1908. He also contended that the trial court was fully justified in holding that the claim was barred under Article 134-B of the Limitation Act, 1908 and that the reliance placed by the appellate court on Article 96 of the Limitation Act, 1963 was totally wrong in view of Section 31 of the Limitation Act, 1963. Therefore, the learned counsel for the appellants contended that under Article 134-B of the Limitation Act, 1908, the suits were clearly barred by limitation and, therefore, Section 107 of the Wakf Act could not have the effect of reviving the barred claim as it is settled law that the right to sue is barred under the law of limitation in force before the new provision comes into operation and the vested right accrued thereon, the new provision could not revive the barred claim or alternatively shall take away the accrued vested right, if any. In support of this contention, the learned counsel for the appellant strongly placed reliance on Section 6(a) of the General Clauses Act, 1897 and Section 112 of the Wakf Act.

9. So far as the plea of adverse possession is concerned, the learned counsel for the appellants further submitted that since the suit properties were accepted by the State Government as the

individual properties of the appellants considering them as absolute owners of the same for which the State Government had granted individual pattas to the appellants in respect of the suit properties, the courts below were wrong in decreeing the suit on the ground that the suit properties were Wakf properties and that plea of adverse possession of the appellants in respect of the same could not be accepted. It was further contended that since the suit properties were the subject matter of alienation as early as in 1927 and there had been successive alienations upto 1975, it must be accepted that the original Inamdars and their legal heirs had perfected the title in respect of the suit properties by adverse possession even prior to 1927. It was also argued by the learned counsel for the appellants before us that the High Court went wrong in declining to allow the application for impleadment of the legal representatives of the deceased V.T.Doraiswami when there were genuine reasons for the delay.

10. Relying on the aforesaid submissions, the learned counsel for the appellants submitted that the judgment of the High Court in the second appeals should be set aside and the suits should be dismissed.

11. The submissions made by the learned counsel for the appellants were seriously contested by the learned counsel for the respondents. The learned counsel for the respondents had seriously relied on the findings of all the courts below that the suit properties were Wakf properties. It was further argued by the learned counsel for the respondents that the appeals had abated against V.T. Duraiswami and Kaliammal and, therefore, the judgment of the High Court in second appeals had become final. According to him, the vested rights could be taken away by the repealing act expressly or by necessary implication. In this connection, attention was drawn to Sections 59A and 59B of the Wakf (Tamil Nadu Amendment) Act, 1982 (Act 34 of 1982) which safeguards the right to recover property of the Wakf and overrides the Limitation Act from 15th of August, 1947. The learned counsel further contended that if Section 107 of the Wakf Act was not given a retrospective effect, ambiguity and contrary results would follow. He submitted that Section 6 of the General Clauses Act, 1897 cannot come to the aid of the appellants in the present case because a different intention is manifested in Sections 107 and 112 of the Wakf Act. Elaborating this submission before us, the learned counsel for the respondents submitted that the test as enumerated by this court was whether the scheme of the repealing act and its aims and objects and section abrogated or destroyed the vested rights, if any, and not that the repealing act made alive past actions. Accordingly, it was submitted that the Wakf Act only kept alive the appurtenant etc. or administrative actions in its negative sense but destroyed that vested rights in positive terms by enacting Sections 107 and 112 of the Act and by Sections 59A and 59B of the Wakf (Tamil Nadu Amendment Act), 1982.

The learned counsel for the respondents also submitted the following:

1) An appeal is a continuation of a suit.

- 2) The court in appeal was bound to take notice of the supervening events and the changes in law
- 3) All procedures in law are retrospective in operation and;
- 4) Section 107 of the Wakf Act must be said to be retrospective in operation.

12. Having heard the learned counsel for the parties and after considering the judgments of the courts below including the materials on record and the statutory provisions, namely, provisions of Wakf Act, Limitation Act, 1908 and 1963, the moot question that needs to be decided in this appeal is whether Section 107 of the Wakf Act is retrospective in operation or whether it can have the effect of reviving barred claims. Section 107 of the Wakf Act was made inapplicable to any suit for recovery of Wakf properties under the Limitation Act, 1963. As noted herein earlier, the Wakf Act was enacted at the time when the second appeals of the appellants were pending. Before we decide the question as posed, we may note the relevant provisions of the different Acts which are as follows :-

Since Section 107 of the Wakf Act is the bone of contention of both the parties, we may first reproduce the said section which is as under :-

"107. Act 36 of 1963 not to apply for recovery of wakf properties.--- Nothing contained in the Limitation Act, 1963 shall apply to any suit for possession of immovable property comprised in any wakf or for possession of any interest in such property."

