



2026 INSC 1122

NON-REPORTABLE

**IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION**

**CIVIL APPEAL NO. _____ OF 2026
(@ S.L.P. (Civil) No. 23573 of 2025)**

**ALLADIN CHARITIES AND ZAKAT
WAKF**

... APPELLANT(S)

VERSUS

**MOHAMMED SALEEM ALIAS MOHD.
WAJID ALI AND ANOTHER**

... RESPONDENT(S)

J U D G M E N T

S.V.N. BHATTI, J.

1. Leave granted.
2. Respondent No. 1 filed O.S. No. 2204 of 2012 before the Court of the VII Senior Civil Judge, City Civil Court at Hyderabad, seeking specific performance of the Agreement dated 23.02.2001, said to have been executed by Respondent No. 2. Respondent No. 2 remained *ex parte*, and on 18.03.2015, O.S. No. 2204 of 2012 was decreed. The terms of the Decree and the schedule of suit property read as under:

“

1. *That the suit of the plaintiff and the same hereby is decreed.*

2. *That the defendant do execute and register a sale deed in favour of the plaintiff in respect of the suit schedule property.*
3. *That plaintiff is at liberty to get the sale deed executed and register through the process of law.*
4. *That the plaintiff is also entitled for possession of the suit schedule property and*
5. *That the defendant do pay the plaintiff a sum of Rs. 10,428/- towards cost of this suit hearing his own costs of Rs. NIL.”*

XXX

XXX

“

SCHEDULE OF PROPERTY

All that the property Old Municipal NO. 634 (New Municipal No. 21-1-1098/9/10/11 consisting of Shops situated at Rikabgunj, Pathergatii, Hyderabad admeasuring 373 sq. yards:

NORTH: *City Court Land (Presently Road)*

SOUTH: *Passage to Pathergatti (Presently Road)*

EAST: *City Court Land (Presently Road)*

WEST: *Passage to Mosque of Mirde Munawar. (Presently Road)*

”

3. Respondent No. 1, on 05.01.2016, filed E.P. No. 4 of 2016 seeking delivery of physical possession of the suit property in the Decree dated 18.03.2015. Alladin Charities and Zakat Wakf, represented by its Managing Trustee/Appellant herein, filed E.A. No. 94 of 2016, resisting execution of the Decree dated 18.03.2015 in O.S. No. 2204 of 2012, as the stranger/Third Party Objector. To appreciate the alleged distinct flow of title claimed by the Decree Holder (“DHR”) and the Third Party Objector, a few circumstances required for disposing of the Appeal alone are referred to beforehand for convenience, and the objections raised by the Third Party Objectors through Document No. 69 of 1353 Fasli are appreciated. Mohammed Abdul Qayyum Sayeed, through the guardianship of Mohammed Abdul Ghafoor, sold a plot admeasuring 375 sq. yards in favour of Ali Ahmed s/o Dawood Ahmed, father of Respondent No. 2. The boundaries of the Sale Deed read as follows:

“East: Govt Land of City Court, West: Way and Mosque (Masjid) Mirde Munnawar, North: Land of City Court South: Way to Patherghatti. Note — This land has taken by Rabia Bi which was tenant of Yashwanth Rao Nekro, pattedar R/o Kacheguda by paying the rent of Rs 20/- for the plot 72 & 73 and having been in possession and enjoyment and having taken permission from the City Improvement Board got the same constructed and I have been in possession and enjoyment thereof. And now sold the same to meet my own need and requirement in favour of Dawood Ahmed.”

4. The said Ali Ahmed is said to have executed the Agreement of Sale in favour of Respondent No.1 for a sum of Rs.8,00,000/- (Rupees Eight Lakhs), said to have been paid in cash, in respect of the following property:

“All that land admeasuring 375 sq. yards consisting of present more than (41) Mulgies on both sides and structure on Pillars of Cellar, First Floor, and 2ns Floor in the middle of land shown in the plan attached herewith is bounded on the
North By: City Civil Court
South By Passage to Patherghatti.
East By: City Court land and
West By Passage to Mosque of Mirdhe Munnawar.”

Respondent No.1, on 06.12.2012, filed O.S. No. 2204 of 2012 for specific performance of the Agreement of Sale dated 23.02.2001 and delivery of possession, etc. On 18.03.2015, the Court decreed the Suit *ex parte*.

5. The Third Party Objector/Appellant claims right and title to the property in its possession through a Farman Mubarak issued by the then Nizam of Hyderabad. Through the Farman, the then Nizam is said to have conveyed the land at Pattharghati, Hyderabad, to Khan Bahadur Ahmed Alladin Nawab Ahmed Nawaz Jung Bahadur, the founder of the Trusts of the Alladin family, to set up a Waqf for charitable purposes. On 06.06.1949, the Muntakhab (Book of Endowments) described the property as the Mecca Madina Building at Pathergatti, Hyderabad. On 23.09.1976, the Trust Deed

was executed covering an extent of Approx. 3151.51 square yards at Rakibgunj, Pattharghati, Hyderabad in favour of the Appellant Trust.

