



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 06.09.2017

Date of Reserving the Order	Date of Pronouncing the Order
16.08.2017	06.09.2017

CORAM:

THE HONOURABLE MR.JUSTICE T.RAVINDRAN

C.R.P. (NPD) (MD) No.354 of 2007

and

M.P. (MD) No.1 of 2007

- 1.Muthu Nachiar
- 2.Insha Nachiar
- 3.Hameed Nachiar
- 4.Yusuff Nachiar
- 5.Abidhapanu
- 6.Sabirabanu

... Petitioners

-vs-

- 1.Dr.Mohamed Meera Saheb
 - 2.Abdul Hakkum
 - 3.Dawood Nachiar Ammal
 - 4.Sheik Ali
 - 5.Sheik Salahudeen
 - 6.Sheik Sabiyudeen
 - 7.Minor.Sheik Samrudeen
 - 8.Minor.Nasreen Fathima
 - 9.Minor.Mubeetha
 - 10.Minor Jaseem
 - 11.Sithi Rabeeka
 - 12.Minor Ibrahim Ali
- (Rep.by Guardian and mother 3rd Respondent)

- 13.Mohamed Mariyam
- 14.Hatheeja Ammal
- 15.Abdul Khader
- 16.Mohamed Rowther

... Respondents

[R7 & R8 rep.by their father
& guardian Mohamed Meera
Sahib and R9 & R10 rep.by
Court guardian Advocate
D.Santhakumari]

PRAYER: Civil Revision Petition is filed, under Section 83 of Wakf Act, 1995 to call for the order and decreetal order made in O.P.No.4 of 2005, on the file of the Principal Subordinate Judge Court (Wakf Tribunal) at Thanjavur, dated 18.09.2006.



For Petitioners : Mr.S.Thiruvengkatasamy

For Respondents : Mr.S.Srinivasa Raghavan for R1 to R15

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O R D E R

The original petition has been laid by the petitioners / petitioners and the 16th respondent / eighth petitioner, against the respondents 1 to 15 / respondents, for declaration, recovery of possession and future *mesne* profits.

2. For the sake of convenience, the parties are referred to as per the nomenclature in the original petition.

3. The case of the petitioners in brief is that the properties described in the petition schedule absolutely belonged to one Abdul Kasim, the elder brother of the deceased first petitioner and the respondents 1 to 3 are the children of the deceased first petitioner's paternal uncle. Abdul Kasim married Bajjiriya Ammal, sister of the respondents 1 to 3 and he died intestate on 22.04.1998 and the deceased first petitioner is the sole heir of the deceased Abdul Kasim as per the Mohammedan Law. The parents of the deceased Abdul Kasim predeceased him and the deceased first petitioner's paternal uncles M.S.Sheik Ali died in 1980 and M.S.Sheik Dawood died in 1950 and the wife of the deceased Abdul Kasim also predeceased him in 1989 and thus, the said Abdul Kasim had no issues. A genealogy table is appended to the petition to show the relationship between the parties concerned. As the deceased first petitioner is the sole heir of the deceased Abdul Kasim, the respondents 1 to 3 are not entitled to inherit the estate of the deceased Abdul Kasim in the presence of the deceased first petitioner and thus, the deceased first petitioner was the absolute owner of the suit properties. The respondents 1 to 3 have taken the possession of the suit properties, after the death of Abdul Kasim by trespassing into the same in the last week of April, 1998 and though the deceased first petitioner had been repeatedly requesting them to vacate and handover the possession of the suit properties to him, the respondents 1 to 3 were giving evasive reply and thereafter, sent a caveat petition to the deceased first petitioner in August, 1998, which revealed their intention to squat on the suit properties as far as possible without handing over the same to the deceased first petitioner. They have no right to remain in the possession of the suit properties and the respondents 1 to 3 also questioned the succession of the deceased first petitioner to the suit properties and the properties of Bajjiriya Ammal. As per the legal position, the deceased first petitioner is the sole heir to inherit the properties of the deceased Abdul Kasim and inasmuch as the