Section 6 of the General Clauses Act is also crucial and relevant for rendering a proper decision in this appeal and the same is reproduced as under: -

"6. Effect of repeal. Where this Act or any [Central Act] or Regulation made after the commencement of this Act, repeals any enactment hitherto made or hereafter to be made, then, unless a different intention appears, the repeal shall not-

- a) revive anything not in force or existing at the time at which the repeal takes effect, or
- b) affect the previous operation of any enactment so repealed or anything duly done or suffered thereunder ; or
- c) affect any right, privilege, obligation or liability acquired, accrued, or incurred under any enactment so repealed, or

d)

e)

Section 112 of the Wakf Act is another important provision and is reproduced as under: -

"112. Repeal and savings. (1) The Wakf Act, 1954 (29 of 1954) and the Wakf (Amendment) Act, 1984 (69 of 1984) are hereby repealed.

(2) Notwithstanding such repeal, anything done or any action taken under the said Acts shall be deemed to have been done or taken under the corresponding provisions of this Act.

(3) If immediately before the commencement of this Act, in any State, there is in force in that State, any law which corresponds to this Act that corresponding law shall stand repealed:

Provided that such repeal shall not affect the previous operation of that corresponding law, and subject thereto, anything done or any action taken in the exercise of any power conferred by or under the corresponding law shall be deemed to have been done or taken in the exercise of the powers conferred by or under this Act as if this Act was in force on the day on which such things were done or action was taken."

13. Some provisions of the Limitation Act, viz., Article 134-B of the Limitation Act, 1908, Article 96 of the Limitation Act, 1963 and Section 31 of the Limitation Act, 1963 are also very relevant for our purpose and therefore the said provisions are reproduced as under: - Article 134 -B of the Limitation Act, 1908 - By the manager of a Hindu, Muhammadan or Budhist religious or charitable endowment to recover possession of immovable property comprised in the endowment which has been transferred by a previous manager for a valuable consideration---- the Limitation is 12 years---- The period shall run from the death, resignation or removal of the transferor. Article 96 of the Limitation Act, 1963- By the manager of a Hindu, Muhammadan or Budhist religious or charitable endowment to recover possession of movable or immovable property comprised in the endowment which has been transferred by a previous manager for a valuable consideration. ----The period of limitation is 12 years---The period shall run from the date of death, resignation or removal of the transferor or the date of appointment of the plaintiff as manager of the endowment, whichever is later.

Section 31 of the Limitation Act, 1963-

"31. Provision as to barred or pending suits, etc. -Nothing in this Act shall,

a) enable any suit, appeal or application to be instituted, preferred or made, for which the period of limitation prescribed by the Indian Limitation Act, 1908 expired before the commencement of this Act; or

b) affect any suit, appeal or application instituted, preferred or made before, and pending at, such commencement."

14. Although we have already briefly noted the findings of the courts below, we feel it proper to undertake a more extensive examination. The trial court, while dismissing the suits for recovery of possession and mesne profits arrived at the following findings:-

"1. Since Syed Nabi and Syed Mahdoom had sold the suit properties by virtue of Ex. B.13, B.16, B.6 and B.42 dated 2.4.1927, 3.4.1927, 27.4.1927 and since this case was not filed within 12 years after their death, the suit was barred by limitation.

2. The argument that the sale deeds were executed by the then muthavallis not only for self but also on behalf of their minor children viz., Syed Kasim, Syed Kulu and Syed Tipu and since the case was filed within 12 years of the death of such children, the suit was not barred by limitation but could still not be accepted because it could neither be assumed nor was it pointed out by the plaintiffs that these children were also muthavallis with their fathers.

3. The argument that after the death of the muthavalli in 1922, no muthavalli was appointed till 12.6.1966 on which date the plaintiff was appointed as the muthavalli and the suit was filed within 12 years of such appointment and since the High Court in a decision had stated that a case would not be affected by limitation if no muthavalli was appointed in place of the former muthavalli, these suits would not be barred by limitation, could not also be accepted.

4. It was evident from the exhibits that the defendant purchased the suit properties in the years 1927 and 1930 respectively and paid the kist etc. to some who enjoyed that property absolutely. Since the suit was barred by limitation and the defendants and their forefathers enjoyed the same for more than 12 years, the plea of adverse possession had to be accepted."