6. According to the Third Party Objector, in a primary dispute under the Waqf Act, 1995, the Chief Executive Officer, A.P. State Waqf Board, on 15.05.2000 declared that the property covered by Door Nos. 21-1-1098/9 to 11 was an integral part of present Municipal No. 21-1-1098. Subsequently, in Writ Petition No. 9434 of 2000, the Court set aside the Order dated 15.05.2000 of the Chief Executive Officer, A.P. State Waqf Board. In that Writ Petition, the High Court directed that possession be given to the Third-Party Claimants, Hamid Ali and others. The Appellant filed Writ Appeal No. 983 of 2001, and the Division Bench, by Order dated 18.10.2001, allowed the Writ Appeal. On 15.02.2002, Special Leave Petition (Civil) Nos. 2351-2352 of 2002 were filed by Hamid Ali and others against the Judgment in Writ Appeal No. 983 of 2001, which was dismissed. It is a matter of record that on 20.11.2003, the A.P. Gazette Notification No. 47 Part II under the Waqf Act, 1995 was issued, notifying Municipal No. 21-1-1098/1 to 8 and declaring seven unnumbered *Mulgies* as property belonging to, or under the administrative control of, the Appellant. The property, admittedly in the Appellant's possession, is claimed as Waqf property, and the DHR also claims the same property through Ali Ahmed. O.S. No. 59 of 2002, filed by Hamid Ali and others against the Appellant for Municipal No. 21-1-1098/9 to 11, was dismissed, and the Tribunal's view was confirmed in the Order dated 22.11.2011 in CRP No. 6275 of 2004 by the erstwhile High Court of Andhra Pradesh at Hyderabad.

7. The Appellant filed E.A. No. 94 of 2016 resisting delivery of possession of the property in the Appellant's possession to the DHR in execution of the Decree dated 18.03.2015. For the view we are proposing to take, and after hearing Mr. C. Aryama Sundaram and Mr. Basava Prabhu S Patil, learned Senior Counsel, we have not, in detail, referred to the competing claims of DHR and the Third Party Objector. The Executing Court, vide Order dated 29.01.2019, dismissed the Claim Petition for the following paraphrased reasons:

A. The Petitioner failed to prove ownership of the specific schedule property in the Execution Petition because Municipal Nos. 21-1-1098/9 to 11 were not explicitly listed in A.P. Gazette Notification No. 47 Part II, and the Petitioner failed to place the Farman, Survey Commission Report, or Managing Trustee authorisation on record.

B. The Petition under Order XXI Rule 58 of the Code of Civil Procedure, 1908 ("CPC") is not maintainable because E.P. No. 4 of 2016 sought delivery of possession, not attachment.

C. The Claimant failed to establish that the E.P. schedule property is declared waqf property or that it is the same property as decided in O.S. No. 59 of 2002.

8. The Appellant challenged the Order dated 29.01.2019 in CCCA No. 94 of 2019 before the High Court for the State of Telangana at Hyderabad. By the impugned Order, CCCA No. 94 of 2019 was dismissed. The reasons in the impugned Judgment and the conclusions are summarised as under:

A. Habib Alladin/PW1 has not filed any document showing that the Trust authorised him to file the Claim Petition. Once the Waqf Board directly controls the property, the Managing Trustees have no *locus standi* to file the Claim Petition.

B. Although PW1 stated that he claims the property under a Farman and the Plan annexed to it, he did not produce either the Farman or the Plan.

C. No document has been filed to show that the Municipal Numbers referred to by the DHRs are fabricated. On the other hand, he has admitted that, as on date, the Municipal Nos. 21-1-1098/9 to 11 still exist in the Municipal Record.

D. In the A.P. Gazette Notification, Municipal Nos. 21-1-1098/9 to 11 are not explicitly mentioned. The said Notification, however, refers to seven mulgies but does not mention Municipal Numbers. The Appellant failed to submit any Waqf Survey Commission Report linking those mulgies to the E.P. schedule property.

E. The Appellant also did not challenge Sale Deed No. 69 of 1353 Fasli. The Decree Holder has a Sale Deed in his favour, executed through Court process, whereas the Petitioner has not produced any document to prove that the Suit Schedule Property, admeasuring 375 sq. yards, bearing Municipal Nos. 21-1-1098/9 to 11, belongs to Alladin Charities and Zakat Wakf. Thus, in the absence of any proof of title in his favour, the Appellant cannot succeed in claiming the suit schedule property.

