IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR.JUSTICE THOTTATHIL B.RADHAKRISHNAN
&
THE HONOURABLE MR. JUSTICE SUNIL THOMAS

MONDAY, THE 20TH DAY OF JULY 2015/29TH ASHADHA, 1937

CRP(WAKF).No. 402 of 2015 ()

(AGAINST ORDER DATED 05.06.2015 IN I.A.NO.269/2015 & I.A.NO.270/2015 IN O.S.NO.66/2005 ON THE FILE OF THE WAKF TRIBUNAL, KOXHIKODE)

REVISION PETITIONER(S)/(PETITIONER/12TH DEFENDANT):

P. JAMSHEED, AGED 42 YEARS,
S/O.MOIDEEN KOYA, P.O.KARAPARAMBA, VENGERI AMSOM
NEDUNGOTTUR DESOM
KOZHIKODE TALUK,
BY POWER OF ATTORNEY HOLDER MOIDEEN KOYA,
AGED 72 YEARS, S/O.PUTHUSSERI USMAN KOYA, RAHAM
P.O.KARAPARAMBA, FLORICAL ROAD, KATCHERI AMSOM DESOM
KOZHIKODE TALUK.

BY ADVS.SRI.T.SETHUMADHAVAN (SR.)
SRI.P.VENUGOPAL
SMT.N.DEEPA

RESPONDENT(S)/PLAINTIFF AND DEFENDANTS 1 TO 11:

1. **J.D.T. ISLAM ORPHANAGE COMMITTEE,**
VELLIMADU KUNNU,
CHEVAYUR AMSOM DESOM
KOZHIKODE TALUK,
REPRESENTED BY ITS SECRETARY, ABDUL RAHIM,
AGED 73 YEARS, S/O.MOHAMMED ABDULLA.

2. **SRI.ABDUL LATHEEF**
AGED NOT KNOWN, S/O.LATE MOHAMMED ASLAM
NOW RESIDING AT 33/1036, THYKANDI PARAMBA,
CHEVAYOOR AMSOM DESOM, KOZHIKODE TALUK.

3. **SRI.M.FEYAZ**
AGED NOT KNOWN, S/O.LATE MOHAMMED ASLAM
NOW RESIDING AT 33/1036, THYKANDI PARAMBA
CHEVAYOOR AMSOM DESOM, KOZHIKODE TALUK.

4. SHAMEEM FATHIMA, AGED 50 YEARS
D/O.LATE MUHAMMED ASLAM, RESIDING AT NO.33
MUTHAYYA MUTHALI STREET, RAYIPETTA, TAMIL NADU-14.

5. MOYIN FATHIMA, AGED 48 YEARS
D/O.LATE MUHAMMED ASLAM, RESIDING AT NO.33
MUTHAYYA MUTHALI STREET, RAYIPETTA, TAMIL NADU-14.

6. THAZNIM FATHIMA, AGED 47 YEARS
D/O.LATE MUHAMMED ASLAM, R/AT PANAMBIL HOUSE
P.O.VAZHAKKAD, ERNAD TALUK, MALAPPURAM DISTRICT.

7. M.THITHIKUTTY UMMA, AGED 67 YEARS
W/O.LATE MUHAMMED ASLAM, RESIDING AT PANAMBIL HOUSE
P.O.VAZHAKKAD, ERNAD TALUK, MALAPPURAM DISTRICT.

8. A.BEEBI FATHIMA, AGED 47 YEARS
D/O.LATE MUHAMMED ASLAM, RESIDING AT PANAMBIL HOUSE
P.O.VAZHAKKAD, ERNAD TALUK, MALAPPURAM DISTRICT.

9. A.ZUBIDA, AGED 38 YEARS
D/O.LATE MUHAMMED ASLAM, RESIDING AT PANAMBIL HOUSE
P.O.VAZHAKKAD, ERNAD TALUK, MALAPPURAM DISTRICT.