15. In contradistinction to the above findings of the trial court, the first appellate court, while decreeing the suits, arrived at the following findings: -

1. The judgment in C.V.Purushotham vs. Chinna Jeevangar Mutt Tirupati [AIR 1975 AP 153] could not be relied upon because it was delivered by a different High Court and reliance had to be placed in the case of The Special Officer for Wakfs, Madras Vs. Subramanyam & Ors. [1976 Vol.89 Law Weekly 467] and S.A. 800/72 and S.A. 452/72 which stated that suits could be filed within 12 years from the date of appointment of Muthavalli.

2. The Public Property (Extension of the Limitation) Act 1959 had extended the time limit in cases like this so that these cases could be filed until 31.12.1970 if the transfers were made between 14.8.1947 and 7.5.1954.

3. As per section 31 of the Limitation Act, 1963, it was evident that if the plaintiff's right had not been affected, he could file the suit. It had been stated that the expiry date which was made like that under the Limitation Act, 1908 could not be renewed as per the new act and that if the time limit had been reduced as per the Limitation Act, 1963, it would not be applicable to the pending suits. The recitals found in Article 96 of the Limitation Act, 1963 had to follow absolutely and straining the language would not be permissible since it would cause hardship to others later. Therefore under Article 96 of the Limitation Act, 1963, since the suit had been filed within 12 years from the date of appointment of muthavalli, the suit was not barred by limitation.

4. No right of adverse possession existed because the suit properties were wakf properties and, therefore, the Inamdars were trustees of the same.

5. Even if the defendants/appellants had been in possession of the properties and paying patta for many years or transferred the patta in their own name, they could not get the right of adverse possession in view of Section 10 of the Limitation Act, 1963.

16. The High Court, while affirming the decisions of the first appellate court, except the finding no. 5, arrived at the following findings: -

1. Section 112 of the Wakf Act shows that the provisions of the Act were intended to apply to pending proceedings also because under Section 112, any action taken under the repealed act would

be deemed to have been done or taken under the corresponding provisions of the present act.

2. Under Section 6 of the General clauses act, the repeal of an enactment can not affect any right, privilege, obligation or liability acquired or incurred under the repealed enactment, but this provision can not be resorted to if a different intention appeared and therefore, Section 6 could not be applied to every repealed provision or enactment regardless of the intention of the legislature and the language used in the repealing provision, the object of the repeal and the existence of a savings clause.

3. By enacting Section 107, the intention to destroy the plea of limitation was made very clear. Reliance in this regard was placed on the observations made in State of Punjab Vs. Mohar Singh Pratap Singh (AIR 1955 SC 84).

4. In procedural matters, there was no vested right and hence any amendment to the procedural matters would apply to pending proceedings.

5. In view of the principles laid down in various authorities and considering the objects behind the Wakf Act, Section 107 would apply to pending proceedings also for the following reasons:

(a) Section 2 of the act holds that the act shall apply to all Wakfs created either before or after the commencement of the act.

b) A separate tribunal is constituted for determining disputes regarding Wakfs under Section 83.

c) The jurisdiction of civil courts are barred under section 85 of the act, in respect of disputes determinable by the tribunal.

d) Section 112(2) specifically mandates that anything done or action taken thereon shall be deemed to be taken under the corresponding provision of the act. In this context, the expression, 'anything done or any action taken in the exercise of the powers' had been held not to mean or include an act done by a person in contravention of the provisions of the act but as intended only to keep alive the official actions, rules and notifications issued and done in the exercise of the powers conferred under the repealed provisions vide judgment of this Court in State of Punjab vs. Mohar Singh Pratap Singh's case (supra). Therefore, in the absence of a specific provision expressly saving or protecting

the pending legal proceedings, it would be incumbent on the courts to give full effect to the provisions of the act.

e) The act, being welfare legislation, passed with the intention of protecting trust properties, ought to be considered in a manner consistent with upholding the said objective. The objective of the legislature was to destroy the rights of trespassers and imperfect the alienees claiming adverse title against the trust properties and as such, no distinction can be made between the pending proceedings and proceedings to be commenced afresh. The various provisions of the Act are self contained code intended to affect pending proceedings also.

