

Kerala High Court

Meethian vs Kerala Wakf Board on 13 December, 2000

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Bench: M D Sreedevi

JUDGMENT D. Sreedevi, J.

1. This Second Appeal is directed against the decree and judgment in A.S. No. 89 of 1987 of the Addl. Sub Court, Ernakulam, which was filed against the decree and judgment in O.S. No. 211 of 1983 of the Munsiff's Court, Moovattupuzha. The plaintiff before the trial court is the appellant and the defendant is the respondent who is the Kerala Wakf Board. The plaintiff filed the above suit for setting aside the decision of the Kerala Wakf Board declaring that the plaint schedule properties are Wakf properties, under S.27 of the Wakf Act, 1954. The plaintiff's case is that the Wakf Board suo motu conducted an enquiry with respect to 13 1/2 cents of property in survey No. 1401/5 and 14 cents in Survey No. 1401/4 of Kothamangalam Village and came to the conclusion that the property comprised in Sy. No. 1401/5 constitutes wakf and that the same is to be registered under the Wakf Act. According to the plaintiff, there was no permanent dedication in order to constitute the property a Wakf. The property and the building standing thereon were owned by one Outhal who is a member of Thadathikunnel family and as per his instructions Quran recitals were conducted in the building for 2 or 3 days during Kumbham each year and meals were served to the poor and faithful and the above practice was continued by his successors. It is also alleged in the plaint that there was no creation of Wakf nor an appointment of Muthawalli for the management of the property which is an ancestral property enjoyed by the members of the family for about 100 years prior to the date of the suit. They have effected mutation. It is also alleged that the Wakf Board has no jurisdiction to conduct such an enquiry and to render a decision. Therefore the suit was filed to set aside the decision of the Wakf Board and for a decree of permanent prohibitory injunction restraining the Wakf Board from further proceeding against the property.

2. The defendant Wakf Board filed written statement contending that the property is endowed with authority under the provisions of the Wakf Act, 1954, declaring certain properties as Wakf properties and to give direction to the Muthawallis to effect registration of Wakfs before the Board. According to them, the plaint schedule property constituted a wakf property as per the registered udambadi of the year 1950 executed by the predecessor of the plaintiff. The recitals therein relate to annual "Nercha". Recital of Holy Quran from inside the Nercha Palli and the collection of cash from the Bhandaram (chest of offerings) attached to the Nercha Palli coupled with the distribution of food to the poor and the needy constitute a valid wakf. They have conducted a comprehensive enquiry after giving sufficient notice to the plaintiff and passed an order on 26.6.1976. The plaintiff then filed a Writ Petition, O.P. No. 1191 of 1980 challenging the above order. That petition was disposed of with a direction to the Wakf Board to consider the question of applicability of S.27 of the Wakf Act, after affording an opportunity to the petitioner/plaintiff to be heard. Subsequently, the final enquiry was conducted and an order has been passed on 4.12.1982. It is also contended that the plaint schedule property was never treated or administered as a personal property of the plaintiff or his predecessors. After taking evidence the trial court decreed the suit with respect to 14 cents of property comprised in survey No. 1401/4 but dismissed the claim with respect to 13 cents of property and the building in survey No. 1401/5.

3. Aggrieved by the said decree and judgment the plaintiff filed A.S. No. 90 of 1987 of the District Court, Ernakulam, which was renumbered as A.S. No. 89 of 1987 of the Sub Court, Ernakulam. The learned Sub Judge dismissed the appeal with costs confirming the judgment of the trial court holding that there is wakf in respect of property in Sy. No. 1401/5. But there is nothing to show that there is dedication with respect to 14 cents in Sy. No. 1401/4. Board has no case that this property is a wakf property. Aggrieved by the said decree and judgment this Second Appeal is filed by the plaintiff.

4. The learned counsel Mr. M.V. Ibrahim Kutty, appearing for the appellant challenged the decree and judgment of the first appellate court on the ground that the courts below erred in finding that the defendant Wakf Board has got jurisdiction to adjudicate the question as to whether the property is a wakf property or not, that the courts below failed to consider the various recitals in the document by which the appellant obtained the property, and that there is no vesting of property in the almighty which is an essential requisite for constituting a wakf.

5. The questions of law involved in this case for interference by the Court are:

i. Whether the courts below are correct in finding that the property is a wakf properly when the legal incidents for a wakf are lacking and the recitals in the document did not contemplate vesting of the property in almighty and permanent dedication?

ii. Whether the Wakf Board has jurisdiction to decide as to whether the property is a wakf property or not and there is exclusion of jurisdiction and limitation in deciding such matters ?

iii. Is not the courts below correct in finding that the property is a Wakf by user when there is a document embodying the obligations attached to the property?

6. The appellant challenged the finding of the lower court on the main ground that the Wakf Board has no jurisdiction to decide the question as to whether the plaint schedule property is a wakf property or not. S.27(1) of the Wakf Act, 1954, reads as follows:

"27. Decision if a property is wakf property.-(1) The Board may itself collect information regarding any property which it has reason to believe to be wakf property and if any question arises whether a particular property is wakf property or not or whether a wakf is a Sunni wakf or a Shia wakf, it may, after making such inquiry as it may deem fit, decide the question."