respondents 1 to 3 had taken a hostile attitude towards the deceased first petitioner, according to the deceased first petitioner, he had been constrained to lay the original petition seeking for the appropriate reliefs. The respondents 4 to 8 are the children of the first respondent. The respondents 9 and 10 are the children of the second respondent. The respondents 11 to 15 are the children of the third respondent. They have also been impleaded as parties to the proceedings as per the orders of the Court below. The alleged oral gift and the document of Hiba relating to the suit properties is a forged one, illegal and invalid and the petitioners denied all the contentions about the alleged oral gift. During the pendency of the original petition, the first petitioner had died and his legal representatives have been brought on record as the petitioners 2 to 8 and on the demise of the first petitioner, the petitioners 2 to 8 have succeeded his estate. Thus, it is stated that the original petition has been laid for the appropriate reliefs.

4. The case of the first respondent, as adopted by the other respondents, is that the original petition laid by the petitioners is not maintainable either in law or on facts and it is false to state that Abdul Kasim died intestate on 22.04.1998. The genealogy table appended to the plaint does not reflect the true position and the petitioners suppressed the branch of M.S.Abdul Karim and M.S.Meera Sahib in the plaint as well as in the genealogy table. It is false to state that the respondents have trespassed into the suit properties after the demise of Abdul Kasim and that the deceased first petitioner had been requesting them to vacate and handover the vacant possession of the suit properties as he is the sole heir of the deceased Abdul Kasim. The deceased Abdul Kasim was living with the respondents along with his wife as his wife was the sister of the respondents 1 to 3 and the sister of the respondents 1 to 3 died without any issues in 1989 and ever after her death, the deceased Abdul Kasim was living only with the respondents' family and accordingly, the properties of the deceased Abdul Kasim and the properties of the respondents were all jointly enjoyed without any partition and the deceased Abdul Kasim on 25.09.1997 had orally gifted the suit properties in favour of the legal heirs of the respondents 1 to 12 in the presence of the witnesses and subsequently, he had confirmed the same by a written document of Hiba on 19.01.1998 out of his own volition and free state of mind. The respondents have taken the possession of the suit properties on the date of the Hiba and enjoying the same as such and accordingly, they have been paying the necessary revenue charges in respect of the suit properties and also receiving the rents from the tenants of the shops located in the suit properties and the same had been suppressed by the petitioners in the original petition and the suit properties had been derived by way of the Hiba executed by the deceased Abdul Kasim, the petitioners are not entitled to lay any claim over the suit properties as if they are



the legal heirs of the deceased Abdul Kasim and further, the petitioners have also not impleaded the proper and necessary parties to the proceedings and not properly valued the original petition and hence, the original petition is liable to be dismissed.

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5. The case of the minor respondents 9 and 10 as stated by their Court guardian is that the suit properties had been gifted by the deceased Abdul Kasim in favour of the children of the respondents 1 to 3 and the same had been confirmed by a written document, dated 19.01.1998 and therefore, it is false to state that the deceased Abdul Kasim died intestate leaving only the deceased first petitioner as his legal heir to succeed his estate and hence, the respondents 9 and 10 are also entitled to the suit properties and hence, the suit is liable to be dismissed.

6. The case of the fifteenth respondent is that the petitioners are not entitled to obtain the reliefs sought for in the original petition. The deceased Abdul Kasim had orally gifted the suit properties in favour of the respondents 4 to 15 by way of the oral gift on 25.09.1997 and later, confirmed the same by a written document, dated 19.01.1998 and thereby, the suit properties had been in possession and enjoyment of the respondents as per the Hiba executed by the deceased Abdul Kasim and the case of the petitioners that the Hiba executed by the deceased Abdul Kasim is a forged one is unsustainable in the eyes of law. The suit properties had not been properly valued and hence, the original petition is liable to be dismissed.

7. On the basis of the pleadings set out above, the following issues were framed by the Court below for determination:

- i. Whether it is true that the deceased first petitioner is the legal heir of the deceased Abdul Kasim?
 - ii. Whether the oral Hiba, dated 25.09.1997 and the confirmation of the same by a written document, dated 19.01.1998, executed by Abdul Kasim in respect of the suit properties is true?
 - iii. Whether the respondents 1 to 3 have been given possession and enjoyment of the suit properties pursuant to the document of Hiba, dated 19.01.1998?
 - iv. Whether the petitioners are entitled to obtain the relief of declaration as prayed for?
 - v. Whether the petitioners are entitled to obtain the relief of possession of the suit properties from the respondents as prayed for? and
- vi. To what relief the petitioners are entitled to?