f) In the suits filed by the occupants or the wakfs prior to the coming into force of the act, the wakfs will not be entitled to raise the defence under Section 107 whereas any suits filed or to be filed belatedly after coming into force of the Act, the wakf would be entitled to raise the said defence and the occupants would be deprived of their right to raise the plea of adverse possession. The legislature could not have intended such a fortuitous circumstances to be the determinative factor to decide the rights of parties.

g) It is also possible that in a pending suit, the wakf withdraws the suit with liberty to file it afresh on the same cause of action and thereby in the fresh suit, confer upon itself the advantages of Section 107 of the Act. Therefore, the interpretation to be placed should be purposeful meaningful and reasonable not giving rise to anomalies and unintended situations.

h) The issue of limitation in reference to disputes between the parties under the Wakfs Act, 1954 is also dependant upon a consideration of the Public Works(Extension of Limitation) Act, Central Act 29 of 1959 and the subsequent Wakf (Tamil Nadu Amendment) Act, 1982 in and by which Section 59-A and 59-B were inserted in the Central Act of 1954. As a result of Section 112(3) of the Wakf Act, all the State Acts corresponding to the present act stand repealed which would add to the complexity of interpreting the rights of the parties, if no retrospective effect is given.

17. The decision of the appellate court was based on an erroneous application under Section 10 of the Limitation Act, 1963 which was not applicable or relevant to the issues involved in the case and therefore to that extent, the finding of first appellate court was liable to be set aside.

18. We have already noted the conclusions of the findings arrived at by the three courts below including the High Court, as noted herein earlier. From the findings arrived at by the High Court, it is clear that in view of the coming into force of the Wakf Act, the said Act did not advert to the question of applicability of the Limitation Act, 1908 or the Limitation Act, 1963 on a peculiar facts of this case because according to the High Court, the question of limitation ceased to exist after

Section 107 of the Act as it applied to pending proceedings also. As noted herein earlier, the High Court did not decide whether the suits were barred by Limitation. However, in the present case, it would be expedient that before we determine whether or not Section 107 applies to pending proceedings also thereby making the bar of limitation non est, we should decide whether Article 96 of the Limitation Act, 1963 would apply or Article 134B of the Limitation Act, 1908 would apply in order to ascertain whether the suits actually stood barred by limitation. It was the findings of the first appellate court that the suits were filed within the limitation period as prescribed under Article 96 of the First Schedule to the Limitation Act, 1963 whereas the Trial Court had held that the suits were barred by limitation in view of Article 134B of the Limitation Act, 1908.

19. From a careful consideration of the above aspect of the matter, in our view, the first appellate court was not justified in holding that the suits were filed within the period of limitation as prescribed under Article 96 of the Limitation Act, 1963. In our view, the view taken by the trial court was the correct one and Article 134B of the Limitation Act, 1908 would apply. We have carefully noted two articles viz. Article 96 of the Limitation Act, 1963 and Article 134B of the Limitation Act, 1908 and we find that they are different from each other in so far as while under the 1908 Act, 12 years was to run from the death, resignation or removal of the transferor, under the 1963 Act, the said period of 12 years was to run from the date of death, resignation or removal of the transferor or the date of appointment of the plaintiff as manager of the endowment, whichever was later. Section 31 of the Limitation Act, 1963 provides that nothing in the Limitation Act, 1963 shall enable any suit, appeal or application to be instituted, provided or made, for which the period of limitation prescribed by the Limitation Act, 1908 expired before the commencement of this Act. Section 31 of the 1963 Act assumes great importance which was completely overlooked by the first appellate court. Admittedly, in the present case, the suits were filed long after the death of the Muthavalli and the suit properties were transferred as far back as in 1927, therefore, the suits were barred under the Limitation Act, 1908. In other words, in the present case, the period of limitation prescribed under the 1908 Act had already expired before the commencement of the 1963 Act and, therefore, in view of the clear mandate of Section 31 of the Limitation Act, 1963, suits could not have been instituted by taking the plea that the same was within the limitation under the 1963 Act.

20. Such being the view, we have already expressed on the question of limitation, let us now examine whether Section 107 of the Wakf Act can have the effect of reviving a barred claim.

