



NON-REPORTABLE

**IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION**

CIVIL APPEAL NO.1946 OF 2013

**A.P. STATE WAKF BOARD
THROUGH CHAIRPERSON** ... APPELLANT(S)

VERSUS

**JANAKI BUSAPPA
AND OTHERS** ...RESPONDENT(S)

J U D G M E N T

AUGUSTINE GEORGE MASIH, J.

1. The present Civil Appeal arises out of the final Judgment and Order dated 18.01.2011 (“Impugned Judgment”) passed by the High Court of Andhra Pradesh (“High Court”) in Civil Revision Petition No.3786 of 2009, whereby the High Court allowed the revision petition

preferred by the plaintiffs and decreed the suit, setting aside the Judgment and Decree dated 04.08.2009 (“Tribunal Judgment”) passed by the Andhra Pradesh Wakf Tribunal, Hyderabad (“Tribunal”) in O.S. No. 68 of 2000.

2. The Appellant herein is Andhra Pradesh State Wakf Board, represented by its chairperson (“Wakf Board”), who was the original defendant no.1. The Respondents were the original plaintiffs and their legal representatives.
3. The factual matrix, giving rise to the present appeal, in brief, is that the plaintiffs, namely, Janaki Busappa and others, instituted O.S. No. 68 of 2000 before the Tribunal, seeking reliefs of permanent injunction and declaration against the defendants and later plaint was amended seeking relief of setting aside letter dated 21.08.1999 issued by the Appellant allotting land to original Defendant No.2, Jamat Ahle Hadees, for construction of Edgah.
4. The case set up by the plaintiffs was that they are the absolute owners and possessors of land

admeasuring Ac. 3.00 in Sy. No. 914/B situated at Kallur Village, Kurnool District (“suit property”). It was asserted that the said property was purchased by them under registered sale deeds executed in the years 1985 and 1996. The plaintiffs traced their title to a registered partition deed dated 01.06.1945, contending that the property originally formed part of a “personal inam” granted by the erstwhile Nawab of Kurnool.

5. It was further pleaded that Defendant No. 1 – A.P. State Wakf Board, Appellant herein, vide proceedings dated 21.08.1999, purported to allot the suit land to Defendant No. 2 – Jamat Ahle Hadees for construction of an Edgah, which action, according to the plaintiffs, was wholly illegal, arbitrary and without authority of law. On this basis, the plaintiffs sought a declaration that the said proceedings are null and void, coupled with a decree of permanent injunction restraining the defendants from interfering with their peaceful possession and enjoyment of the suit schedule property.

6. The defendants, on entering appearance, filed their written statement contesting the claim of the plaintiffs. It was specifically averred that the suit land is not a private property but constitutes “service inam” land attached to Budda Buddi Mosque, as evidenced by Title Deed No. 3826, and forms part of registered Wakf property. The defendants contended that the partition deed dated 01.06.1945 and the subsequent sale deeds relied upon by the plaintiffs are void and confer no valid title, inasmuch as the land, being service inam, could not have been alienated. Defendant No.2 was already in possession of the land and had commenced construction activities by raising compound walls for the purpose of an Edgah.

7. On the basis of the pleadings of the parties, the Tribunal framed the following issues for consideration:
 1. Whether the plaintiffs are entitled for permanent injunction against the defendants restraining them from interfering with their peaceful

possession and enjoyment of the plaint schedule property.

2. Whether the plaintiffs are entitled for the relief of declaration to declare the proceedings of the Defendant No.1 as null and void.

3. Whether the suit is bad and maintainable for want of mandatory notice under Section 89 of the Wakf Act, 1995.

8. The Tribunal, upon appreciation of the oral and documentary evidence on record, dismissed the suit vide Judgment and Decree dated 04.08.2009. The Tribunal concluded that the plaintiffs had failed to establish either lawful possession or valid title over the suit property. It was held that the material on record, including partition deed dated 01.06.1945 and the admissions of PW-1, indicated that the land in question was a “service inam” granted for rendering services to the mosque, thereby forms part of Wakf land, consequently, disentitling the alleged vendors from conveying any valid title to the plaintiffs.

9. Aggrieved by the dismissal of the suit, the plaintiffs preferred Civil Revision Petition No. 3786 of 2009 before the High Court under Section 83(9) of the Wakf Act, 1995. The High Court, upon consideration of the matter, allowed the revision petition and set aside the findings as recorded by the Tribunal.
10. The High Court held that the defendants had failed to substantiate their claim that the land in question is Wakf property, particularly in the absence of production of Title Deed No. 3826. It was further held that the plaintiffs had established their independent title and continuous possession over the suit property through the partition deed dated 01.06.1945, the subsequent registered sale deeds, and supporting evidence including standing crops on suit property.
11. Being aggrieved by the finding of the High Court in the Impugned Judgment, the Appellant has preferred the present Appeal before this Court.

