



IN THE HIGH COURT OF KARNATAKA,

KALABURAGI BENCH

DATED THIS THE 16TH DAY OF OCTOBER, 2025

PRESENT

THE HON'BLE MR. JUSTICE H.T.NARENDRA PRASAD

AND

THE HON'BLE MR. JUSTICE TYAGARAJA N. INAVALLY

REGULAR FIRST APPEAL NO. 200204 OF 2024 (DEC/INJ)

BETWEEN:

PRASHANT KALMAT S/O DS KALMAT,
AGE: 44 YEARS, OCC: ADVOCATE BY HIS SPA
HOLDER, SRI.D.S.KALMAT ADVOCATE AND FATHER
OF PLAINTIFF, R/O. OPP. TOWN POLICE STATION,
KALMAT COMPLEX, SINDHANUR TQ. SINDHANUR
DIST. RAICHUR-584 128.

...APPELLANT

(BY SRI. SANJEEVKUMAR C PATIL, ADVOCATE)

AND:

1. SYED FAROOQ PASHA S/O AZAZUDDIN,
AGE: MAJOR, R/O. SIDHANUR,
DIST.RAICHUR-584 128.
2. KARNATAKA STATE AUQAF BOARD,
BANGALORE -01,
BY ITS CHIEF EXECUTIVE OFFICER,
3. DISTRICT AUQF BOARD,
RAICHUR-584 101.



4. REGIONAL COMMISSIONER,
KALABURAGI-584 101.
5. DEPUTY COMMISSIONER,
RAICHUR-584 101.
6. ASSISTANT COMMISSIONER,
LINGASAGUR, DIST. RAICHUR -584 128.
7. TASHILDAR
SINDHANUR DIST. RAICHUR-584 128.

...RESPONDENTS

THIS REGULAR FIRST APPEAL IS FILED UNDER SECTION 96 OF C.P.C, PRAYING TO CALL FOR THE RECORDS AND SET ASIDE THE ORDER DATED 05.02.2024, PASSED BY THE SENIOR CIVIL JUDGE AND JMFC, SINDHANUR, IN O.S. NO.260/2021 BY DIRECTING THE HON'BLE TRIAL COURT TO DISPOSE THE SUIT ON MERITS, BY HOLDING THE HON'BLE TRIAL COURT HAS JURISDICTION TO TRY THE SUIT.

THIS APPEAL, COMING ON FOR ORDERS, THIS DAY, JUDGMENT WAS DELIVERED THEREIN AS UNDER:

CORAM: HON'BLE MR. JUSTICE H.T.NARENDRA PRASAD
AND
HON'BLE MR. JUSTICE TYAGARAJA N. INAVALLY



ORAL JUDGMENT

(PER: HON'BLE MR. JUSTICE H.T.NARENDRA PRASAD)

This appeal is filed by the appellant challenging the order dated 05.02.2024 passed by the Senior Civil Judge & JMFC, Sindhanur in O.S.No.260/2021, thereby IA No.IV filed by the defendant No.2 U/o VII Rule 11(d) of CPC seeking for rejection of the plaint has been allowed.

2. The plaintiff has filed a suit for declaration, declared that Gazette Notification dated 17.01.1974 issued under Waqf Act and declared that it is a Waqf property is not binding on the plaintiff.

3. After service of summons, the defendant No.2 has filed IA No.IV U/o VII Rule 11(d) of CPC seeking for rejection of plaint. Admittedly, there is a Gazette Notification dated 17.01.1974. In the said notification, Sy.No.11/2 is notified as Waqf property. Pursuant to that mutation entry has been made. Once it is a declared a Waqf property, there is a bar under Section 85 and 85 of Waqf Act, 1995. Considering the same, the trial Court has



allowed the application. The relevant paragraph Nos.10 and 11 of the impugned order reads thus:

