

Supreme Court of India

K.S. Viswam Iyer vs State Wakf Board on 25 February, 1993

Equivalent citations: 1994 SCC, Supl. (2) 109

Author: J S Verma

Bench: Verma, Jagdish Saran (J)

PETITIONER:

K.S. VISWAM IYER

Vs.

RESPONDENT:

STATE WAKF BOARD

DATE OF JUDGMENT 25/02/1993

BENCH:

VERMA, JAGDISH SARAN (J)

BENCH:

VERMA, JAGDISH SARAN (J)

KASLIWAL, N.M. (J)

CITATION:

1994 SCC Supl. (2) 109

ACT:

HEADNOTE:

JUDGMENT:

## ORDER

1.This appeal by special leave is by the defendants against the judgment of the Madras High Court by which the second appeal was allowed resulting in the suit filed by the respondent for recovery of possession of the suit property, being decreed. The impugned judgment is a common judgment rendered in several second appeals but this civil appeal relates only to the second appeal arising out of Original Suit No. 790 of 1967 filed in the court of the District Munsif of Pattukkottai.

2.The suit property consists of 1.89 acres of land which was alienated in favour of the original defendant, now represented by the LR's, by Sheik Dawood on May 22, 1946 for a sum of Rs 300 only. The suit land was a part of the Wakf property, the Wakf being created by the ancestors of the husband of Ibrahim Bivi Ammal through whom Sheik Dawood, her son, claimed under a will.

3. Sheik Dawood died sometime in 1953. The suit giving rise to the civil appeal was filed by the Wakf Board on August 14, 1967 for recovery of possession of the suit land alienated by Sheik Dawood in favour of the original defendant.

4. The trial court upheld the defendants' plea of limitation and dismissed the suit as time barred. On appeal the learned District Judge of West Thanjavur affirmed the trial court's decree and dismissed the appeals. That gave rise to the second appeal filed by the plaintiff, Wakf Board, in the High Court which was allowed by the impugned judgment. The High Court has held that the suit is governed by Article 96 of the Limitation Act, 1963 and being filed within 12 years of the constitution of the Wakf Board, was within time. An attempt made in the High Court on behalf of the defendant to support dismissal of the suit by the trial court as well as the first appellate court on the ground that the suit property was not a wakf, was rejected on merits by the High Court. This has given rise to the present appeal.

5. Learned counsel for the appellants strenuously urged that the suit is time barred. It is not disputed that Article 96 of the Limitation Act, 1963 is applicable to such a suit which was filed in 1967. The contention of learned counsel for the appellants primarily is, that the time for suit began to run from the date of death of Sheik Dawood in 1953 on account of which the suit filed on August 14, 1967 is time barred. In the Limitation Act of 1908 it was Article 134-B which governed such suit while in the Limitation Act, 1963 the corresponding provision is Article

96. The present suit being filed in 1967 would be governed by Article 96 of the Limitation Act, 1963. The starting point of limitation under Article 134-B of Limitation Act, 1908 and that under Article 96 of the Limitation Act, 1963, for facility of comparison, are quoted as under :

1908 Act : "Time from which period begins to run.- The death, resignation or removal of the transferor."

1963 Act: "Time from which period begins to run.- The date of death, resignation or removal of the transferor or the date of appointment of the plaintiff as manager of the endowment, whichever is later."

6. A comparison of the two provisions would indicate that time begins to run under Article 96 of the new Act from the date of death, resignation or removal of the transferor or the date of appointment of the plaintiff as the manager of the endowment whichever is later; and earlier under Article 134-B of Limitation Act, 1908, the starting point of limitation was not prescribed, in addition, with reference to 'the date of appointment of the plaintiff as manager of the endowment'; with the further provision under the new Act that the later of the prescribed dates is to apply. It is on the basis of this additional provision in Article 96 of the new Act that the High Court has taken the view that the plaintiff Wakf Board being constituted in 1958, the starting point of limitation for the present suit is 1958 and not the date of death of Sheik Dawood in 1953.

Admittedly, the period of limitation of 12 years prescribed under the old Act in Article 134-B reckoned from the date of death of Sheik Dawood in 1953 had not expired when the new Limitation

Act came into force and, therefore, the present suit was clearly governed by Article 96 of the new Limitation Act.

7.The only other question which arises for consideration in this context is whether the plaintiff Wakf Board can be treated as 'manager of the endowment' within the meaning of that expression used in Article 96 of the Limitation Act, 1963? The High Court has considered this aspect also at length and stated its conclusion with reference to the provisions of the Wakf Act, thus :

"The word, 'Manager' in relation to a religious or charitable endowment is not a term of art. The said word notes the person who is in charge of the administration of the endowment or manages the property or supervises the performance of the charity and the word is one of very wide and general import.

The combined effect of Sections 15(1) and 15(2) of the Wakfs Act will certainly be sufficient to designate the Wakf Board as a manager for the purpose of recovery of possession of Wakf property and consequently it can certainly be termed as 'Manager' contemplated by the third column to Article 96 of the new Limitation Act and if so construed, the constitution of the Wakf Board under the statute can certainly be construed to be the appointment of the Wakf Board as Manager of the Wakf in question, because even the word 'appointment' just like the word 'Manager' is not a term of art and therefore has to receive its ordinary, natural and normal meaning."

8.In our opinion, the High Court rightly came to the above conclusion that the plaintiff Wakf Board has to be treated as the manager of the Wakf in question for the purpose of Article 96 of the Limitation Act, 1963. It is, therefore, clear that the view taken by the High Court that the suit was within time under Article 96 of the new Limitation Act does not suffer from any infirmity and the contention of the learned counsel for the appellants has to be rejected.

9.The next submission of the learned counsel for the appellants was, in fact, an attempt to contend that the suit property is not a Wakf property. We are unable to accept this contention as we agree with the High Court even on this point. While repelling a similar contention, the High Court has referred to a document Ex. A-2, on which the defendant relies to claim title through Sheik Dawood. The contents of that document, a part of which has been extracted in the High Court's judgment, clearly indicate that Ibrahim Bivi Ammal had herself mentioned in that document that the properties had been set apart as a grant to the Mosque from the time of her husband's ancestors which clearly means that the properties had been endowed as Wakf properties by the forefathers of the husband of Ibrahim Bivi Ammal. The defendant claiming through Sheik Dawood cannot assert any better title in himself. This contention was rightly rejected by the High Court.

10.Another submission made by the learned counsel for the appellants was that the right, if any, conferred on the plaintiff was confined to the income of Rs 27 per annum from the property and did not extend to the property itself. For the reasons already given, the entire property being endowed as Wakf property by the forefathers of the husband of Ibrahim Bivi Ammal, this contention has to be rejected.

11. Consequently, the appeal fails and is dismissed. No costs.