12. Learned Senior Counsel appearing for the Appellant submits that the Impugned Judgment is unsustainable in law as well as on facts. He contends, at the outset, that the High Court has failed to advert to the foundational document relied upon by the plaintiffs, namely, the partition deed dated 01.06.1945, on which the entire claim of title is based. A perusal of the said document would demonstrate that the suit-schedule property is described therein as “service inam” land granted for rendering services to Budda Buddi and Asthabal mosques, and not as “personal inam” as asserted by the plaintiffs.

13. He further submits that once the land is admitted being “service inam” in nature, the same partakes the character of Wakf property, and the predecessors-in-interest of the plaintiffs had no transferable or heritable title therein. In such circumstances, the partition deed dated 01.06.1945, as also the subsequent sale deeds executed in favour of the plaintiffs, are *void ab initio* and incapable of conferring any valid title.

Reliance is placed upon the judgment of this Court in ***Sayyed Ali v. A.P. Wakf Board***¹, wherein it has been held that grants made for religious or charitable purposes, including service inams, would clothe the property with the character of Wakf. It is, therefore, contended that the suit property, being service inam land, is inherently Wakf property and cannot be alienated or transferred.

14. Learned Counsel further submits that the High Court has committed a manifest error in shifting the burden of proof upon the defendants, contrary to the well-established principles under Sections 101 to 103 of the Indian Evidence Act, 1872. It is urged that the plaintiffs, having approached the Tribunal seeking declaration of title and injunction, were required to establish their case independently on the strength of their own evidence, and could not succeed on the alleged weakness of the defence. In this regard, reliance is placed on the

¹ (1998) 2 SCC 642

decision of this Court in ***P. Kishore Kumar v. Vittal K. Patkar***².

15. He further submits that PW-1 i.e. plaintiff no.11, has admitted that the suit property was assigned for rendering services to the mosque to his ancestors and that the partition deed does not describe the land as personal inam. It is further admitted that no document has been produced to substantiate the claim that the property is personal inam land.
16. It is further contended that the suit schedule property stands duly notified as Wakf property in accordance with the provisions of the Wakf Act, 1995, as is evident from the Gazette Notification dated 02.05.1963 issued under Section 5(2) pursuant to a statutory survey under Section 4, wherein the property in Sy. No. 914/B, covered under Title Deed No. 3826, has been recorded as Wakf property attached to Budda Buddi Mosque, and the said notification, having not been challenged under Section 6,

² (2024) 13 SCC 553

has attained finality and is binding. By a subsequent notification dated 22.08.1985, the Appellant assumed direct management of the property on account of mismanagement by the mutawallis.

17. Regarding possession of suit property, it is submitted that the report of the Principal District Judge, Kurnool dated 06.10.2007, in compliance with the order of the High Court, records the existence of minarets, compound walls and other structures indicative of an Edgah. In a suit for injunction, the burden lies on the plaintiff to establish actual and lawful possession as on the date of institution of the suit, which burden has not been discharged in the present case, and in any event, the alleged possession of the plaintiffs is neither lawful nor bona fide, having been obtained, if at all, during the pendency of the proceedings by taking advantage of interim orders, thereby constituting an abuse of the process of law.

18. Learned Senior Counsel further submits that the plaintiffs have sought to rely upon additional documents for the first time before this Court, which were not part of the record before the courts below, and such reliance is impermissible in law being contrary to the principles governing admission of additional evidence under Order XLI Rule 27 of the Code of Civil Procedure, 1908, as reiterated by this Court in ***Union of India v. Ibrahim Uddin***³, and ***N. Kamalam v. Ayyasamy***⁴.
19. Learned Senior Counsel rests his submission stating that the High Court has ignored the fact that a similar suit, being O.S. No. 1197 of 1999, in respect of a portion of land in the same survey number, was dismissed by the competent civil court holding the property to be Wakf property, and the said judgment having attained finality, the same ought to have been taken into consideration.

³ (2012) 8 SCC 148

⁴ (2001) 7 SCC 503

20. Per contra, learned Senior Counsel appearing for the Respondents submits that the proceedings initiated by the Wakf Board in the year 1999, seeking to allot the suit property for construction of an Edgah, were wholly illegal and without authority of law. It is contended that the Respondents, having purchased the property under registered sale deeds in the year 1996, were in settled, continuous and peaceful possession thereof for several decades, to the knowledge of the Wakf Board. Despite such knowledge, the Wakf Board neither instituted any suit for declaration of title nor sought recovery of possession in accordance with law but instead attempted to dispossess the Respondents through executive action and use of State machinery, which is impermissible in law. Reliance is placed upon the judgment of this Court in **Wakf Board of A.P. v. Biradavolu Ramana Reddy**⁵, to contend that extinguished rights cannot be revived subsequently.