"10. I have gone through the contention raised by the defendant No.2 in the backdrop of materials available on record. The counsel for the defendant No.1 herein has produced the copy of gazette notification dated 17.01.1974. In the said notification, Sy.No.11/2 is notified as Waqf property and the name of Waqf is mentioned as Qazat (Sunni) Sindhanur as Waqf. In the particular of Waqf document produced by the counsel for the defendant No.2, the names of muthavali is been mentioned and in the particulars of Waqf property, Sy.No.11/2 measuring 23 acres of Siddapur, Tq. Sindhanur, Dist: Raichur is also mentioned. Admittedly the said notification is dated 17.01.1974 whereas as per averments made in the plaint, as per order of land Tribunal dated 08.07.1980, the name of one Rangappa was mutated. Meaning that the mutation of name of Rangappa was subsequent to notifying the suit property as Waqf property. In the present case the plaintiff herein has challenged the notification of Waqf Board dated 17.01.1974 claiming that said notification is illegal null and void. On going through the plaint averments the plaintiff is disputing the nature of property and contended that it is not Waqf property but it was the personal Inam land. Therefore in the present case the question



involved is whether the suit property is Waqf property or not and whether the notification No.KTW/30/ASR/74 dated 17.01.1974 is illegal and not binding on the plaintiff and the plaintiff also sought for deleting the name of waqf board i.e., defendant no.2 from column No.11 of record or fights and retain his name in column No.9. As per the decision relied upon by the counsel for the defendant No.2 reported in *AIR 2017 SCC 2155 in between Rajasthan Wakf Board V/s Devki Nandan Pathak and others*, it is held that: *Wakf act (43 of 1995), Ss. 85, 83, 51, 52 Exclusion of jurisdiction of Civil Wakf property or not can be decided by Tribunal alone and not by civil Court. Civil P.C. (5 of 1908), S.9. AIR 2014 Raj 70, Reversed. Question whether the suit land is a Wakf property or not can be decided only by Tribunal and not by Civil Court. Once property is declared to be a Wakf property a fortiori, whether sale of such property is made by a person not connected with affairs the Wakf or by a person dealing with the affairs of Wakf, the same becomes void by virtue of S.51 of the Act unless it is proved that it was made after obtaining prior permission of Board as provided under Act. Once cannot dispute that the matters falling under Ss.51 and 52 of Act are also required to be decided by Tribunal and hence jurisdiction of Civil Court to decide such matters is also barred by virtue of provisions contained in S.85 of Act.*



11. In the other decisions relied upon for the counsel for the defendant No.2 it is categorically held that when the question is whether the particular property is Waqf property or not can be decided only by the Tribunal and not by the Civil Court. As per Sec. 83 of Waqf Act, it is it is Tribunal which has to decide the question whether the property is Waqf property or not. As per Sec.85 of the Wakf Act, cognizance of such suit is barred by Civil Court and same has to be determined by the Waqf Tribunal. In the present case plaintiff has challenged notification issued by the Waqf board way back in the year 1974 and under Sec.88 of the Waqf Act which runs as :

88. Bar to challenge the validity of any notification, etc. Save as otherwise expressly provided in this Act, no notification or order or decision made, proceeding or action taken, by the Central government or the State Government under this Act or any rule made thereunder shall be questioned in any Civil Court."

Therefore, in view of the above section the validity of notification also cannot be challenged before this Court. In view of the bar contained in Sec.83 as well as Sec.88 of the Waqf Act 1995, this Court has no jurisdiction to try the present suit and as such plaint is liable to be rejected. The plaintiff is at liberty to present the plaint before proper authority having jurisdiction to try the present suit with observation. Accordingly the above point is answered in the affirmative."



4. There is no error or illegality in order passed by the trial Court. Accordingly, we proceed to pass the following:

ORDER

Appeal is dismissed.

**Sd/-
(H.T.NARENDRA PRASAD)
JUDGE**

**Sd/-
(TYAGARAJA N. INAVALLY)
JUDGE**

SMP
List No.: 1 Sl No.: 31
CT: SB