

ORDER SHEET
IN THE HIGH COURT OF SINDH, CIRCUIT COURT, HYDERABAD.
R.A.No.107 of 2000
[Misri @ Shamsuddin v. Tharparkar District Development]

DATE

ORDER WITH SIGNATURE OF JUDGE

For hearing of main case.

11.11.2021.

**M/s Parkash Kumar and Najab Raper, Advocates for
the applicant.**

Respondent called absent.

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Adnan Iqbal Chaudhry J. - This is a civil revision application. The Applicant was Plaintiff in F.C. Suit No. 103/1994 (old number), subsequently F.C. Suit No.122/1998 (new number). It was the case of the Plaintiff that in the year 1952 he had made a Waqf of his agricultural land measuring 50-06 acres in Deh Akri Wadi, Taluka Pithoro, District Umerkot, and dedicated its income to agricultural reforms, education etc, for the betterment of the residence of Pithoro; that in the year 1954 the Plaintiff appointed the Defendant/Respondent, Tharparkar District Development Association, as manger of the Waqf to utilize its income for setting-up educational institutes and cottage industries for the local haris; that not only did the Defendant fail in its duties, but it also manipulated the record of rights to claim that the suit property had been gifted to it by the Plaintiff; that the Plaintiff therefore filed Suit No. 511/1981 against the Defendant; that such suit was not pursued when the Defendant promised to adhere to the objects of the Waqf; that

subsequently, when the Defendant utilized the income of the Waqf for other projects and refused to set-up any educational institute or industry for the locals, the latter suit was filed praying *inter alia* as follows:

- “a) Declaration that the entry in the revenue record in respect of the suit land in the name of the Defendants is illegal, void, of no legal effect and not on the basis of any valid authority, and entry in the name of Plaintiff should be restored and the gift claimed by the Defendants declared void;*
- b) Permanent injunction be issued against the Defendants restraining and prohibiting them permanently claiming the ownership of the property in suit;*
- c) That the Defendants should render accounts of the income of the suit lands;”*

2. In the written statement, apart from objections to the maintainability of the suit, the case set-up by the Defendant was that the Plaintiff had in fact gifted the suit property to the Defendant by way of a declaration of gift made before the Deputy Collector in the year 1954, and by delivering possession thereof to the Defendant; and ever since the Defendant had been expending the income of the suit property for the benefit of the locality.

3. The learned I-Senior Civil Judge, Umerkot decreed the suit in favor of the Plaintiff/Applicant *vide* judgment dated 11.02.1999. However, on Civil Appeal No.16/1999 preferred by the Defendant/Respondent, the learned District Judge, Umerkot dismissed the suit *vide* judgment dated 29.03.2000.

4. Heard the learned counsel and perused the record.

5. Though Entry No.14 was made in the revenue record of the suit land in favour of the Defendant (Exhibit 61) in 1954, such entry does not mention any 'gift', rather it only mentions a 'statement' recorded by the Plaintiff before the Deputy Collector. That statement by the Plaintiff, which was produced as Exhibit 79, stated that the suit property was being dedicated as a Waqf and was being given to the Defendant Association for such purpose. Therefore, the finding of the trial court that the suit property was Waqf property and was never gifted to the Defendant, was based on cogent evidence. On the other hand, the appellate court dismissed the suit on the following grounds:

- (a) that the Waqf could not have been revoked by the Plaintiff;
- (b) that an earlier suit filed by the Plaintiff on the same facts had been dismissed for non-payment of process fee in the year 1983, and therefore the fresh suit was time-barred;
- (c) that the Plaintiff had not sought the consequential relief of possession;
- (d) that the suit being in respect of a Waqf, it was hit by section 92 CPC, as it was not by or with the permission of the Advocate General.

6. With regards to grounds (a) and (c) above, the learned appellate court did not appreciate that the suit was not for revocation of the Waqf, but essentially for a declaration that the suit property was Waqf property, and for an account of the income of the Waqf property.

As regards ground (b), though the appellate court recognized that a fresh suit could be filed under Order IX Rule 4 CPC where the previous suit had been dismissed under Order IX Rule 2 CPC for non-

payment of process fee, but held that the fresh suit was time-barred. However, in doing so, the learned appellate court did not notice Para 216 of Muhammadan Law, which stipulates that no suit against a manager of Waqf property for the purpose of following in his hands such property, or for an account of such property is barred by any length of time. A similar provision exists with regards to trust property in section 10 of the Limitation Act, 1908. In any case, the Plaintiff had pleaded that the second suit was brought on a fresh and continuing cause of action, which aspect was never examined by the learned appellate court.

Ground (d) above taken by the appellate court to dismiss the suit was also misconceived. Para 195 of Muhammad Law excludes the provision of section 92 CPC for a suit for declaration that a property belongs to a Waqf, and it further provides such a suit can be brought by any Muhammadan interested in the Waqf.

7. In view of the foregoing, not only did the appellant court mis-read the plaint, it also did not notice material provisions of law in passing judgment. Therefore, the revision application is allowed. The judgment and decree passed by the District Judge, Umerkot in Civil Appeal No.16/1999 is set-aside, and the judgment and decree dated 11-02-1999 passed by the I-Senior Civil Judge, Umerkot in F.C. Suit No.122/1998 is restored.

JUDGE