21. The Limitation Act, 1908 was amended on the basis of the third report of the Law Commission and Limitation Act 36 of 1963 was enacted. The Wakf Act, 1954 as originally enacted did not touch the question of limitation. Suits to recover immovable properties comprised in a Wakf were governed by Articles 134A and 134B of the Limitation Act, 1908 inserted by Act I of 1929 and the residuary Articles 142 and 144 of the said Act. Articles 94 and 96 of the Limitation Act, 1963 correspond to Articles 134A and 134B of the Limitation Act, 1908, while Articles 64 and 65 of the Limitation Act, 1963 correspond to Articles 142 and 144 of the Limitation Act, 1908. The corresponding old law was Section 66G of the Wakf Act, 1954 inserted by the Amendment Act 69 of 1984.

22. Section 107 lays down that nothing contained in the Limitation Act, 1963 shall apply to any suit for possession of immovable property comprised in any Wakf or for possession of any interest in such property. Thus it can be said that this section virtually repeals the Limitation Act, 1963 so far as the Wakf properties are concerned. Therefore, it can be concluded without any hesitation in mind that there is now no bar of limitation for recovery of possession of any immovable property comprised in a Wakf or any interest therein. In this background, let us now see whether this section has any retrospective effect. It is well settled that no statute shall be construed to have a retrospective operation until its language is such that would require such conclusion. The exception to this rule is enactments dealing with procedure. This would mean that the law of limitation, being a procedural law, is retrospective in operation in the sense that it will also apply to proceedings pending at the time of the enactment as also to proceedings commenced thereafter, notwithstanding that the cause of action may have arisen before the new provisions came into force. However, it must be noted that there is an important exception to this rule also. Where the right of suit is barred under the law of limitation in force before the new provision came into operation and a vested right has accrued to another, the new provision cannot revive the barred right or take away the accrued vested right. At this juncture, we may again note Section 6 of the General Clauses Act, as reproduced herein earlier. Section 6 of the General Clauses Act clearly provides that unless a different intention appears, the repeal shall not revive anything not in force or existing at the time at which the repeal takes effect, or affects the previous operation of any enactment so repealed or anything duly done or suffered thereunder, or affect any right, privilege, obligation or liability acquired, accrued, or incurred under any enactment so repealed.

23. From the above, it is clear that the right of action, which is barred by limitation at the time when the new act comes into force, cannot be revived by the change in the law subsequently. In *Ram Murthi & Ors. Vs. Puran Singh S/o Attra Singh & Anr.*[AIR 1963 Punjab 393], it has been held that Section 107 renders the Limitation Act, 1963 inapplicable to suits for possession of immovable properties comprised in any Wakf or any interest therein but the right of a person to institute such a suit which is already barred at the commencement of this Act can not revive. It was further held that his title is extinguished and a good title is acquired by the person in possession and that where the title of the true owner is extinguished in favour of the wrong doer, it is not revived by that person again getting into possession. There is no remitter to the old title.

24. Let us also see Section 112 of the Wakf Act dealing with Repeal and Savings. Sub-Section (1) repeals Wakf Act 1954 and the Wakf Amendment Act 1984. Sub- Section (2) provides that notwithstanding such repeal, anything done or any action taken under the said acts shall be deemed to have been done or taken under the corresponding provisions of this Act. In the present case, there is no specific provision which stipulates that Section 107 has any retrospective effect. If we look at Section 112, it is clear that Sub-Section (2) is the saving clause and provides validity to the actions taken under the repealed act. As noted hereinafter, the High Court has proceeded on the assumption that a reading of Section 112 of the act leads to the conclusion that the provisions of the act are intended to apply to pending proceedings also. With regard to Section 6 of the General Clauses Act, it has observed that although it is true that under that section, the repeal of an enactment will not affect any right, privilege, obligation or liability acquired or incurred under the

repealed enactment, but this provision cannot be resorted to if a different intention appears and therefore, Section 6 cannot be applied to every repealed provision or enactment regardless of the intention of the legislature and the language used in the repealing provision, the object of the repeal and the existence of a savings clause. We agree with the observations of the High Court with regard to Section 6 of the General Clauses Act, but we are afraid, we are not inclined to accept the reasoning of the High Court that Section 112 shows that the Act had a retrospective effect. Section 112 (2) of the Act is a saving clause and saves the actions already done or taken under the repealed enactment. This cannot lead to the conclusion that the Act has been given a retrospective effect. Rather, if seen properly, this saving clause in the absence of any specific provision providing retrospective effect to the Act, reinforces the suggestion that Act has no retrospective effect. This is because it saves actions already taken under the repealed enactment, i.e., it provides that the new provisions will not affect the validity of the actions already taken or in other words, it says that there will not be a retrospective effect. We do not mean to suggest that from a saving clause, the retrospectivity or no retrospectivity can be judged but we are of the view that the reliance placed by the High Court on Section 112, which is a saving clause, to hold that the act has a retrospective effect is not proper. In our view, Section 112 is in conformity with Section 6 of the Act which also provides that a repeal shall not affect any right, privilege, obligation or liability acquired or incurred under the repealed enactment unless a contrary intention appears. Thus under Section 6 of the General Clauses Act and Section 112 of the Wakf Act, prior operation of the repealed enactment or the legal proceedings or remedies instituted, continued or enforced etc. are saved. Thus on this ground, we are of the opinion that the High Court was not justified in relying on Section 112 of the Wakf Act to hold that the act has retrospective effect. The High Court has relied on certain cases and we would advert to them in the later part of this judgment while answering the applicability of Section 6 to the present case in further detail.

