

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS. 2232-2233 OF 2002

TAMIL NADU WAKF BOARD

Appellant (s)

VERSUS

SYED ABDUL QUADER & ORS.

Respondent(s)

J U D G M E N T

R.M. Lodha, J.

We have heard learned counsel for the parties.

2. The present appellant - Tamil Nadu Wakf Board - alongwith Aminjikaiarai Mosque and Burial Ground represented by its Secretary (hereinafter referred to as 'plaintiffs') filed a suit for a declaration that the suit property was a Wakf property and for directing S.A. Rasool, since deceased and now represented by his legal representatives, who are respondent Nos. 2, 4, 5(i) to (iii), 6, 8 and 9, referred to as the legal representatives of the original defendant, to hand over vacant possession of the suit property to the plaintiffs.

3. The case of the plaintiffs was that the suit property (land and superstructure) was a Wakf property known as Aminjikaiarai Mosque and burial ground. The suit

property had been surveyed and published in the Fort St. George Gazette on May 20, 1959 and the said notification had not been questioned by any one. The suit property was leased out to the father of the original defendant by the then Muthavalli in 1921. Earlier the original defendant paid rent to then Muthavalli but thereafter no rent had been paid and he asserted his title over the property.

4. The legal representatives of the original defendant set up the defence that they were governed by Madras City Tenants' Protection Act, 1921 (for short, '1921 Act') as amended from time to time and in the absence of any notice under Section 11 of the 1921 Act, the suit was not maintainable. It was their case that the superstructure did not belong to the Wakf and, therefore, the Wakf Board was not the owner of the superstructure. They further stated that they had made an application under Section 9 of the 1921 Act for sale of the land on which superstructure had been built by their predecessor in title and as lessees they were entitled to purchase the land from the plaintiffs.

5. On the basis of the pleadings of the parties, diverse issues were framed. The parties let in their evidence. After hearing the parties, vide judgment and decree dated July 16, 1981, the trial court decreed the plaintiffs' suit.

6. The legal representatives of the original defendant preferred an appeal challenging the judgment and decree of the trial court. The first appellate court, by its judgment dated February 22, 1984, dismissed the appeal and affirmed the decree passed by the trial court. As regards superstructure, the legal representatives of the original defendant were allowed to remove it.

7. The legal representatives of the original defendant preferred Second Appeal before the High Court. The High Court, after hearing the parties, by its judgment dated September 23, 1998, allowed the Second Appeal and set aside the judgment and decree of the two courts below and remanded the matter to the trial court to proceed further with the application made by the legal representatives of the original defendant under Section 9 of the 1921 Act.

8. The plaintiffs filed a Review Petition seeking review of the judgment dated September 23, 1998. In the Review Petition, it was brought to the notice of the High Court that by virtue of Section 3 of the Madras City Tenants' Protection (Amendment) Act, 1994 (for short, '1994 Amendment Act'), the rights and privileges of the legal representatives of the original defendant had ceased to be enforceable and their application under Section 9 of the 1921 Act had abated.

9. The Review Petition was dismissed by the High Court on April 28, 1999. This is how the present Civil Appeals, by special leave, have arisen.

10. Section 9 of the 1921 Act, to the extent it is relevant, reads as under :

"SECTION 9. APPLICATION TO COURT FOR DIRECTING THE LANDLORD TO SELL LAND - (1)(a)(i) Any tenant who is entitled to compensation under section 3 and against whom a suit in ejectment has been instituted or proceeding under section 41 of the Presidency Small Cause Courts Act, 1882, taken by the landlord may, within one month of the date of the publication of Madras City Tenants Protection Amendment Act, 1979 in the Tamil Nadu Government Gazette or of the date with effect from which this Act is extended to the municipal town, township or village in which the land is situate or within one month after the service on him of summons, apply to the Court for an order that the landlord shall be directed to sell for a price to be fixed by the Court, the whole or part of the extent of and specified in the application.