⁵ (1999) 6 SCC 582

21. It is further contended that the Wakf Board has failed to establish its title, inasmuch as it has relied solely upon Title Deed No. 3826 but has not produced or proved the same before any court. The reliance upon Gazette Notification dated 02.05.1963 is misconceived, as the said notification does not specifically refer to Survey No. 914/B. He further contends that earlier decisions of the High Court concerning the same Title Deed No. 3826 had gone against the Wakf Board and were not challenged.
22. Learned Senior Counsel lastly submits that the reliance placed on the recitals in the partition deed of 1945 is misplaced, as such recitals cannot constitute binding admissions against third parties. It is contended that the said document is loosely drafted and cannot be determinative of title. Reliance is placed upon the judgment of this Court in ***Nagindas Ramdas v. Dalpatram Ichharam***⁶, to contend that admissions in private documents bind only the parties thereto.

⁶ (1974) 1 SCC 242

23. Having heard learned Counsels for the parties and upon perusal of the pleadings and material on record, the principal question which arises for consideration is whether the suit schedule property admeasuring Ac. 3.00 in Sy. No. 914/B of Kallur Village is Wakf property or not?
24. At the outset, reference must necessarily be made to the crucial document relied upon by the Respondents, namely, the partition deed dated 01.06.1945, from which the entire claim of title is sought to be traced. A bare perusal of the said document evidently indicates that the lands covered thereunder, including the suit schedule property, are described as “service inam” lands assigned for rendering services to Budda Buddi Mosque and Asthabal Masjid. Once such a recital is borne out from the very document on which the Respondents predicate their title, the plea that the property constitutes “personal inam” stands clearly belied. It is undisputed and settled that lands granted as service inam for religious or charitable purposes partake the

character of endowed property and are impressed with a public or religious trust, thereby restricting their alienability.

25. On a careful consideration of the material on record, it becomes evident that the suit property, being service inam, could not have been validly partitioned or subsequently alienated so as to confer title upon the predecessors of the Respondents. In this regard, it would be apposite to refer to the judgment of this Court in **Sayyed Ali (supra)** wherein it was categorically held that a grant of land for rendering religious or charitable services does not vest absolute title in the individual, and such grants, being for purposes recognised under Muslim law as pious, religious or charitable, would clothe the property with the character of Wakf. The said principle squarely applies in the present case, where the recital in the partition deed itself establishes the land as service inam attached to a mosque. The High Court, however, proceeded to treat the partition deed as conferring independent title, without

adverting to its recitals in their proper perspective, which, in our opinion, constitutes a manifest error.

26. The record further discloses that the admissions of PW-1, who, in categorical terms, acknowledged that the suit property was assigned to his ancestors for rendering services to the mosque and that no document exists to establish the same as personal inam land. These admissions, being substantive evidence, go to the root of the matter and corroborates the recitals contained in the partition deed dated 01.06.1945. Admissions made by a party, particularly when consistent with documentary evidence, cannot be lightly disregarded or brushed aside. The High Court, however, brushed aside the said admissions on the ground that PW-1 lacked personal knowledge, being not contemporaneous to the execution of the said partition deed. In our considered opinion, such an approach is unsustainable.

27. In this context, the reliance placed on ***Nagindas Ramdas (supra)*** is equally misplaced. While there can be no dispute with the proposition that clear and unequivocal admissions made by the parties in pleadings constitute substantive evidence, the said decision also recognises that evidentiary admissions may not be conclusive but can be evaluated in the context of the overall material on record. In the present case, the admissions of PW-1, are required to be appreciated in the context of the overall material on record, which, as discussed above, clearly corroborates with the recitals contained in the partition deed dated 01.06.1945 and have been rightly relied upon by the Tribunal. The High Court, in discarding the same, has failed to appreciate their evidentiary value in the proper perspective.

28. Another contention advanced on behalf of the Respondents that the partition deed is loosely drafted and therefore not determinative of the nature of the property cannot be accepted, inasmuch as the recitals therein are clear and

unambiguous in describing the land as service inam, and no material has been placed on record to discredit the same.

29. Apart from the above, the Wakf character of the property is further borne out from the material placed on record by the Appellant, including the Survey Commissioner's Report dated 30.04.1956 and the Gazette Notification dated 02.05.1963 issued under Section 5(2) of the Wakf Act, 1995, which collectively indicate that the property forms part of Wakf land attached to Budda Buddi Mosque. The High Court has expressed reservations on account of the non-production of Title Deed No. 3826 and the absence of specific survey numbers in the notification. While such deficiencies may be relevant, the same cannot be viewed in isolation so as to dislodge the cumulative evidentiary effect of the material on record. The existence of Title Deed No. 3826 stands established and corroborated by endorsement dated 21.01.2003 of the Collector, Kurnool, indicating the inability to produce the original owing to its brittle

condition, that cannot, by itself, be treated as fatal. A cumulative consideration of the material on record would indicate that the property bears the character of Wakf land.