8. In support of the case of the petitioners, P.Ws.1 to 5 were examined and Exs.P1 to P16 were marked and on the side of the respondents, R.Ws.1 to 5 were examined and Exs.R1 to R110 were marked.

9. On a consideration of the oral and documentary evidence placed by the respective parties, the Court below was pleased to dismiss the original petition laid by the petitioners. Aggrieved over the same, the present civil revision petition has been preferred by the petitioners.

10. The following points arise for consideration in this civil revision petition:

- i. Whether the Wakf Tribunal, Thanjavur, has the jurisdiction to entertain the *lis* between the parties concerned and whether the petitioners are entitled to question the jurisdiction of the Wakf Tribunal, Thanjavur, for the first time in the revisional Court?
- ii. Whether the oral Hiba, dated 25.09.1997 and the confirmation of the same by a written document, dated 19.01.1998, executed by the deceased Abdul Kasim in respect of the suit properties in favour of the respondents 4 to 15 is true, valid and binding on the petitioners?
- iii. Whether the petitioners are entitled to obtain the reliefs of declaration, possession and future *mesne* profits as prayed for? and
- iv. To what relief the petitioners are entitled to?

POINT NO. I:

11. It is found that the original petition laid by the petitioners has been originally instituted as O.S.No.127 of 1998, on the file of the Sub Court, Pattukkottai. It is further found that subsequently, on account of the jurisdiction, the suit above mentioned was partly tried by the Fast Track Court No.II, Pattukkottai and it is further found that after the evidence had been recorded on the side of the petitioners both oral and documentary and the evidence of the respondents also having been substantially recorded upto the stage of D.W.4 by the Fast Track Court No.II, Pattukkottai, it is found that the Fast Track Court No.II, Pattukkottai finding that the controversy between the parties also relate to the wakf property as such transferred the suit proceedings to the Wakf Tribunal, Thanjavur for further continuation of the proceedings and accordingly, it is found that the Wakf Tribunal, Thanjavur on the transfer of the above said original suit, assigned W.O.P.No.4 of 2005 to the proceedings and after completion of the recording of evidence in the matter, pronounced the order as above mentioned dismissing the petition preferred by the petitioners.



12. Impugning the above said aspects, it is strenuously argued by the learned counsel for the petitioners that inasmuch as the dispute between the parties does not pertain to any wakf property and further according to him, as even the second item of the suit properties only pertains to the shops located on the site belonging to the wakf and as the parties are not in dispute about the title of the wakf as regards the site on which the shops are located, it is contended that the Fast Track Court No.II, Pattukkottai has erred in transferring the suit proceedings to the Wakf Tribunal, Thanjavur, by invoking the provisions of the Wakf Act, 1995 and also contended that the Wakf Tribunal, Thanjavur, who has no jurisdiction to decide the issues involved in the matter, erred in proceeding with the *lis* and therefore, it is stated that the Wakf Tribunal having no jurisdiction at all to determine the *lis* between the parties concerned for the reasons afore-stated, it is contended that on the above ground alone, the impugned Judgment and Decree of the Wakf Tribunal are liable to be set aside. In this connection, strong reliance is placed upon by the learned counsel for the petitioners on the decisions reported in **(2012) 4 SCC 307 [Kanwar Singh Saini vs. High Court of Delhi]** and **(2013) 10 SCC 136 [Jagmittar Sain Bhagat and others vs. Director, Health Services, Haryana and others]**.