10. A.SAINABHA, AGED 35 YEARS
D/O.LATE MUHAMMED ASLAM
(NOS.6 TO 9 ALL ARE TO BE SERVED AT PANAMBIL HOUSE
P.O.VAZHAKKAD, ERNAD TALUK, MALAPPURAM DISTRICT).

11. WAKF BOARD
KERALA, ERNAKULAM
REPRESENTED BY ITS CHIEF EXECUTIVE OFFICER.

12. FIZAL M.
S/O.LATE MUHAMMED ASLAM
NO.33, MUTHAYYA MUTHALI STREET,
ROY PETTA, MADRAS-14.

R1 BY ADV. SRI.K.JAYAKUMAR (SR.)
R1 BY ADV. SRI.R..PARTHASARATHY (CAVEATOR)

THIS CRP (WAKF ACT) HAVING COME UP FOR ADMISSION ON 20-07-2015, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

THOTTATHIL B.RADHAKRISHNAN &
SUNIL THOMAS, JJ.

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CRP (Wakf) No.402 of 2015

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Dated this the 20th day of July, 2015.

O R D E R

Thottathil B.Radhakrishnan, J.

1. The twelth defendant in a suit before the Wakf Tribunal, Kozhikode is the revision petitioner.

2. We have heard the learned senior counsel for the revision petitioner and the learned counsel for the opposing plaintiff.

3. The plaintiff held out that it has title to the property in question. It being wakf property, a suit that was pending before the Munsiff Court was, later on, re-presented before the Wakf Tribunal. Certain issues relating to limitation in institution of the proceeding before the Wakf Tribunal led to an earlier proceeding before this Court. Certain directions were issued during the course of that proceeding requiring the Wakf Tribunal to conclude the adjudication in a time bound manner. Ultimately, defendant

Nos.1 to 10 and the revision petitioner before us faced a situation, where an ex parte decree was passed against them.

4. The sum and substance of the defence of defendant Nos.1 to 10 is that the acquisition was made by their father in his personal capacity and such acquisition will not inure to the benefit of any wakf and the property is not a wakf property. The determination of title was thus sought to be one eligible to be given in their favour. The 12th defendant, who is before us, is a pendente lite transferee. He joined other defendants, namely defendant Nos.1 to 10, in filing an interlocutory application seeking to set aside the ex parte decree. He also filed a separate application seeking that the ex parte decree be set aside. The court below dismissed those applications, though they were filed within the time prescribed by law for institution of such applications.

5. We have seen the quality of the rival claims and the nature of adjudication that is called for in such a situation. We also see

from the proceedings before the court below that some amount of evidence was adduced by the plaintiff and the defendants were set ex parte after some portion of defence evidence was adduced and a Commission was appointed to record the oral evidence of the witnesses. The explanation extended was that the matter could not be prosecuted and, ultimately, the ex parte decree was known through the father of the 12th defendant. We have considered the rival contentions and submissions. We also note the stand taken by the plaintiff that the defendants cannot cling on possession except on terms even if the ex parte decree were to be set aside. We are told that the extent of the property is 31 cents with a building and yielding coconut trees.

Taking all the aforesaid facts and circumstances into consideration and in the light of the submissions in this regard as well as made by the learned senior counsel on either side, we are of the view that ends of justice would be satisfied if the impugned order is set aside and, consequentially, the ex parte decree is also

set aside on condition that the revision petitioner deposits before the court below an amount of ₹1,00,000/- (Rupees one lakh only) and pays to the plaintiff an amount of ₹10,000/- (Rupees ten thousand only) as costs, within a period of seven weeks from now and we do so. Parties are directed to mark appearance before the court below on 08.09.2015. The receipt evidencing payment of costs as ordered above shall be produced before the court below. If the aforesaid conditions are satisfied, the court below will make an endeavour to expeditiously decide the suit finally. The revision petitioner shall take this as the last opportunity for contesting the suit. This civil revision petition is ordered accordingly.

(THOTTATHIL B.RADHAKRISHNAN, JUDGE)

(SUNIL THOMAS, JUDGE)

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