30. Another aspect which requires consideration is the reliance placed by both parties on earlier decisions rendered in proceedings concerning lands in the same or adjoining survey numbers. In our considered view, such reliance is of limited assistance in the present case. The findings recorded in earlier proceedings are essentially founded upon the evidence adduced in those cases and cannot be mechanically applied to a subsequent dispute involving different parties and independent claims of title. Each case must necessarily be adjudicated on the basis of the pleadings and evidence brought on record therein. In the present case, the determination of the nature and character of the suit property must rest upon the evidence led in the present case.

31. In the same vein, the reliance placed by the Respondents on **Wakf Board A.P. (supra)** to contend that the Appellant's right with respect to the suit property has been extinguished, which, in our opinion, is misconceived and inapplicable to the facts of the present case. The said decision pertains to the question of limitation in a suit instituted by a Wakf for recovery of possession from an alienee and turns upon the applicability of Article 96 of the Limitation Act in the context of alienation by a previous manager. The present case, however, does not involve any such issue of limitation or recovery from an alienation by a mutawalli or manager, but rather concerns the anterior question as to the very nature and character of the property. The ratio of the said judgment, therefore, has no application to the controversy at hand.

32. It is also necessary to advert to the settled principle that a plaintiff seeking declaration of title must succeed on the strength of his own case and not on the weakness of the defence.

The Respondents, in the present case, having approached the Tribunal seeking declaration and injunction, were required to establish a clear and lawful title to the suit property. However, as noticed hereinabove, the very document relied upon by them militates against their claim. The High Court, in reversing the findings of the Tribunal, has effectively shifted the burden upon the Appellant, which, in the facts of the present case, is legally untenable.

33. At this juncture, reference may be made to the decision of this Court in ***P. Kishore Kumar (supra)***, wherein it has been reiterated that in a suit for declaration of title, the burden lies squarely upon the plaintiff to establish a clear and legally sustainable title, and such a claim cannot succeed merely on perceived weaknesses in the defendant's case. The failure to produce cogent title documents is fatal to the claim.
34. The aforesaid position is further reinforced by the settled principle under Section 101 of the

Evidence Act, 1872 as elucidated by this Court in ***Rangammal v. Kuppuswami***⁷, wherein it has been held that the burden of proving a fact always lies upon the party who asserts it, and until such burden is discharged, the opposing party is under no obligation to establish its case. It has been further emphasised that a court cannot proceed on the weakness of the defence unless the party on whom the burden lies has first discharged the same. Applying the said principle to the present case, the Respondents, having asserted title to the suit property, were under a legal obligation to establish the same by cogent evidence, which, as noticed hereinabove, they have failed to do.

35. Insofar as the aspect of possession is concerned, the material on record does indicate that the Respondents had adduced evidence of cultivation and existence of standing crops. However, it is equally well settled that mere physical possession, in the absence of lawful title, would not entitle a party to the relief of

⁷ (2011) 12 SCC 220

declaration or injunction. Such possession, even if assumed, cannot be treated as lawful. Furthermore, we deem it necessary to make reference to the report dated 06.10.2007 of the District Judge, Kurnool, submitted before the High Court. The said report records the existence of compound walls, minarets and other features indicative of an Edgah, lending support to the case of the Appellant that the property was being used for religious purposes. The High Court, in contrast, has inferred possession in favour of the Respondents primarily on the basis of standing crops, without advertng to the legal character of such possession or the relevant admissible material on record, which, in our view, is not in consonance with settled principles.

36. Taking into consideration the above discussion and material on record, we are of the considered opinion that the suit schedule property is “service inam” land attached to a religious institution and partakes the character of Wakf property. The Respondents have failed to

establish any valid title or lawful possession so as to entitle them to the reliefs claimed.

37. The findings recorded by the Tribunal are borne out from comprehensive appreciation of the evidence adduced before it. However, the High Court, while exercising its revisional jurisdiction has re-appreciated the entire evidence and substituted its own finding disregarding material aspects such as the recitals in partition deed dated 01.06.1945 and the admissions of PW-1, and has accorded undue significance to perceived deficiencies in the Appellant's evidence proceeding to shift the onus of proof wrongly upon the defendant.
38. In the light of above, the Impugned Judgment dated 18.01.2011 passed by the High Court being unsustainable in law is set aside, and the Judgment and Decree dated 04.08.2009 passed by the Tribunal is restored.
39. This Appeal is allowed in above terms.
40. There shall be no order as to cost.

41. Pending application(s), if any, also stands disposed of.

.....J.
[M.M. SUNDRESH]

.....J.
[AUGUSTINE GEORGE MASIH]

**NEW DELHI;
APRIL 24, 2026.**