7. The Wakf Board has thus jurisdiction to decide the question mentioned above. Another contention of the appellant is that the property covered by Ext. A1 is not a wakf property. According to the plaintiff the plaint properties are private properties of his family. The question to be decided herein is whether a wakf has been created in respect of this property. S.3(1) of the Wakf Act defines wakf as follows:

"Wakf means the permanent dedication by a person professing Islam or any other person of any movable or immovable property for any purpose recognised by the Muslim law as pious, religious or

charitable and includes-

(i) a wakf by user but such wakf shall not cease to be a wakf by reason only of the user having ceased irrespective of the period of such cesser;

(ii) "grants" (including mashrut-ul-khidmat) muafies, khairati, quazi services, madadmash for any purpose recognised by the Muslim law as pious, religious or charitable; and

(iii) a wakf-alal-aulad;

and "wakf" means any person making such dedication;

Provided that in the case of a dedication by a person not professing Islam, the Wakf shall be void if, on the death of such person, any objection to such dedication is raised by one or more of his legal representatives;"

8. PW.1 is the plaintiff himself. He has deposed that there is no Jaram in the property. Jaram, according to him, means the place where Muslim saints are buried and prayers are offered. The plaintiff and his family members used to conduct 'chatham' every year for the peace of souls of their deceased predecessors once in an year in this property and in the building standing thereon. They also used to recite Quran and call those who are acquainted with them and serve food to them. This 'chatham' is conducted for 3 days during every Kumbham. The above deeds are done as per the direction of the plaintiff's grandfather Outhal. Admittedly there is a "Bhandaram" (chest of offerings) in the property. According to the plaintiff, the elder brother of his father got this property towards his share under a partition deed. But that partition deed, even though it is available, is not produced in court. He also would state that his father's brother gave this property to his brother as per Ext. A1 in the year 1950 and in that document the conditions about the use of this property are mentioned. He claims that he got the property after the death of his brother. He admits that once in a year there will be prayers and 'niskaram' for 3 days in the building. Musallians will recite Quran. Five Musallians were there for that purpose. He also admits that there will be "Niskaram" by the people who are invited by the plaintiff. According to him, nearly Rs. 200/- will be received by way of offerings, which will be put in the 'Bhandaram' (chest of offerings). Food will be given by PW.1 at the time of 'nercha' to those who need it. All these are done by PW.1 and others as the original owner Outhal had done this. He also admits that about 50 people will attend this 'nercha'. PW.2 who is a resident of the locality also deposed that when worship is going on for 3 days, about 10 to 20 people will attend and they used to call this building in the property as "nercha palli" and there is also a 'Bhandaram' (chest of offerings) in that building. Admittedly this building is about 100 years old. PW.3 who is residing near to this property also admits that the recital of Quran is conducted in the name of forefathers of PW.1. From the evidence of PW.1 to PW.3 it is clear that the building is known as 'nercha palli' and neighbours residing there used to attend the 3 days' prayer and people used to put their offerings in the 'Bhandaram'. Thus it is evident that there was recital of Quran, and feeding the poor. Since the chest of offerings was also placed in front of the mosque people used to put their offerings in cash. The public used to attend the function. According to the plaintiff no public prayer is going on there. But the building is there for the last 100 years. People put their

offerings in the Bhandaram. Building is called "Nercha Palli". There is no lock and key for the building. So any person can go to the property and pray. Two "Bhandarams" are there one in front of the Mosque and the other on the road side for making offerings.

Building is constructed in the model of Mosque. All these would only go to show that the building was treated as a mosque wherein the public used to worship. S.188 of Mulla's Principles of Mohamedan Law, 18th Edition by M. Hidayatullah and Arshad Hidayatullah, reads:

"If land has been used from time immemorial for a religious purpose, eg., for a mosque or a burial ground or for the maintenance of a Mosque, then the land is by user wakf although there is no evidence of an express dedication."

9. If a building has been set apart as a mosque it is enough to make it wakf, if public prayers are made there with the permission of the owner. Both a mosque and a saint's tomb become wakf by user. If a mosque has stood for a long time and worship has been performed in it, the Court will infer that it does not stand by leave and licence of the owner of the site but that the land is dedicated property and no longer belongs to the original owner. S.178 relates to the objects of wakf. It provides that the purpose for which a wakf may be created must be recognised by the Mohamedan law as religious, pious or charitable and a wakf may also be created in favour of the settlor's family, children and descendants. The following are valid objects of a wakf:

1. Distribution of alms to poor persons, and assistance to the poor to enable them to perform the pilgrimage to Mecca;
- 2 Celebrating the death anniversary of the settlor and of the members of the family;
3. Reading of Koran in public places and also at private houses;
4. Payment of money to the poor.

concerned the court below dismissed the suit. Regarding 14 cents of property comprised in survey No. 1401/4 the plaintiff's prayer was allowed, as there is absolutely nothing to show that this property was dedicated for the purpose of wakf. Even the respondent/ Wakf Board has no case that 14 cents of property comprised in survey No. 1401/4 was a wakf property. Therefore I do not find any reason to interfere with the findings entered by the courts below.

11. In the result, the second appeal is dismissed.