REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOs.3132-3133 OF 2016

P. NAZEER ETC. …APPELLANT(S)

VERSUS

SALAFI TRUST & ANR. ETC. …RESPONDENT(S)

J U D G M E N T

V.RAMASUBRAMANIAN, J.

1. Aggrieved by a common Judgment delivered by the High Court of Kerala in two Civil Revision Petitions filed under the proviso to sub-section (9) of Section 83 of the Waqf Act, 1995, reversing the judgment of the Waqf Tribunal and decreeing the suit of the respondents in entirety, but dismissing their own suit, the appellants have come up with the above civil appeals.

2. We have heard Shri R. Basant, learned senior counsel appearing for the appellants and Shri V. Giri, learned senior counsel appearing for the private contesting respondents.

3. The sole appellant in one of the above appeals by name Shri P. Nazeer was the defendant in a suit O.S No.10 of 2004 filed by the respondents 1 and 2 herein, on the file of Waqf Tribunal, Kollam. The three appellants in the other civil appeal were the plaintiffs in O.S No.9 of 2004 filed on the file of very same Waqf Tribunal, Kollam. Since the appeals on hand arose out of cross-suits between the same parties and also since the subject matter of the dispute relates to the right to management and administration of a mosque and its properties, it will be easy to appreciate the facts, if presented in a tabular column:

Suit No.	***Names of Plaintiffs***	***Names of defendants***	***Reliefs sought***	***Reliefs granted by Waqf Tribunal***
OS No.9 of 2004	1.Salafi Juma Masjid Mahal Committee 2. K.M. Syed, President 3. P. Nazeer, Secretary	1. Salafi Trust 2. H.E. Ahmed Thahir Sait, Vice President 3. A.K. Babu, Secretary 4. O.M. Khan, Salabhavan	i) pass a decree declaring that the document No.2 issued by the 6th Defendant is	1. The relief of declaration was rejected. 2. The relief of permanent injunction granted

		5. S. Rasheed, Cashier 6. The CEO, Kerala Waqf Board, 7. Kerala Waqf Board	null and void. ii) Issue a decree of permanent prohibitory injunction restraining the Defendants No.1 to 4 their men, agents and supporters from interfering into or obstructing the management and administration of plaint schedule mosque and its institutions by the Plaintiff Committee.	restraining defendants 1 to 4 from interfering with the management and administration of the plaint schedule waqf and its institutions.
OS No.10 of 2004	1. Salafi Trust 2. A.K. Babu	P. Nazeer	(i) Declaring that the 2nd Plaintiff is the Secretary of the 1st Defendant Trust. (ii) Restraining the Defendant or anybody under him by permanent injunction from interfering with	1. Declaration that the second plaintiff A.K. Babu is the secretary of Salafi Trust is granted. 2. But the relief of permanent injunction is rejected.

			administration & management of the 1st Plaintiff Trust and scheduled property by the 2nd Plaintiff as the Secretary of the 1st Plaintiff.	

4. It is necessary to bring on record, before proceeding further, that document No.2 in respect of which the appellants herein sought a declaration of nullity, in their own suit O.S No.9 of 2004, was a certificate issued by the Chief Executive Officer of Kerala Waqf Board dated 24.03.2004 in favour of Salafi Trust. The said certificate reads as follows:

> "This is to certify that the Salafi Trust, Mattanchery, Cochin-2 in Kochi Taluk, Ernakulam District, Kerala State and its properties having 17 cents comprised in Survey No.527/4 within the limit of Ambalappuzha Taluk Alappuzha District have been registered before the Kerala Waqf board as required under Section 36 of the Waqf Act, 1995 being its registration No.6406/RA. As per records of this office, Shri A.K. Babu is the present secretary of the above Trust."

5. In other words the appellants in the second civil appeal before us, namely, ***(i)*** Salafi Juma Masjid Mahal Committee; ***(ii)*** its President

K.M. Syed; and ***(iii)*** its Secretary P. Nazeer, sought two sets of reliefs from the Waqf Tribunal. They were ***(i)*** to declare the certificate dated 24.03.2004 issued by the Chief Executive Officer of the Kerala Waqf Board in favour of Salafi Trust as null and void; and ***(ii)*** for a permanent injunction restraining the defendants from interfering with their management and administration of the mosque and its properties. Though the Tribunal granted the relief of injunction, the Tribunal refused the relief of declaration. However, these three appellants did not choose to challenge the Judgment of the Waqf Tribunal rejecting the relief of declaration.

