

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.09.2017

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(NPD)No.1980 of 2009

Mohamed Yahia

.. Petitioner

Vs.

1.Tamil Nadu Wakf Board
Santhome
Chennai-4.

2.Sunnath jamath Masjid
Vadugankalipalayam
Palladam Taluk.

.. Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, against the judgment and decree dated 25.08.2008 in A.S.No.13 of 2007 on the file of the Principal District Court, Coimbatore.

For Petitioner : Mr.R.Venkatachalapathy
for Mr.S.Kadarkarai

For R1 : Mr.V.Lakshmi Narayanan

For R2 : Mr.T.P.Manoharan

ORDER

The Civil Revision Petition is filed against the judgment and decree dated 25.08.2008 in A.S.No.13 of 2007 on the file of the Principal District Court, Coimbatore.

2. The petitioner is the plaintiff and respondents are the defendants in O.S.No.971 of 2003 on the file of the Wakf Tribunal and Subordinate Court, Coimbatore. The petitioner is the appellant and respondents are the respondents in A.S.No.13 of 2007 on the file of the Principal District Court, Coimbatore. The petitioner filed the above suit for a declaration declaring the notice dated 25.06.2003 issued by the first respondent in reference No.R.C.No.6632/CBE/E3/2003 which is produced as Doc.No.1, as ultra Vires, unlawful and unenforcible in law and for consequential relief of permanent injunction restraining the respondents from interfering with the petitioner's peaceful possession and enjoyment of the suit property.

3. According to the petitioner, the suit property was purchased by his father S.K.Mohammed Ibrahim by sale deed dated 07.08.1950. From that date, till his death on 24.01.1990, his father was in possession and enjoyment of the suit property. After his death, the Special Tahildar, Natham land tax scheme, Palladam, has issued Patta No.754 to the legal heirs of S.K.Mohammed Ibrahim and they released their interest in the suit property in favour of the petitioner by release deed dated 09.09.1999. From

that date onwards, the petitioner is in possession and enjoyment of the suit property by paying property tax. For more than 100 years, 80 families in Vadugankalipalayam village occupied the land in S.No.387/1 and they are in possession and enjoyment of the suit property. They approached the Special Tahshidar, Natham land tax scheme, Palladam, for patta. A copy of the said application has been sent to the second respondent. The second respondent by Resolution Nos.265 and 266, dated 02.01.1992 stated that they have no objection for granting patta in favour of 80 families, who are occupying the land in S.No.387/1. The petitioner is also one of the persons covered by the said Resolutions. Based on the said Resolutions dated 02.01.1992, patta was granted to the occupants including the petitioner. While so, the first respondent issued impugned notice dated 25.06.2003 in reference No.R.C.No.6632/CBE/E3/2003, which is illegal and unenforceable in law. The petitioner is not an encroacher and he is the absolute owner of the suit property. The respondents do not have title over the suit property and without any enquiry, the first respondent is making attempts to dispossess the petitioner. In view of the above facts, the petitioner filed the suit before the Wakf Tribunal.

4. The respondents 1 and 2 have filed separate written statements and are contesting the suit. They submitted that the property in S.No.387/1 and other properties were declared as wakf properties as per the Coimbatore Gazette notice dated 18.08.1863. The said wakf properties were created in the year 1863. Once wakf is created, it is always a wakf and nobody has right to claim the title over the wakf property. The persons who were in the management of second respondent earlier colluded together and passed Resolution Nos.265 and 266, dated 02.01.1992 stating that they have no objection for granting patta to 80 families, who were the encroachers. The previous secretary was also one of the encroachers in the suit property. Even though patta was granted to the petitioner and others, their names were not changed in the Chitta and Adangal. The first respondent in order to give an opportunity to the petitioner by impugned notice called upon the petitioner for an enquiry. The petitioner has not issued mandatory notice as per Section 89 of the Wakf Act, 1995. As per Section 107 of the Wakf Act, 1995, there is no limitation to claim the wakf property.

5. Before the Tribunal, the petitioner examined himself as P.W.1 and marked 17 documents as Exs.P1 to P17. The respondents

examined one Beer Mohammed Sait as R.W.1 and marked six documents as Exs.R1 to R6.

6. The Wakf Tribunal considering the pleadings, oral and documentary evidence, dismissed the suit in O.S.No.971 of 2003. Against the said order of dismissal dated 10.02.2006 made in O.S.No.971 of 2003, the petitioner filed A.S.No.13 of 2007 on the file of the Principal District Court, Coimbatore. The learned Appellate Judge dismissed the appeal holding that the Principal District Court, Coimbatore, has no power to entertain and decide the said appeal as against the judgment of the Wakf Tribunal. As per Section 83(9) of the Wakf Act, no appeal can be filed against the decision or order passed by the Wakf Tribunal.