25. There is another aspect of the matter. The learned counsel for the respondents has contended that an appeal is only a continuation of the suit and the High Court was bound to consider any change in law affecting the question involved in the appeal. It was also argued that Section 107 is retrospective in operation because although there are no express words in the amended statute that the new provision will apply to the pending proceedings also, the legislature clearly intended that even pending proceedings should be affected by such amendment. We are not inclined to accept this submission. It is an admitted position that there is no express provision provided for retrospective effect and Section 112 clearly saves actions done under the repealed enactment. Therefore, we are not inclined to accept the first reasoning given by the High Court to hold that Section 107 is retrospective in operation.

26. Let us now look at the other ground taken by the High Court to hold that Section 107 has a retrospective effect. The High Court has held that it is a settled proposition of law that in procedural matters, there is no vested right and hence any amendment to the procedural matters would apply to pending proceedings also. The learned counsel for the respondent relied in the case of *C.Beepathuma & Ors. vs. Velasari Shankaranarayana Kadambolithaya & Ors.* [AIR 1965 SC 241] in support of his submission that law of limitation was only a procedural law and the provisions existing as on the date of the suit should be applied. Similarly, in *Mst.Rafiquennessa vs. Lal Bahadur Chetri (since deceased) and his LRs. & Ors.* [AIR 1964 SC 1511], it was held that where vested rights are affected by any statutory provision, the said provision should normally be

construed as prospective unless the provisions related to a procedural matter. In Mohd. Idris & Ors. vs. Sat Narain & Ors. [AIR 1966 SC 1499], it was held that the law affecting procedure was also retrospective. Similarly in Qudratullah Vs. Municipal Board, [1974 (1)SCC 202] it was held in respect of a provision that even if Section 6 of the General Clauses Act could be held as applicable, the provision was only procedural and hence applicable to pending proceedings. The ratios of the above authorities undoubtedly lay down the correct position of law. Before we express any opinion on the above argument of the learned counsel for the respondents, the ensuing discussion on some of the other aspects is very important.

27. Section 107 provides that nothing in the Limitation Act, 1963 would apply to any suit for possession of immovable property, comprised in any Wakf or for any interest in such property. Therefore, for the application of Section 107, on 1st of January, 1996, the property must be comprised in the Wakf or the Wakf must have some interest in such properties. If however, the right to property stands extinguished, then Section 107 cannot apply. In the present case, any right which the Wakf had over the property stood extinguished under the Limitation Act, 1908. A similar question came up for consideration of this court in Yeshwantrao Laxmanrao Ghatge and Anr. Vs. Baburao Bala Yadav (Dead) By Lrs. [(1978) 1 SCC 669] wherein this court in paragraph

5 observed as under:-

"In our judgment, there is no substance in any of the points urged on behalf of the appellants. The possession of the purchasers was adverse in respect of all the properties at 1A to 1D and 1F to 1H from the very beginning. By such adverse possession, those who had come in possession of those properties had acquired an indefeasible title under the Indian Limitation Act, 1908. It is not necessary to decide in this case as to which of the articles in the first schedule of the said Limitation Act applied to this case. Whether it was Articles 134, 134A, 134B, 142 or 144 the claim had become barred long, long before the year 1955. The effect of Section 28 of the Limitation Act was that the right to the property was extinguished resulting in conferment of a title by adverse possession on the person in possession of the concerned properties. It is well known that the effect of Section 28 of the Limitation Act is not only to bar the remedy but also extinguish the right. The right to the property itself was dead and gone. It could not be revived by a provision like the one contained in Section 52A of the Act.