6. Similarly the respondents 1 and 2 herein sought two sets of reliefs from the Tribunal, namely, ***(i)*** for a declaration that the second respondent A.K. Babu is the Secretary of the first respondent-Trust namely Salafi Trust; and ***(ii)*** for a permanent injunction restraining Shri P.Nazeer, the Secretary of the Mahal Committee from interfering with their right of management of the mosque. Though the Tribunal granted the relief of declaration, it did not grant the relief of injunction.

7. Therefore, ***(i)*** Salafi Trust; and ***(ii)*** its Secretary A.K. Babu filed two civil revision petitions before the High Court of Kerala under the proviso to Sub-section (9) of Section 83 of the Waqf Act, 1995. The High Court allowed both the civil revision petitions, dismissing O.S No.9 of 2004 in entirety and decreeing O.S No.10 of 2004, as prayed for. Therefore, the group which we may conveniently refer to as 'Mahal Committee' has come up with the above civil appeals.

8. The case of the appellants before the Waqf Tribunal was: ***(i)*** that Salafi Juma Masjid is a public waqf registered with the Kerala Waqf Board; ***(ii)*** that though the mosque was constructed in a vacant plot given by Salafi Trust, the management and the administration of the waqf was with the Mahal Committee; ***(iii)*** that as per the law relating to waqfs, the person who manages the waqf is the Mutawalli; ***(iv)*** that upon a complaint lodged by the appellant Shri P. Nazeer on behalf of the Mahal Committee, an enquiry was held by the Waqf Board; ***(v)*** that though the Enquiry Officer recorded a finding that the management and administration of Salafi Masjid was with the Mahal Committee of which P. Nazeer was the Secretary, the Chief Executive Officer of the

Waqf Board wrongfully issued the certificate dated 24.03.2004; and ***(vi)*** that, therefore, the said certificate should be declared as null and void and a permanent injunction should be issued restraining Salafi Trust and its men from interfering with the management and administration of the mosque.

9. Interestingly, the Waqf Tribunal refused to declare the Certificate dated 24.03.2004 as void, on the ground that undisputedly, Salafi Trust got the waqf registered under Section 36 of the Waqf Act and that admittedly Mr. A.K. Babu was the Secretary of the Trust. But the relief of injunction was granted by the Waqf Tribunal on the ground that the management and administration of the mosque and its properties was with the Mahal Committee.

10. In the revision, the High Court found ***(i)*** that Mahal Committee is not a registered entity and hence not entitled to file a suit; ***(ii)*** that the suit was not even filed in a representative capacity after following the procedure prescribed under Order 1 Rule 8 CPC; ***(iii)*** that though the challenge was to the management and administration of a mosque and its immovable properties, there was no schedule of property attached

to the plaint in O.S No.9 of 2004; and ***(iv)*** that as per the evidence on record, it was the Salafi Trust which was in management and administration of the mosque and its properties. On the basis of these findings, the High Court decreed the suit filed by the respondents in entirety and dismissed the suit filed by the appellants in full.

11. Assailing the order of the High Court, Shri R. Basant, learned senior counsel contended that the High Court exceeded its revisional jurisdiction and decided the *lis* as though it was a regular appeal. Relying upon the Constitution Bench decision of this Court in ***Hindustan Petroleum Corporation Limited*** *vs.* ***Dilbahar Singh***,[1] the learned senior counsel contended that wherever the statute employed the expressions "*appeal*" and "*revision*", the expression "*revision*" is meant to convey the idea of a much narrower jurisdiction. Sub-section (9) of Section 83 of the Waqf Act declares that no appeal shall lie against any decision given by the Waqf Tribunal. Therefore, the learned senior counsel contended that the proviso to Sub-section (9) which confers a revisional jurisdiction upon the High Court, is meant to confer a jurisdiction narrower than the jurisdiction of an

1 (2014) 9 SCC 78

appellate Court. In the case on hand, according to the learned senior counsel for the appellants , the High Court appreciated the evidence independently and recorded findings on questions which were not even framed as issues by the Tribunal and that, therefore, the impugned order of the High Court is completely contrary to law.

12. While we agree with the learned senior counsel for the appellants that the revisional jurisdiction conferred by the proviso to Sub-section (9) of Section 83 is narrower than the jurisdiction that could have been conferred upon an appellate court, we do not think that the impugned order of the High Court suffers from the vice sought to be attributed by the learned senior counsel for the appellants.