7. Against the said order of dismissal dated 25.08.2008 made in A.S.No.13 of 2007, the present Civil Revision Petition is filed by the petitioner/plaintiff.

8. The learned counsel for the petitioner mainly argued that the learned Principal District Judge, Coimbatore, having dismissed the appeal filed by the petitioner as having no power to entertain

and decide the appeal erred in holding that the petitioner is not entitled to relief sought for in the suit. The judgment of the Wakf Tribunal is erroneous and is liable to be set aside. The learned counsel for the petitioner reiterated the averments made in the plaint, as per Ex.P1/sale deed dated 07.08.1950, Ex.P2/release deed dated 09.09.1999 and other documents marked as Exs.P3 to P14 and contended that the petitioner is the absolute owner of the suit property and it does not belong to the first respondent.

9. Per contra, Mr.Lakshmi Narayanan, the learned counsel for the first respondent relied on Ex.R1/Gazette issued by the Tamil Nadu Government and Exs.R2 to R6 and contended that the property belongs to the wakf and nobody has power to deal with the said property except the first respondent. The Resolution dated 02.01.1992 passed by the second respondent is not a valid one and second respondent has no authority or power to give no objection to issue patta to the petitioner and others. Thus, he prayed for dismissal of the civil revision petition.

10. The learned counsel for the second respondent has also made similar submissions and further submitted that the Resolution

dated 02.01.1992 relied on by the petitioner is passed in collusion with the erstwhile management of the second respondent and Secretary, who was also one of the encroachers and the same is invalid.

11. Heard both sides and perused the materials available on record.

12. The petitioner claims right over the suit property based on Ex.P1/sale deed dated 07.08.1950, under which, according to the petitioner, his father S.K.Mohammed Ibrahim purchased the property in question and after the death of his father, by release deed dated 09.09.1999/Ex.P2, other legal heirs of his father S.K.Mohammed Ibrahim released their interest in the suit property in favour of the petitioner. The Tribunal considered Ex.P1/sale deed dated 07.08.1950 and took note of the fact that the survey number and extent were not mentioned in Ex.P1/sale deed. While so, the petitioner is claiming title over the vacant land of 2016 Sq.ft in S.Nos.387/1 and 387/2A and subsequently, the petitioner has contended that the said property is in S.No.387/2A and not in S.No.387/1. The Tribunal rejected the said contention on the ground

that the petitioner has not taken any steps with the help of land surveyor to prove that the property claimed by him is in S.No.387/2A and not in S.No.387/1.

13. It is pertinent to note that the petitioner is claiming title over the property based on Ex.P1/sale deed dated 07.08.1950 and Ex.P2/release deed dated 09.09.1999. When the petitioner claims his title based on the said documents, there is no necessity for the petitioner to rely on the Resolution dated 02.01.1992 of the second respondent giving no objection for issuance of patta. This contradiction coupled with the fact that survey number and extent of the land are not mentioned in Ex.P1/sale deed, the Tribunal has rightly held that the petitioner is not the owner of the property in question and only first respondent is the owner. The petitioner is challenging the impugned notice of the first respondent. As per Section 89 of the Wakf Act, no suit can be instituted against the Board without notice being issued before instituting such a suit. The Tribunal considering two judgments of this Court reported in AIR 1973 Madras 104 (C.A.K.Mohidden Vs. Madras State Wakf Board), AIR 1982 Madras 202 (Rahmath Bi Vs. State Wakf Board) and Section 56 of Wakf Act, 1923, which is corresponding to Section 89

of the present Act, held that the pre-notice is mandatory. For the above reasons, the Tribunal dismissed the suit filed by the petitioner. The Tribunal has given valid reason for rejecting each and every plea raised by the petitioner. The learned Principal District Judge, Coimbatore, has dismissed the first appeal on the ground that he has no power to entertain the said appeal in view of Section 83(9) of the Wakf Act. Both the Courts below have given valid reasons for dismissing the claim of petitioner.

14. In view of the above, there is no illegality or irregularity warranting interference by this Court with the judgment of the learned first Appellate Judge, dated 25.08.2008.

15. In the result, this Civil Revision Petition is dismissed as devoid of merits. No costs.

Index : Yes/No
dm/kj

04.09.2017

WEB COPY

V.M.VELUMANI, J.

dm/kj

To

- 1.The Principal District Judge,
Coimbatore.
- 2.The Tamil Nadu Wakf Board
Santhome
Chennai-4.



C.R.P.(NPD)No.1980 of 2009

WEB COPY

04.09.2017