28. In the present case, as noted herein earlier, the trial court had held that the suits were barred under Article 134B of the Limitation Act, 1908 and, therefore, since the suits were barred under the 1908 Act, in view of Section 31 of the Limitation Act, 1963, Article 96 of the 1963 Act could not be applied. Section 31 was overlooked by the first appellate court. Therefore, in our view, when the right stood extinguished, Section 107 cannot have the effect of reviving the extinguished right/claim. This principle has also been followed in Karnataka Steel & Wire Products and others Vs. Kohinoor Rolling Shutters & Engg. Works and others (2003) 1 SCC 76.

29. The learned counsel for the respondents argued before us that in the present case, only the remedy was barred but the right was not extinguished and therefore, no reliance can be placed on the authorities cited above. We are not inclined to accept this submission of the learned counsel for the respondents. It is true that there is a difference between extinguishing a right and barring a remedy. The difference has been explained by this court in Prem Singh and others Vs. Birbal and others (2006) 5 SCC 353 wherein this court at paragraph 11 and 12 observed as under: -

"11. Limitation is a statute of repose. It ordinarily bars a remedy, but, does not extinguish a right. The only exception to the said rule is to be found in Section 27 of the Limitation Act, 1963 which provides that at the determination of the period prescribed thereby, limited to any person for instituting a suit for possession of any property, his right to such property shall be extinguished.

12. An extinction of right, as contemplated by the provisions of the Limitation Act, prima facie would be attracted in all types of suits. The Schedule appended to the

Limitation Act, as prescribed by the articles, provides that upon lapse of the prescribed period, the institution of a suit will be barred. Section 3 of the Limitation Act provides that irrespective of the fact as to whether any defence is set out or is raised by the defendant or not, in the event a suit is found to be barred by limitation, every suit instituted, appeal preferred and every application made after the prescribed period shall be dismissed."

30. The difference between the two aspects viz., barring of remedy and extinguishment of right can also be seen in the decision of this court in M/s. Bharat Barrel & Drum Mfg. Co. Ltd. & Anr. Vs. The Employees State Insurance Corporation [(1971) 2 SCC 860]. In view of the above authorities, we are of the view that in the present case, once it is held that the suit for possession of the suit properties filed at the instance of the Wakf were barred under the Limitation Act, 1908, the necessary corollary would be to hold that the right of the Wakf to the suit properties stood extinguished in view of Section 27 of the Limitation Act, 1963 and therefore, when Section 107 came into force, it could not revive the extinguished rights. The authorities relied upon by the learned counsel for the respondents in this regard in the case of Sree Bank Ltd. vs. Sarkar Dutt Roy & Co. [(1965) 3 SCR 708], Dhannalal vs. D.P.Vijayvargiya & Ors. [(1996) 4 SCC 652], New India Assurance Co. Ltd. vs. C.Padma & Anr. [(2003) 7 SCC 713] and S.Gopal Reddy vs. State of A.P. [(1996) 4 SCC 596] have no application to the facts of the case because in these cases, unlike the present case, there was no extinguishment of the rights.

31. Let us now answer the submissions on behalf of the learned counsel for the respondents. The learned counsel for the respondents relied on a decision of this court in Smt.Dayawati & Anr. Vs. Inderjit & Ors. [(1966) 3 SCR 275] to suggest that the law affecting procedure is always retrospective and therefore, Section 107 should be given retrospective effect. In Dayawati's case (supra), this court observed as under: -

"Now as a general proposition, it may be admitted that ordinarily a court of appeal cannot take into account a new law, brought into existence after the judgment appealed from has been rendered, because the rights of the litigants in an appeal are determined under the law in force at the date of the suit..... Matters of procedure are, however, different and the law affecting procedure is always retrospective. But it does not mean that there is an absolute rule of inviolability of substantive rights. If the new law speaks in language, which, expressly or by clear intendment, takes in even pending matters, the court of trial as well as the court of appeal must have regard to an intention so expressed, and the court of appeal may give effect to such a law even after the judgment of the court of first instance. The distinction between laws affecting procedure and those affecting vested rights does not matter when the court is invited by law to take away from a successful plaintiff, what he has obtained under judgment."