13. Admittedly, the Mahal Committee which is appellant No.1 in one of the two appeals on hand, was plaintiff No.1 in O.S No.9 of 2004. In the plaint in O.S No.9 of 2004, there was not even a whisper about the corporate status of the Mahal Committee. In the written statement filed by Salafi Trust, they raised a specific contention that plaintiff No.1 was not a legal entity and that it is an illegal association of certain individuals and that there was not even a pleading as to

whether there were any bye-laws and as to how plaintiffs No.2 and 3 became the President and Secretary respectively.

14. Unfortunately, the Waqf Tribunal, in paragraph 17 of its Judgment held that plaintiff No.1 is a legal entity, entitled to sue and be sued. This was solely on the ground that plaintiff No.1 (Mahal Committee) was one of the *Sakha* units affiliated to a registered society by name Kerala Naduvathil Mujahideen ('KNM' for short).

15. The aforesaid finding is completely contrary to law. A society registered under the Societies Registration Act is entitled to sue and be sued, only in terms of its bye-laws. The bye-laws may authorise the President or Secretary or any other office bearer to institute or defend a suit for and on behalf of the society. Under section 6 of the Societies Registration Act, 1860, "*every society registered under the Act may sue or be sued in the name of President, Chairman, or Principal Secretary, or trustees, as shall be determined by the rules and regulations of the society and, in default of such determination, in the name of such person as shall be appointed by the governing body for the occasion*". Even the Travancore-Cochin Literary, Scientific and Charitable

Societies Registration Act, 1955, which is applicable to parts of Kerala carries a similar provision in section 9. Therefore, unless the plaintiff in a suit which claims to be a society, demonstrates that it is a registered entity and that the person who signed and verified the pleadings was authorised by the bye-laws to do so, the suit cannot be entertained. The fact that the plaintiff in a suit happens to be a local unit or a *Sakha* unit of a registered society is of no consequence, unless the bye-laws support the institution of such a suit.

16. The Waqf Tribunal committed a gross illegality, first in not framing an issue about the status of the Mahal Committee and then in recording a finding as though the local unit of a registered society which is in enjoyment of affiliated status, was entitled to sue. Such an illegality committed by the Tribunal was liable to be corrected by the High Court under its revisional jurisdiction and hence the fulcrum of the argument of the learned senior counsel for the appellants, has to fall to the ground.

17. As a matter of fact, the Mahal Committee did not file any revision against the rejection by the Waqf Tribunal of the relief of declaration regarding the certificate dated 24.03.2004 issued by the Chief

Executive Officer of the Kerala State Waqf Board. In the plaint filed by the Mahal Committee in OS No.9 of 2004, they assailed the certificate, on the ground that the said certificate completely repudiated the findings of the Enquiry Officer that the Mahal Committee was in management and administration of the Masjid. In other words the appellants herein understood, and rightly so, that the certificate dated 24.03.2004 sought to dislodge their claim to be in management and administration of the mosque. Therefore, the rejection by the Waqf Tribunal, of the prayer for declaring the said certificate to be null and void was fatal to their claim. Yet the appellants did not choose to file a revision. Today they cannot take umbrage under the fact that in any case, the Tribunal found them to be in management and administration of the waqf.

18. Though the High Court did not put against the appellants, their failure to file a revision, we think it is a crucial fact which cannot be overlooked. This is for the reason that the document dated 24.03.2004 is a certificate of registration issued under Section 36 of the Waqf Act, 1995. Once it is admitted that it was the first respondent namely the Salafi Trust who got the mosque registered as a waqf under Section 36

of the Act and once it is admitted by the appellants in paragraph 2 of their plaint in OS No.9 of 2004 that the mosque was constructed in a vacant plot demised by Salafi Trust, it was not open to them to go against the statutory prescriptions and claim to be the Mutawalli.

19. Though Shri R. Basant, learned senior counsel for the appellants also invited our attention to certain other aspects in the impugned judgment, we do not think that we need to go into each of these issues when we are convinced that the High Court exercised its revisional jurisdiction correctly and justly.

20. Therefore the appeals are dismissed. There shall be no order to costs.

.....J.
(Hemant Gupta)

.....J.
(V. Ramasubramanian)

New Delhi
March 30, 2022.