xx JUDGMENT xx

11. 1921 Act came to be amended by the 1994 Amendment Act. Section 3 of the 1994 Amendment Act reads as under:-

"Section 3. Certain pending proceedings to abate.-Every proceeding instituted by a tenant in respect of any land owned by any religious institution or religious charity belonging to Hindu, Muslim, Christian or other religion and pending before any court or other authority or officer on the date of the publication of this Act in the Tamil Nadu Government Gazette, shall, in so far as the proceeding relates to

any matter falling within the scope of the principal Act, as amended by this Act, in respect of such land, abate, and all rights and privileges which may have accrued to that tenant in respect of any such land and subsisting immediately before the said date shall in so far as such rights and privileges relate to any matter falling within the scope of the principal Act, as amended by this Act, cease and determine and shall not be enforceable:

Provided that nothing contained in this section shall be deemed to invalidate any suit or proceeding in which a decree or order passed has been executed or satisfied in full before the said date."

12. The provision contained in Section 3 of the 1994 Amendment Act leaves no manner of doubt that all proceedings initiated by tenants under 1921 Act in respect of lands owned by religious institutions or religious charities belonging to Hindu, Muslim, Christian or other religion and pending before courts or authorities or officers on coming into force of 1994 Amendment Act have abated and the tenants in respect of such lands have ceased to have any enforceable rights. By virtue of Section 3 of the 1994 Amendment Act, whatever rights and privileges the tenants had in respect of the lands mentioned therein stood determined. The expression 'Every proceeding' is too wide to include the proceedings initiated by the tenants under Section 9 of the 1921 Act.

13. In view of Section 3 of the 1994 Amendment Act, the application made by the legal representatives of the original defendant being Interlocutory Application No. 16520 of 1973 under Section 9 of the 1921 Act which is said to be pending before the trial court does not survive and by operation of law that application has abated. It is strange that when Second Appeal was heard by the High Court, none of the parties brought to the notice of the learned Judge the provisions of the 1994 Amendment Act. In the Review Petition, the provisions of the 1994 Amendment Act were expressly referred to but the learned single Judge referred to Section 2 only and did not advert to Section 3 at all. The omission to consider Section 3 of the 1994 Amendment Act has rendered the impugned judgment and impugned order legally unsustainable.

JUDGMENT

14. The requirements of main Section 3 of the 1994 Amendment Act are fully met in the present case but unfortunately this aspect was not considered by the High Court on both occasions, while disposing of Second Appeal as well as Review Petition. The Interlocutory Application No. 16520 of 1973 made by the legal representatives of the original defendant has abated by operation of law and does not survive for consideration by the trial court. The

central reason of the impugned judgment dated September 23, 1998 had been the pendency of the application made by the legal representatives of the original defendant under Section 9 of the 1921 Act but that reason noted in the impugned judgment even did not exist on that date in view of Section 3 of the 1994 Amendment Act. As noted above, by virtue of Section 3 of the 1994 Amendment Act all rights and privileges (including the right to purchase the land from the plaintiffs under Section 9 of the 1921 Act) that the legal representatives of the original defendant had in respect of the suit property in terms of 1921 Act had been extinguished and ceased to be enforceable.

15. It is not possible to sustain the impugned judgment dated September 23, 1998. As a result of this, the order dated April 28, 1999 also has to go.

JUDGMENT

16. We, accordingly, allow these Appeals and set aside the impugned judgment dated September 23, 1998 and the order dated April 28, 1999. Second Appeal No. 640 of 1986 titled "*Kathija Bi & Ors. Vs. The Tamil Nadu Wakf Board & Others*" is restored to the file of the Madras High Court for fresh hearing and disposal in accordance with law.

17. Since the matter is very old, we expect the High Court to hear and decide the Second Appeal expeditiously and preferably within six months of the receipt of the order of this Court. No costs.

.....J.
(R.M. LODHA)

NEW DELHI;
OCTOBER 9, 2012

.....J.
(ANIL R. DAVE)



JUDGMENT