13. A perusal of the above cited decisions would go to show that the jurisdiction of the Courts / Forums cannot be conferred by the consent of the parties or acquiescence or waiver and hence, the decree passed by a Court having no jurisdiction over the matter would amount to nullity. However, it is vehemently contended by the learned counsel for the respondents 1 to 15 that the question of jurisdiction of the Wakf Tribunal, Thanjavur, had not been raised by the petitioners, when the matter was pending before the Wakf Tribunal, Thanjavur, as such and only for the first time, the issue of jurisdiction is being raised in this civil revision petition and further according to him, as regards the issue of jurisdiction, on any account if at all valid, should have been raised by the petitioners at the earliest possible opportunity and in all cases where issues are settled at or before such settlement and further, the petitioners should establish that the decision or the determination of the issues between the parties by the Wakf Tribunal, Thanjavur, has resulted a failure of justice against the parties concerned and in this connection, strong reliance is placed upon Section 21 of the Code of Civil Procedure, which reads as follows:

"21. Objections to jurisdiction:

(1)] No objection as to the place of suing shall be allowed by any appellate or Revisional Court unless such objection was taken in the Court of first instance at the earliest possible opportunity and in all cases where issues are



settled at or before such settlement, and unless there has been a consequent failure of justice.

(2) No objection as to the competence of a Court with reference to the pecuniary limits of its jurisdiction shall be allowed by any Appellate or Revisional Court unless such objection was taken in the Court of first instance at the earliest possible opportunity, and in all cases where issues are settled, at or before such settlement, and unless there has been a consequent failure of justice."

14. A perusal of the above said provision of law would go to show that as regards the objection to the jurisdiction, it is found that the same should have been raised at the earliest possible opportunity and in all cases where issues are settled at or before such settlement and further, it is also found that the objection to the jurisdiction cannot be allowed to be made unless there has been a consequent failure of justice by the determination of the *lis* by the Court having no jurisdiction. In this connection, the decision reported in **2016 (2) MWN (Civil) 668 [K.P.Ranga Rao vs. K.V.Venkatesham and others]** is relied on by the learned counsel for the respondents 1 to 15 and the position of law as regards the objection to the jurisdiction vis-a-vis Section 21 C.P.C., has been illuminated in the above cited decision as follows:

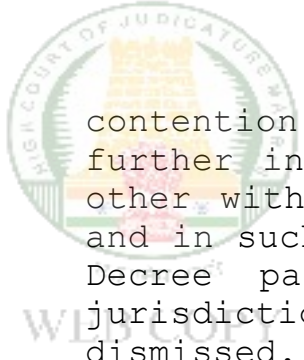
"5. In order that an objection to the place of suing may be entertained by an Appellate or Revisional Court, the fulfilment of the following three conditions is essential:

(1) The objection was taken in the Court of first instance,

(2) It was taken at the earliest possible opportunity and in cases where issues are settled at or before such settlement,

(3) There has been a consequent failure of justice."

15. Insofar as this case is concerned, it is found that no doubt, the *lis* was originally instituted as a suit in the Civil Court and thereafter, on finding that the properties involved in the *lis* also comprise of wakf properties, the *lis* had been transferred to the Wakf Tribunal for further proceedings. However, it is the contention of the learned counsel for the petitioners that when there is no dispute between the parties as such as regards the vacant site on which the shops described in the second item of the suit properties are located, the same having been admitted to be a site belonging to the wakf, it is his contention that the proceedings should not have been transferred to the Wakf Tribunal, Thanjavur and accordingly, it is his further