32. We have to agree that the decision relied upon by the learned counsel for the respondents which lays down the correct position of law but we are afraid that it is distinguishable on facts and cannot be of any help to the respondents. First, Dayawati's case (Supra) was not a case of extinguishment of right in property. Moreover, in that case, there was a specific provision viz., Section 6 which gave retrospective effect to the provisions in that case. Also, the decision in that case dealt with certain rights, which the judgment of the courts below had given. In the present case, however, the right to property flows not from any judgment but by the application of the principle of extinguishment of rights. The learned counsel for the respondents also relied upon a decision of this court in *Indira Sohan Lal Vs. Custodian of Evacuee Property, Delhi and others* [AIR 1956 SC 77] to argue that in the present case, Section 6 of the General Clauses Act would not apply at all because a different intention appears from Section 112 of the Wakf Act and, therefore, the very question of reviving the barred claim does not arise. In *Indira Sohan Lal's* case, this court observed as under:-

"10..... Whenever there is a repeal of an enactment, the consequences laid down in Section 6 of the General Clauses Act will follow unless, as the section itself says, a different intention appears. In the case of a simple repeal, there is scarcely any room for expression of a contrary opinion. But when the repeal is followed by a fresh legislation on the same subject, we would undoubtedly have to look to the provision of the new Act, but only for the purpose or determining whether they indicate a different intention.

The line of enquiry would be, not whether the new Act expressly keeps alive old rights and liabilities but whether it manifests an intention to destroy them. We cannot therefore subscribe to the broad proposition that Section 6, General Clauses Act is ruled out when there is repeal of an enactment followed by a fresh legislation. Section 6 would be applicable in such cases also unless the new legislation manifests an intention incompatible with or contrary to the provisions of the Section. Such incompatibility would have to be ascertained from a consideration of all the relevant provisions of the new law..... Thus where the repealing section of the fresh enactment which purports to indicate the effect of repeal on previous matters, provides for the operation of the previous law in part and in negative terms as also for the operation of the new law in the other part and in positive terms, the said provision may well be taken to be self contained and indicative of the

intention to exclude the application of Section 6 of the General Clauses Act..... Subsection 3 of section 58, Administration of Evacuee property Act, 1950 purports to indicate the effect of the repeal, both in negative and in positive terms. The negative portion of it relating to "the previous operation" of the prior Ordinance appears to have been taken from Section 6 (b) General Clauses Act while the positive portion adopts a "deeming" provision quite contrary to what is contemplated under that section. Under the General Clauses Act, the position in respect of matters covered by it would have to be determined as if the repealing Act had not been passed, while under section 58 of Central Act 31 of 1950, the position so far as positive portion is concerned has to be judged as if the repealing Act were in force at the earlier relevant date. Section 6 of the General Clauses Act cannot therefore be called in aid in a case governed by Section 58(3) of the Act....."

33. After considering this submission of the learned counsel for the respondents, it may appear that the controversy has narrowed down to the point whether Section 6 of the General Clauses Act would apply in this case or not. That is to say, it may appear that if we answer this question in the negative thereby holding that Section 112 is self contained, the appeal would fail because then the question of reviving a barred claim would not arise at all because Section 112 does not contemplate or provide for any such provision. However, if we answer this question in the affirmative, the inevitable result would be that the appeal would have to be allowed because on all other points, discussed herein earlier, the arguments of the learned counsel for the appellants have been accepted. However, in our view, the authorities relied upon by the respondents deal only with the question of repeal and savings but do not answer the question raised by the learned counsel for the appellants, i.e., whether Section 107 can revive an extinguished right. We may note that the authority relied upon by the learned counsel for the appellant reported in *Yeshwantrao Laxmanrao Ghatge and Another (supra)* cannot be ignored. That decision was not a case of repeal and accordingly, there was no reference to Section 6 at all in that Act. Nevertheless, it was held in that case that a right extinguished under Section 28 of the Limitation Act, 1963 cannot be revived by Section 52A. Similarly, in the present case, we are of the opinion that applicability of Section 6 is inconsequential because admittedly, there was an extinguishment of rights under Section 28 and Section 107 cannot revive those extinguished rights.

34. In view of the above discussions, we are, therefore, of the view that Section 107 cannot revive a barred claim or extinguished rights.

35. For the reasons aforesaid, the judgment and decree of the High Court passed in the aforesaid second appeals are set aside and the suits filed by the respondents are dismissed. In view of the dismissal of the second appeals, we do not find any reason to interfere with the order passed in CMP Nos.3200 and 3201 of 2000 and accordingly the Civil Misc. Petitions are also dismissed.

36. The appeals are thus allowed. There will be no order as to costs.

