# Karnataka Board Of Wakf vs Anjuman-E-Ismail Madris-Un-Niswan on 10 August, 1999

## Equivalent citations: AIR 1999 SUPREME COURT 3067, 1999 AIR SCW 3004, (1999) 4 ALLMR 281 (SC), (1999) 4 SCALE 645, (1999) 3 KER LT 39, 1999 (5) KANT LD 276, 1999 (4) ALL MR 281, 1999 (7) ADSC 144, 1999 (6) SCC 343, 1999 (8) SRJ 288, (1999) 5 JT 573 (SC), (2000) 2 ICC 40, (1999) 3 LANDLR 617, (2000) 1 MAD LJ 21, (1999) 7 SUPREME 510, (1999) 37 ALL LR 138, (1999) 3 BLJ 866, (2000) 4 CIVLJ 285, (1999) 2 HINDULR 398, (1999) 3 RECCIVR 639, (1999) 3 SCJ 269, (1999) 4 CURCC 114

## Bench: M.Jagannadha Rao, N.Santosh Hegde

PETITIONER:
KARNATAKA BOARD OF WAKF

Vs.

RESPONDENT:
ANJUMAN-E-ISMAIL MADRIS-UN-NISWAN

DATE OF JUDGMENT: 10/08/1999

BENCH:
M.Jagannadha Rao, N.Santosh Hegde

JUDGMENT:

SANTOSH HEGDE, J.

Leave granted.

Heard learned counsel. This appeal is preferred against the judgment and decree passed by the High Court of Karnataka in R.S.A. No.329/1989 dated 24.9.1997. We shall refer to the status of the parties as was in the trial court.

The plaintiff filed a suit for declaration that the suit property is not a wakf property and for consequential directions to delete the suit property from the list of wakf properties. The trial court as per its judgment dated 16.4.1980 in O.S. No.5/75 dismissed the suit and the appeal by the plaintiff against the said judgment came to be dismissed by the first appellate court as per its judgment dated 2.1.1989 in RA No.508 of 1980. The concurrent findings of the two lower courts have been reversed by the impugned judgment of the High Court and the defendant has preferred

this appeal before us.

The plaintiff claiming to be a Society registered under the Societies Registration Act, 1860 contended before the trial court that it had purchased the suit property as per two sale- deeds dated 25.7.1921 and 27.9.1921 and is running an educational institution for the benefit of the girls of muslim community. It further contended that the objects of the said Society did not confine itself to the benefit to the muslim community only, therefore, the property owned by it could not have been a wakf property and the defendant-Wakf Board had erroneously notified the same in the list of wakf properties without proper enquiry. Hence it sought the declaration referred to above. Defendant, in brief, contended that the property in question originally belonged to one Sultanji who during his life-time, had dedicated this property for the benefit of muslim community, reserving for himself the sole right and privilege of managing them. The said declaration was absolute and was for the sole purpose of benefiting the muslim community. Therefore, the property in question is a wakf property as contemplated under the Wakf Act. On this basis the defendant denied the claim of the plaintiff. The trial court framed as many as 9 issues but for the disposal of this case the only relevant issue for consideration is:

> whether the suit property is a wakf property or not. The definition of a wakf property reads thus :
>
> ""Wakf" means a permanent dedication by a person professing Islam of any movable or immovable property for any purpose recognised by the Muslim law as pious, religious or charitable and includes,
>
> (i) Wakf by user, (ii) Mashrut ul khildmat and (iii) a wakf alal glad to the extent to which the property is dedicated for any purpose recognised by Muslim law as pious, religious or charitable."

Therefore, the necessary ingredients for the purpose of deciding an issue whether a property is a wakf property or not, is to examine with reference to any particular property whether there is a permanent dedication by a person professing Islam of any movable or immovable property for any purpose recognised by the Muslim law as pious, religious o r charitable or not. In the instant case, the sale-deeds Ex. P1 and P2 dated 25.7.1921 and 29.9.1921 hitherto produced by the plaintiff at the relevant place read thus :

> "Whether (sic) as the land known as Sultanji Gunta, situated in C & M Station, Bangalore, and shown in the accompanying sketch and scheduled hereunder together with the Makhan adjoining it were originally the properties of one Sultanji, who died about 70 years ago and whereas the said Sultanji constructed in the said land a pond or gunta named after him and also set apart the Makhan and had dedicated both for the benefit of the Muslim Community reserving for himself the sole right and privilege the Vendors abovenamed possess as being heirs of the said Sultanji as stated in the Putwa given about 6 years ago by Sur Khazi Abdul Gaffar of C & M. Station, Bangalore and whereas the said pond has become insanitary and is now filled up and

> has consequently become a building site and whereas the said Sultanji have acceded to the wishes of the said purchasers that the site of the pond should be utilised for building a School thereon for Musalman Girls or for any other communal purposes and whereas the said Vendors have agreed to convey, assign and sell their right and privilege in respect the schedule property to the said purchasers for the said purpose of building a Muslim Girls' School on it or for any other communal purpose or purposes for the sum of Rs.1000/- (Rupees One thousand) free from all encumbrances."

(emphasis supplied).