contention that the Wakf Tribunal should not have proceeded further in the matter and disposed of the matter one way or the other without ascertaining the jurisdiction to entertain the *lis* and in such view of the matter, according to him, the Judgment and Decree passed by the Wakf Tribunal in the matter without jurisdiction is nothing but a nullity and hence liable to be dismissed. In this connection, reliance is also placed upon Section 83 of the Wakf Act, 1995 and it has been contended that only if there is a dispute between the parties in respect of or relating to a wakf or wakf property and other causes as adumbrated under Section 83 of the Wakf Act, the Wakf Tribunal would not have jurisdiction to determine the matter. However, on a reading of Section 83 of the Wakf Act, it is found that the Wakf Tribunal has got jurisdiction for the determination of any dispute, question or other matter relating to a wakf or wakf property and also for other cases as outlined therein. Therefore, it is not necessary that there should decisively be a dispute or question as regards the wakf or wakf property concerned by the parties in the *lis* for conferring the jurisdiction on the Wakf Tribunal. On the other hand, a reading of Section 83 of the Wakf Act would go to show that for the determination of any dispute, question or "other matter" relating to a wakf or wakf property, the Wakf Tribunal has jurisdiction to determine such issues and when admittedly, the shops described in the second item of the suit properties are located in the site belonging to the wakf and accordingly, it is found that the Fast Track Court No.II, Pattukkottai, on knowing the said fact, had transferred the *lis* to the Wakf Tribunal, Thanjavur, for the further continuation of the *lis* and in such view of the matter, it is found that even though there may not be a specific dispute as regards the site on which the shops described in the second item of the suit properties are located between the parties, when the site is found to be admitted to be a wakf property and when the shops located thereon are in dispute between the parties, it is found that the issue would come under "the other matter" relating to a wakf or wakf property as adumbrated under Section 83 of the Wakf Act and in such view of the matter, the question pertaining to the same also should be decided only by the Wakf Tribunal and in such view of the matter, it is found that the Wakf Tribunal, Thanjavur, has the jurisdiction to determine the *lis* involved in the matter.

16. That apart, as rightly put forth by the learned counsel for the respondents 1 to 15, if according to the petitioners, the Wakf Tribunal, Thanjavur, has no jurisdiction to entertain the *lis*, noting prevented the petitioners from impugning the transfer of the proceedings to the Wakf Tribunal, Thanjavur, by the Fast Track Court No.II, Pattukkottai, in the manner known to law. Even further if really, according to the petitioners, the Wakf Tribunal, Thanjavur, has no jurisdiction to entertain the *lis*, nothing prevented the petitioners from raising an issue with reference to the same and invite its decision on the said question



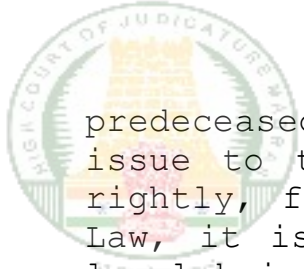
also. However, without any demur, it is found that the petitioners on the transfer of the *lis* proceedings to the Wakf Tribunal, Thanjavur, had continued the proceedings by adducing further evidence on their side and accordingly, it is found that they had acquiesced to the jurisdiction of the Wakf Tribunal, Thanjavur, and in such view of the matter, when, as per the discussions made supra, the Wakf Tribunal, Thanjavur, is also found to have the jurisdiction to determine the issue as per Section 83 of the Wakf Act and when further the petitioners have also not challenged the jurisdiction of the Wakf Tribunal, Thanjavur, at the earliest possible opportunity or even subsequent to the transfer of the proceedings to the Wakf Tribunal, Thanjavur, it is found that the petitioners have failed to question the jurisdiction of the Wakf Tribunal, Thanjavur, as mandated under Section 21 of the Code of Civil Procedure.

17. In the light of the above discussions, it is found that the Wakf Tribunal, Thanjavur, has the jurisdiction to entertain the *lis* as per Section 83 of the Wakf Act, 1995. Even assuming for the sake of argument that the Wakf Tribunal, Thanjavur, has no jurisdiction, as put forth by the learned counsel for the respondents 1 to 15, the petitioners should further establish that the determination of the *lis* by the Wakf Tribunal, Thanjavur, has resulted a failure of justice thereby to the parties concerned and when the same has not been established in any manner by the petitioners, it is found that they are not entitled to question the jurisdiction of the Wakf Tribunal, Thanjavur, by raising the plea of the jurisdiction in the Revisional Court for the first time. It is, thus, found that none of the ingredients adumbrated under Section 21 of the Code of Civil Procedure has been satisfied by the petitioners in any manner and in such view of the matter, it is found that the objection now raised by the petitioners to the jurisdiction of the Wakf Tribunal, Thanjavur, that it has no jurisdiction to determine the *lis* is found to be not sustainable in the eyes of law and therefore, it is seen that the plea of jurisdiction has been raised by the petitioners only for the purpose of the case and hence, it is liable to be rejected.

