



**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED:20.06.2017**

CORAM:

**THE HONOURABLE DR. JUSTICE G.JAYACHANDRAN
C.R.P. (MD) No.1835 of 2011**

and

C.M.P. (MD) Nos.1 of 2011 and 7416 of 2016

WEB COPY

K.S.Pakkir Mohammed

...Petitioner/1st Defendant

-Vs-

1.U.Musthapa

... 1st Respondent/Plaintiff

2.Tamil Nadu Wakf Board

Through its Chief Executive officer,
Door No.7, 9th Cross Street,
Adaiyar, Chennai -20.

... 2nd Respondents/2nd Defendant

Prayer: Civil Revision Petition filed under Section 83(9) of Wakf Act, 1995, r/w.227 of Constitution of India, against the judgment and decree passed in O.S.No.169 of 2007 dated 30.01.2010 on the file of the Wakf Tribunal/ Principal Sub Court, Tirunelveli.

For Petitioner	: Mr.H.Arumugam
For R1	: Mr.M.Sankar
For R2	: Mr.K.K.Senthil

ORDER

This Civil Revision Petition is directed against the judgment and decree passed by the Wakf Tribunal/Principal Subordinate Court, Tirunelveli, in O.S.No.169 of 2007.

2.The relief sought for in the said suit is as under:

..."to declare the suit property as property of the plaintiff Thaikka and to remove the construction put up in the suit property by the first defendant and hand over the vacant possession, to pay the arrears of rent from 01.05.2004 to 30.04.2007 and Rs.300/- per month for damages towards house occupation for the period of 01.05.2007 to 30.09.2007 and future mesne profit of Rs.500/- from the date of decree till the date of hand over the possession."...

3.The case of the plaintiff is that the suit property belongs to the plaintiff Thaikka, in which the defendant has entered into the rental agreement for Rs.100/- per month, and the defendant has failed to pay the rent from 07.04.2004 to 30.04.2007.

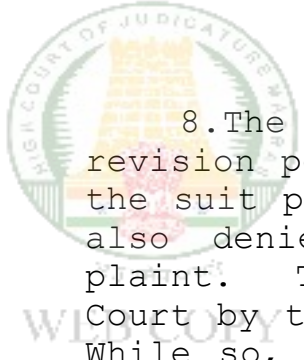


4.The first respondent has filed a written statement denying the averments of the plaintiff, on the ground that the suit property was occupied by one, K.S.Sulthan in the year 1940, who is none other than the father of the first defendant and he had put up more than 10 houses in the said land and has paid tax and other revenue liabilities, since 1940. The allegation of the plaintiff that he was a tenant under the plaintiff and there are rental arrears from 07.03.2004 to 30.04.2007, is denied. As a consequence, the first defendant has totally denied the allegations made in the plaintiff. The second defendant has filed the written statement by supporting the plaintiff.

5.The trial Court has framed as many as five issues and one additional issue, but, consequentially the issue relating to the landlord and tenant relationship was framed. In the course of the trial, the plaintiff has examined two witnesses and marked seven documents. The defendants have examined two witnesses and marked five documents.

6.The foremost contention raised in this revision petition is that the trial Court failed to appreciate the evidence placed by the respective parties regarding the title. Though the plaintiff has claimed that the property belonged to Thaikka governed by the Tamil Nadu Wakf Board, there is no piece of revenue record to show that the suit property belongs to the plaintiff Thaikka or it is a Wakf property. Ex-A1 is the proforma issued by the Tamil Nadu Wakf Board to the plaintiff Thaikka, which refers the suit schedule property in the Entry No.3, wherein, it is specifically stated that the suit property is entered in the prohibition order book and it is reserved for Mohammathiar Festival occasion, and nowhere in the said proforma, it is stated that the property belongs to plaintiff Thaikka, namely, Melapalayam, Sheik Sitha Mathar Thaikka. It is obvious that the portion of land entered into prohibition order book is reserved for Muslim Festival Occasion and available for ground rent according to the Collectors proceedings of the year 1941 and nobody can claim title or exclusive right over the property. If at all any person wants to make use of piece of land which has been entered into prohibition order book, they have to pay rent and they can use it only for specific purpose. In this case, the piece of land which is subject matter of the suit property, is only marked for Muslim Festival Occasion. Except this document, there is no other document upon which the plaintiff Thaikka can claim right over the property.

7.As discussed above, even this document does not confer any title or any right to the Thaikka. It is a common right conferred on Festival Occasion to conduct the Festival in the vacant site on payment of rent.



8.The specific case of the first defendant, who is the revision petitioner herein is that since 1940 after occupation of the suit property has put up and continuously enjoyed it. He has also denied the landlord tenant relationship alleged in the plaint. There is no piece of evidence placed before the Trial Court by the plaintiff to prove the landlord tenant relationship. While so, the Trial Court has miserably failed to appreciate the evidence placed before the Court and in the proforma, it is stated that it is reserved for Muslim Festival only as exclusive right conferred on the plaintiff and came to erroneous conclusion.

9.Now the counsel for the revision petitioner circulated a copy of the proceedings of the Tirunelveli Collector, dated 14.09.2005, in which, he claims that the copies of the documents filed by the respondents herein in the writ petition, initiated by them against the present revision petitioner for removal of encroachment. A perusal of the Collector proceedings of the collector dated 14.09.2005, makes it very clear that the suit property is a Government Poramboke and permitted for the Muslims to conduct festival.

10.Therefore, patta not issued in favour of Sidha Matha Thaikka, the plaintiff/respondent herein. In the absence of document to prove title but in contrary document to show that the land is Government Poramboke reserved for some specific purpose, the Thaikka cannot claim any exclusive right or title over the suit property. The impugned order of the Tribunal is perverse in this regard and requires interference. Since the plaintiff has not made out a case to declare title in his favour in respect of the suit property and the documents relied by the Trial Court to grant decree are not sufficient to grant such relief and moreso, in the light of the proceedings of the Collector of the year 2005 declining the request of the plaintiff to grant patta, the declaration of title by the Civil Court without any document, is perverse and illegal.

11.Hence, the order of the Trial Court passed in O.S.No.169 of 2007 is set aside and the civil revision petition is allowed. No costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS-I)

/True Copy/

Sub Assistant Registrar



To

Wakf Tribunal/ Principal Sub Court,
Tirunelveli.

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+1cc to Mr.H.Arumugam, Advocate Sr.No.61319
+1cc to Mr.M.Sankar, Advocate Sr.No.61354
+1cc to Mr.K.K.Senthil, Advocate Sr.No.61115

MM/CMR

VB/MR/SAR2/21.07.2017/4P/5C

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