A perusal of this recital shows that Sultanji named in the said sale-deed had dedicated both the pond as well as the Makan for the benefit of the Muslim community, reserving for himself the sole right and privilege of managing them. Having so dedicated the property on the death of Sultanji the privilege of managing the said property seems to have devolved upon the vendors of the said sale deed. It is also clear from the recital extracted above that it is in furtherance of the said dedication of Sultanji with a desiree to see that the property in question should be utilised for building a School thereon for Muslim girls or for other communal purpose, the said property was sold. In our view, the said recital makes it amply clear that the said Sultanji had dedicated the property in question for a purpose recognised by Muslim law, hence, the property in question had become a wakf property. Both the trial court and the lower appellate court in their elaborate judgments referred to the arguments addressed on behalf of the parties and perused the documents produced and concurrently came to the conclusion that the property in question was a wakf property and the fact that the plaintiff was registered under the Societies Registration Act, did not make any difference since the object of the Society was in conformity with the original dedication by Sultanji and also came to the conclusion that the contention of the plaintiffs that there was no opportunity afforded to them before notifying the suit property as wakf property, is also baseless. In second appeal, the High Court framed the following question of law for consideration :

> "i) Having regard to the fact that Ex.P.1 and P.2 are the sale deeds executed by the Vendors in favour of the plaintiffs, whether the courts below are justified in holding that they have the effect of creating a Wakf."

A perusal of this question hardly gives an impression that the said question involves any question of law much less a substantial question of law. In the ordinary course, what we have stated above, would have sufficed for the disposal of this appeal. However, the approach of the High Court in this case has been in total contravention of the law laid down by this C ourt in a catena of decisions. This Court had repeatedly held that the power of the High Court to interfere in second appeal under Section 100 of the C.P.C. is limited solely to decide a substantial question of law, if at all the same arises in the case. It has deprecated the practice of the High Court routinely interfering in pure findings of fact reached by the courts below without coming to the conclusion that the said finding of fact is either perverse or not based on material-on-record. In Ramanuja Naidu v. V. Kanniah Naidu & Anr. (1996 3 SCC 392), this Court held "It is now well settled that concurrent findings of fact of trial court and first appellate court cannot be interfered with by the High Court in exercise of its

jurisdiction under Section 100 of Civil Procedure Code. The Single Judge of the High Court totally misconceived his jurisdiction in deciding the second appeal under Section 100 of the Code in the way he did." In Navaneethammal v. Arjuna Chetty (1996 6 SCC 166), this Court held : "Interference with the concurrent findings of the courts below by the High Court under Section 100 CPC must be avoided unless warranted by compelling reasons. In any case, the High Court is not expected to reappreciate the evidence just to replace the findings of the lower courts. x x x Even assuming that another view is possible on a reappreciation of the same evidence, that should not have been done by the High Court as it cannot be said that the view taken by the first appellate court was based on no material." And again in Secretary, Taliparamba Education Society v. Moothedath Mallisseri Illath M.N. & Ors. (1997 4 SCC 484), this Court held "The High Court was grossly in error in trenching upon the appreciation of evidence under Section 100 CPC and recording reverse finding of fact which is impermissible." We are not referring to these judgments because they have laid down any new legal principles, but to highlight the fact, how the High Court has overlooked these dicta. In the narration of facts of this case in the paragraphs hereinabove, we have referred to minimal facts of the case only to show that the question involved in the suit as well as in the appeal was a pure question of fact. The recitals in the documents produced by the plaintiff itself established on their face the facts necessary to settle the question in dispute, without even having to interpret the contents of the documents. The two courts below have correctly understood the same. In the instant case, if the learned Judge of the High Court felt that there was a need for examining the evidence to find out whether the findings of the lower courts were either perverse or not borne out of records then we would have expected him to refer to and discuss the evidence in detail, pointing out the fatal error committed by the courts below in their finding of fact. In the instant case, the High Court after quoting extensively from certain judgments of this Court and without pointing out how the ratio of those judgment applied to the facts of the present case, reversed the concurrent finding which, in our opinion, was wholly unwarranted. The trial court noted the specific admissions made by PW-1 during the course of his cross-examination which clearly negatived the case of the plaintiff/appellant. It also came to the conclusion that the evidence of PW-1 with reference to lack of opportunity given to the plaintiff was "clearly false". The first appellate court during the course of its judgment held that the plaintiff at the first appellate stage had filed a fabricated affidavit in support of its application under Order 41 Rule 27 CPC for additional evidence, and directed that steps should be taken to impound the affidavit in question and to keep the affidavit in safe custody for further action in the matter against the concerned persons. If really the High Court had applied its mind to the facts of the case, as understood by the two lower courts, then certainly it should have commented upon the above circumstances relied upon by the lower courts. All these facts noted above give us an impression that the High Court has interfered with the concurrent findings of the two courts below in a routine and casual manner by substituting its subjective satisfaction in the place of the lower courts. For the reasons stated above, this appeal succeeds and the judgment and decree of the High Court under appeal is set aside, and the judgment and decree of the trial court in OS No.5/75 as affirmed by the first appellate court is restored. The appeal is, accordingly, allowed with costs.