18. For the reasons afore-stated, I hold that the Wakf Tribunal, Thanjavur, has the jurisdiction to entertain the *lis* between the parties in the above matter and the petitioners are not entitled to question the jurisdiction of the Wakf Tribunal, Thanjavur, in the Revisional Court as they had failed to satisfy the ingredients outlined in Section 21 of the Code of Civil Procedure. Accordingly, Point No.I is answered.

POINT NOS.II & III:

19. It is not in dispute that the suit properties belonged to the deceased Abdul Kasim. It is also found that it is not in dispute that the parents of the deceased Abdul Kasim had



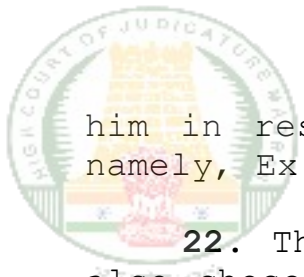
predeceased him and his wife also predeceased him and there is no issue to the deceased Abdul Kasim and his wife. Therefore, as rightly, found by the Court below and also as per the Mohammedan Law, it is found that the deceased first petitioner is the sole legal heir of the deceased Abdul Kasim. Thus, it is seen that as per the case of the petitioners, if the deceased Abdul Kasim had died intestate, as rightly put forth by them, the properties of the deceased Abdul Kasim would devolve upon the deceased first petitioner and on the demise of the deceased first petitioner, the properties would have been inherited by the other petitioners as per law. But the case of the petitioners that the deceased Abdul Kasim had died intestate is seriously disputed by the respondents. According to them, Abdul Kasim did not die intestate and on the other hand, even during his lifetime, he had executed a gift deed (Hiba) in respect of the suit properties in favour of the respondents 4 to 15 on 25.09.1997 and further, according to them, the same had been confirmed by the deceased Abdul Kasim by a written document of Hiba on 19.01.1998 and therefore, according to them, inasmuch as the suit properties had been gifted by the deceased Abdul Kasim in favour of the respondents 4 to 15, the same would constitute an interdiction in the right of the petitioners claiming title to the suit properties as the heirs of the deceased Abdul Kasim and therefore, it is contended that the petitioners would not be entitled to obtain the reliefs as prayed for.

20. It is not as if the deceased first petitioner was not aware of the Hiba projected by the respondents. Inasmuch as he was fully aware of the Hiba made by the deceased Abdul Kasim, it is found that even in the plaint, he has averred that the alleged oral gift and the document of Hiba relating to the suit properties is forged one, illegal and invalid. In such view of the matter, when it is found that the deceased first petitioner was fully aware of the gift made by the deceased Abdul Kasim in respect of the suit properties, his plea that the same is a forged one, illegal and invalid, should have been expatiated by him in detail in the plaint. However, other than merely stating that the Hiba said to have been executed by the deceased Abdul Kasim is a forged one, illegal and invalid, the details with reference to the same are not forthcoming. It is found that in all cases, in which the party pleads relying on any misrepresentation, fraud, breach of trust, wilful default or undue influence and in all other cases in which particulars may be necessary beyond such as are exemplified in the forms aforesaid, particulars (with dates and items if necessary) shall be stated in the pleading. This is adumbrated under Order VI Rule 4 of the Code of Civil Procedure. Therefore, when according to the deceased first petitioner and also the other petitioners as such that the oral gift and the document of Hiba made by the deceased Abdul Kasim is a forged transaction and invalid one, as rightly argued by the learned counsel for the respondents 1 to 15, the petitioners should have given more



details with regard to as to how they had based such a claim, but other than the bald allegations, nothing is pleaded in the plaint as regards the same.

