

IN THE HIGH COURT OF KARNATAKA

CIRCUIT BENCH AT GULBARGA

ON THE 28TH DAY OF JUNE 2013

BEFORE

THE HON'BLE MR. JUSTICE RAVI MALIMATH

CIVIL REVISION PETITION No.2020 OF 2013

BETWEEN

MOHD.MAQBOOL HUSSAINI
S/O MOHD. KABULLHA HUSSAINI
AGE: 62 YEARS, OCC. MUTAVALLI,
& AGRICULTURE OF DARGAH ALAUDDIN SAHEB (SUNNI)
VILLAGE ANPUR TQ & DIST. YADGIR
... PETITIONER

(BY SRI. LIYAQAT FAREED USTAD, ADVOCATE)

AND

1. SHIVAREDDY
S/O BHIMAREDDY DELPATI
AGE: 59 YEARS, OCC. AGRICULTURE
2. MANKAL NARAYANREDDY
S/O MANKAL BALREDDY
AGE: 49 YEARS, OCC. AGRICULTURE,
3. VENKATARAMREDDY
S/O SIDRAMREDDY
AGE: 46 YEARS, OCC. AGRICULTURE,

4. VISHWANATHREDDY S/O NAGAREDDY
MAJOR, OCC. AGRICULTURE,
5. VENKATREDDY S/O TAPPA BASREDDY
AGE: 49 YEARS, OCC. AGRICULTURE

ALL ARE R/O ANPUR TQ & DIST. YADGIR

... RESPONDENTS

(NOTICE TO R1 TO R5 HELD SUFFICIENT)

CRP FILED U/S. 83(9) OF KARNATAKA WAKF ACT, 1995, BY THE ADVOCATE FOR PETITIONER PRAYING THAT THIS HON'BLE COURT TO, CALL FOR THE RECORDS AND SET-ASIDE THE JUDGMENT AND DECREE DATED 07.07.2012 PASSED BY THE KARNATAKA WAKF TRIBUNAL GULBARGA DIVISION, GULBARGA IN O.S. NO. 49/2011.

THIS CRP COMING ON FOR HEARING THIS DAY, THE COURT MADE THE FOLLOWING:

ORDER

Aggrieved by the judgment dated 07.07.2012 passed by the Karnataka Wakf Tribunal, Gulbarga Division, Gulbarga, in O.S.No.49/2011 dismissing the plaintiff 's suit for perpetual injunction, the plaintiff has filed the present petition.

2. Sri.Liyaqat Fareed Ustad, learned counsel for the petitioner contends that the judgment is erroneous and

liable to be set aside. That the trial court failed to consider the material and evidence on record.

3. Notice to respondents are held sufficient.

4. The case of the plaintiff is that the suit property is a Wakf property and they were notified as such in the Gazette of 1974. That there was Darga of Allauddin Shaik and there are Sama kahana, Nagar khana and Idaga etc. He is in possession and enjoyment of the suit property as Mutahvalli. That the defendants having no right and interest over the suit property. The plaintiff in the peaceful possession and enjoyment of the suit property. The defendant attempted to construct a building on the suit property. Therefore, the suit is filed seeking a decree for perpetual injunction. On contest the trial court by the impugned judgment dismissed the suit. Hence, the present petition.

a) Primarily, the trial court considered the maintainability of the suit. The evidence of PW.1 is to effect that the plaintiff and his brothers had filed an application to the Board of Wakf to appoint them Muthvalli to the Wakf institution. That the application is still pending. That they have still not been appointed as Muthavalli. Therefore, the plea of the plaintiff of Muthavalli turns contrary. The application seeking appointment as a Muthavalli has not been granted. Hence, the suit required to be dismissed.

b) Further the trial court considered the issue as to whether even if the plaintiff is to be considered as Muthawalli, whether such Muthavalli could institute a suit independently. It relied on the judgment reported in *2007 Part II KCCR page 873*, wherein it was held that in terms of Section 50 - *Wakf Board alone can sue and be sued in respect of its properties. Muthavalli has no locus standi to file suit on behalf of the Wakf Board.* Following the said

judgment and in view of the evidence of the plaintiff himself, since the application for appointment as Muthavalli was not granted and in view of the fact that no other documents were produced by the plaintiff to show him as Muthawalli, the suit was dismissed.

(c) The trial court was of the view that the plaintiff has no locus-standi to maintain the suit and on various other grounds the trial court negated the suit. I am of the considered the view that it is not necessary for this Court to dwell on each and every issue that was considered by the trial court.

2. The finding of the trial court is appropriate in far as the maintainability of the suit against the defendants is concerned. It was of the view that such a suit could not be filed by the plaintiff. In view of upholding of the trial court that the suit itself was not maintainable, no other issues survive for consideration. It would be wholly necessary to dwell on the issue or reasoning on the merits

of the suit. Consequently, I 'am of the considered view that the order passed by the trial court holding that the plaintiff has locus standi to maintain the suit is justified. The reasons assigned is just and proper. Consequently, the revision petition being devoid of merits is dismissed.

Sd/-
JUDGE

sdu