F. Order XXI Rule 58 of the CPC governs objections to attachment of property. Since. E.P. No. 4 of 2016 was filed for delivery of possession, the

Claim Petition under Order XXI Rule 58 of the CPC was not maintainable. The application ought to have been filed under Order XXI Rule 97 of the CPC. Even otherwise, the Claim Petition deserves to be dismissed on merits.

9. Hence the Civil Appeal.

10. Mr. C. Aryama Sundaram, appearing for the Appellant, relies on the Judgment in *Periyammal (Dead) Through Legal Representatives and Others v. V. Rajamani and another*¹ and contends that the dismissal of the Claim Petition on the ground that the claim filed under Order XXI Rule 58 of the CPC is not maintainable by the Executing Court as well as the High Court is illegal. The quoting of the wrong provision is not a ground for rejecting the prayer of the Third Party Objector. The view of this Court in the relied-upon Judgment makes the position in law crystal clear, and the Executing Court and the Trial Court must decide the objections by conducting a detailed inquiry. The gist of the case in *Periyammal (Dead) (supra)* and the principles laid down by this Court are summed up as under:

A. Order XXI Rule 35 of the CPC confers jurisdiction on the Executing Court to remove any person bound by the Decree who refuses to vacate the property. Rules 97 to 101 of Order XXI deal with situations where execution is obstructed or resisted by “*any person*”, including even a stranger to the Decree who is not bound by it or who claims an independent right, title or interest in the property.

¹ (2025) 9 SCC 568.

B. Order XXI Rule 97 applies before a Decree for Possession is executed, allowing the Court to resolve an obstructionist's grievance before delivering the Decree to the DHR. Rule 99 applies later, when a stranger claiming rights in the property has been dispossessed and seeks restoration.

C. If a purported stranger to the Decree resists execution, the DHR's sole remedy lies under Order XXI Rule 97 of the CPC. The Holder cannot bypass such obstruction and insist on the reissuance of the warrant for possession under Order XXI Rule 35.

D. Courts adjudicating an Application under Order XXI Rule 97 must do so in accordance with Rule 101 of the CPC and conduct a full-fledged inquiry into all questions, including those relating to the right, title, or interest in the property arising between the parties.

10.1 In a matter such as the present, the decisive factor is not the claim of the DHR or the Appellant, but the identity of the property in the old and contemporaneous Revenue or Municipal Records. The documents relied on by the DHR are sketchy and do not establish the title, let alone defeat the title in favour of the Appellant recognised in earlier rounds of litigation with Hamid Ali and others up to this Court. The burden is wrongly fastened on the Third Party/Appellant. The boundaries in the Sale Deed of 1943 and the Decree Schedule are distinct. In the Suit, identity of property was not an issue. The identity of the Agreement of Sale, as reflected in anterior documents and the Decree Schedule, is established by the DHR. The DHR has no evidence to the contrary. Still, on the ground that the Appellant failed to discharge the burden, the Claim Petition is rejected, and such procedure is impermissible

and illegal. Since the enquiry has not been conducted as laid down by this Court in the relied-upon Judgment, it is argued that the impugned Judgment be set aside and the matter be referred to the Executing Court for disposal afresh. Alternatively, it is argued that the Appellant be allowed to establish the claim through legal and valid documents on record in the present Appeal.

11. Mr. Basva Prabhu S Patil, appearing for the first Respondent, argues that no ground is made out warranting interference with the impugned Orders and that the DHR is taking possession of the property covered by the Agreement to Sell and the Decree dated 18.03.2015. The Learned Senior Counsel, in response to the Court's query on whether the Schedules in the 1943 Sale Deed, Agreement of Sale, and the Sale Deed executed by the Court are correlated and established by the documentary evidence, fairly stated that the DHR was of the opinion that the Third Party Objector had to discharge the burden. He suggested that the matter be remanded to the Executing Court and that both parties be afforded an opportunity to file additional pleas and adduce additional evidence in support of their respective claims.

12. In view of the above, we are convinced that some of the findings recorded in the impugned Judgments do not conform to well-established principles of law. Accordingly, the impugned Judgments are set aside, and, as has been suggested, the matters are referred to the Executing Court for disposal afresh in accordance with law. The Executing Court is directed to allow further or fresh pleas on behalf of both parties, conduct a fresh inquiry in light of the decision referred to above, and dispose of the matter afresh.

13. The Civil Appeal is allowed. The matter is remanded to the VII Senior Civil Judge, City Civil Court at Hyderabad, State of Telangana for disposal as indicated above. No order as to costs.

14. Pending application(s), if any, stand disposed of accordingly.

.....J.
[S.V.N. BHATTI]

.....J.
[N. V. ANJARIA]

**New Delhi;
October 14, 2026.**