21. Be that as it may, inasmuch as the respondents have set up a case of oral Hiba and the confirmation of the same by a document executed subsequently and when the same is resisted by the petitioners as such, it is found that *prima facie* the respondents should establish their plea of oral gift and the written document of Hiba as claimed by them. It is found that in order to establish the case of the respondents, they have chosen to examine the scribe of the document of Hiba marked as Ex.R106 as R.W.2 and the attestors to the said document as R.Ws.3 and 4. In this connection, it is found that the document marked as Ex.R106 had come to be marked only by R.W.2, who in his evidence has deposed that it is he, who had written the said document as per the dictation of the deceased Abdul Kasim and the deceased Abdul Kasim had informed him about the execution of the said document one week prior to the date of the execution and accordingly, on the date of the execution of the said document, he had written the document as dictated by the deceased Abdul Kasim and at that point of time, three witnesses were present and accordingly, after writing the said document, he had read over the contents of the same and thereafter, the deceased Abdul Kasim had subscribed his signature to the said document and thereafter, the three witnesses had attested the said document and finally, he had put his signature as the scribe of the said document and thus, it is seen from the evidence of R.W.2 that he is the scribe of the said document and he has prepared the document as per the desire and dictation of the deceased Abdul Kasim and that after knowing the contents of the said document, the deceased Abdul Kasim had subscribed his signature to the said document and thereafter, the witnesses had attested the said document. It is further found that R.W.2 is a retired Sub-Registrar and after his retirement, he had become a document writer and accordingly, it is further found that he had also, on earlier occasions, written documents for the deceased Abdul Kasim and thus, it is found that he is well acquainted with the deceased Abdul Kasim and accordingly, the deceased Abdul Kasim had solicited his presence for the execution of the Hiba document marked as Ex.R106 and accordingly, the document has been executed by the deceased Abdul Kasim in the presence of the witnesses and scribe / R.W.2. No doubt, R.W.2, in his evidence, has deposed that he is also acquainted with the first respondent. By that itself it cannot be construed that he would speak only falsehood in favour of the respondents. Despite the cross-examination of R.W.2, it is found that nothing concrete has been elicited from him during the course of his cross-examination to discredit his testimony with reference to the above said aspects and in such ~~circumstances~~ ^{circumstances}, it is found that through the evidence of R.W.2, the respondents have clearly established that it is only the deceased Abdul Kasim, who had confirmed the oral gift made by



him in respect of the suit properties by the written document, namely, Ex.R106.

22. That apart, it is further seen that the respondents have also chosen to examine one of the attestors to the said document as R.W.3. R.W.3 also, in his evidence, has clearly deposed that the suit properties belonged to the deceased Abdul Kasim and during 1997, the suit properties were given as Hiba by him and further, he had deposed that the deceased Abdul Kasim had given oral Hiba in respect of the suit properties in favour of the respondents 4 to 15 and that the same had been accepted by the respondents 4 to 15 and four months thereafter, Abdul Kasim had solicited him and the other witnesses and accordingly, at the Registrar Office, the document marked as Ex.R106 had come to be written by D.W.2 at the dictation of the deceased Abdul Kasim and the scribe had read over the contents of the said document and accordingly, the deceased Abdul Kasim had confirmed the correctness of the same and subscribed his signature to the same and the document had been attested by the attestors, namely, Mohammed Thambi and Ahamed Kabeer and that he is the third attesor to the document and thereafter, the scribe had completed the document and entrusted the same to the deceased Abdul Kasim. No doubt, at the time of the deposition, it is found that D.W.3 is a blind person and not having the ability of vision. However, it is found that as per the testimony of R.W.3, at the time of execution of the document marked as Ex.R106, he was able to read to some extent and he is not a blind person by birth and accordingly, it could be seen that he had deposed about the attestation of the document in the manner known to him as per law. It is found that despite cross-examination of D.W.3 by the petitioners, nothing had been culled out from him in support of the petitioners' case or to undermine the case of the respondents as regards the oral gift and the confirmation of the same by a document, namely, Ex.R106. It is, thus, found that as rightly contended by the learned counsel for the respondents, it cannot be said that a blind person cannot be a witness to the transaction. It is found that at the time of execution of the document marked as Ex.R106, D.W.3 was not fully incapacitated to know about the transaction on account of his deformity and on the other hand, he was able to visualize the transaction to some extent, accordingly, he had attested the document as deposed by him. It is, thus, found that even through the evidence of D.W.3, the respondents have established the plea of oral gift and the confirmation of the same by a document subsequently marked as Ex.R106.

23. To buttress their case further, the respondents have also chosen to examine the other attesor to the document as R.W.4 and R.W.4 also, in his evidence, has clearly deposed about the oral gift and the confirmation of the same by the deceased Abdul Kasim in respect of the suit properties in favour of the respondents 4 to 15 and the acceptance of the same by the respondents 4 to 15 and the confirmation of



said oral Hiba by the deceased by a written document four months thereafter and accordingly, as solicited by the deceased Abdul Kasim, it is found that he has also gone to the Sub-Registrar's Office concerned and accordingly, on the instructions of the deceased Abdul Kasim, the scribe, namely, R.W.2 had written the document and after knowing the contents of the same, the deceased Abdul Kasim had subscribed his signature to the said document and the same had been attested by R.W.4 and other two attestors and thereafter, the document was completed by the scribe and it is found that though R.W.4 was cross-examined by the petitioners, nothing has been projected to hold that R.W.4 is speaking falsehood as regards the above aspect and deliberately without justification supporting the respondents' case. On the other hand, it is found that R.W.4 being one of the attestors to the document has clearly deposed about the execution of the said document in a cogent and convincing manner and accordingly, nothing is being able to cull out from him to undermine his testimony and thus, it is found that through the evidence of R.W.4 also, the respondents have established the authenticity and genuineness of the oral gift and the document of Hiba marked as Ex.R106 by the deceased Abdul Kasim.

24. In such view of the above position, when it is found that the respondents have clearly established that the deceased Abdul Kasim had not died intestate and on the other hand he had, during his lifetime, made oral Hiba in respect of the suit properties in favour of the respondents 4 to 15 and also subsequently confirmed the same by a written document marked as Ex.R106 and when the oral Hiba and the confirmation by the written document of the same had also been made out and established by the respondents through the evidence of R.Ws.2 to 4 in a clear and cogent manner and when the petitioners are unable to place any point to disbelieve the version of R.Ws.2 to 4 as regards the execution of Ex.R106 and the oral Hiba, it is found that the respondents have clearly established that the deceased Abdul Kasim had not died intestate and that he had gifted the suit properties in favour of the respondents 4 to 15 as pleaded by them. In such view of the matter, when as seen already the petitioners have knowledge about the Hiba as pleaded by the respondents and when they take up a plea that the same is a forged transaction and on the other hand, when the respondents are able to establish that the said transaction is a genuine one, as rightly argued by the learned counsel for the respondents 1 to 15, it is for the petitioners to establish their case of forgery as pleaded by them and when nothing is coming out other than the bald plea with reference to the same, as rightly argued by the learned counsel for the respondents 1 to 15, the case of the petitioners that the Hiba projected by the respondents is a forged transaction should be ~~disproved~~ it is, thus, found that the petitioners for the purpose of this case has taken the plea that the Hiba made by the deceased Abdul Kasim is a forged transaction.



25. In the light of the foregoing reasons, I hold that the oral Hiba, dated 25.09.1997 and the confirmation of the same by a written document, dated 19.01.1998, executed by the deceased Abdul Kasim, in respect of the suit properties in favour of the respondents 4 to 15, is true, valid and binding on the petitioners and I further hold that the petitioners are not entitled to obtain the reliefs of declaration, possession and future *mesne* profits as prayed for. Accordingly, Point Nos.II and III are answered in favour of the respondents and against the petitioners.

POINT NO.IV:

26. In conclusion, the Judgment and Decree, dated 18.09.2006, passed in O.P.No.4 of 2005, on the file of the Sub Court / Wakf Tribunal, Thanjavur, are confirmed. Resultantly, the civil revision petition is dismissed with costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS-III)

/True Copy/

Sub Assistant Registrar

To:

The Principal Subordinate Judge,
Wakf Tribunal, Thanjavur.

+ 1 cc TO Mr.S.Thiruvengkatasamy , Advocate in SR No. 76764
+ 1 cc TO Mr.S.Srinivasa Raghavan , Advocate in SR No. 76775

krk/ia

AE/MR KKR/SAR1/20.11.2017/14P/4C

**ORDER
in
C.R.P. (NPD) (MD) No.354 of 2007
and
M.P. (MD) No.1 of 2007
06.09.2017**