

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 14.09.2018

Delivered on : 31.10.2018

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

C.R.P. (NPD) .No.2175 of 2004
and
C.M.P.No.16397 of 2004

- 1.No.11461 Koothanallur Primary
Agricultural Co-operative Bank
rep. By its Special Officer,
Koothanallur,
Thiruvarur District.
- 2.No.11461 Koothanallur Primary
Agricultural Co-operative Bank
rep. by its Secretary,
Koothanallur,
Thiruvarur District.Petitioner/Respondents 2 & 3

Vs

- 1.Koothanallur Periyapallivasal
rep. By its President,
S.E.A. Haji Kaja Mohideen,
31, Hamidiya Street,
Koothanallur,
Thiruvarur District.
- 2.Koothanallur Periyapallivasal
rep. By its Secretary,
K.A. Mohammed Farooq,
38, Ismail Street,
Koothanallur,
Thiruvarur District. ... Respondent 1 & 2/Petitioners
- 3.A.B. Jainab Ammal3rd Respondent/1st Respondent

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India against the Judgment and Decree dated 07.07.2004 in W.O.P.No.23 of 2000 on the file of the learned Principal Sub Judge, Nagapattinam.

For Petitioner : Mr.K. Selvaraj

For Respondent : Mr.S.M.Hameed Mahideen
for Mr.K.M. Mohamed Shaik Dawood
for R1 and R2

Mr.N. Muthuvel for R3

Mr.V. Lakshminarayan
for Waqf Board

ORDER

The above Civil Revision Petition is filed by the 2nd respondent challenging the order dated 07.07.2004 in W.O.P.No.23 of 2000 passed by the learned Principal Sub Judge, Nagapattinam, allowing the petition filed by the 1st respondent herein for recovery of possession and for damages.

The facts in brief are as follows:

2.The 1st respondent/Mosque, which came under the supervision of the Waqf Board, had been gifted the suit property and other properties by ten persons under the Settlement Deed dated 07.11.2010. The suit properties which are vacant house sites bearing Door Nos.29 to 31 situate in Survey No.66A, Koothanallur Village, Needamangalam, was taken on lease by one Abdul Wahab and the said Abdul Wahab had put up a building and he paid the ground rent to the Mosque. After his death, the legal heirs partitioned the properties under a Partition Deed dated 21.08.1970 in and by which the suit property was divided into two portions, i.e., the Northern portion which includes the suit properties and it was allotted to the share of Basheer Ahamed and the Southern portion was allotted to Abdul Kareem. The Southern portion also consisted of a building. Both Basheer Ahamed and Abdul Kareem paid the ground rent to the petitioner/Mosque till their life time. One Nabeesa Ammal, wife of Abdul Kareem, continued to pay the rents even after his life time. After the life time of Basheer Ahamed, his legal heirs had partitioned the properties on 31.01.1990 under a registered Partitioned Deed and the property fell to the share of the 3rd respondent herein. In the meanwhile, considering the age of the building, the building had collapsed and thereafter, the President of the Mosque had issued a letter dated 25.09.1996 terminating the lease with effect from 30.11.1996 and calling upon the 3rd respondent to hand over vacant possession of the property on 01.12.1996.

3. On 24.10.1996, the 3rd respondent had sent a letter stating that she was ready to put up the superstructure at her expenses and that she was ready to pay the ground rent as fixed by the petitioner. Responding to this reply, by a letter dated 08.12.1996, the petitioner/Mosque informed the 3rd respondent that in addition to giving a donation of Rs.5,000/-, the 3rd respondent should pay the enhanced rent and execute a new Lease Deed with reference to the land. On 31.01.1997, the 3rd respondent through her power agent, one Abdul Kareem handed over the Lease Deed of the 1st respondent/Mosque agreeing to pay the enhanced rent of Rs.35/-. She had also paid the donation of Rs.5,000/- on 02.02.1997 and by her letter dated 01.10.1998, she had ratified the action of her Power Agent.

4. However, contrary to the Agreement, the 1st respondent tried to sell the property to the petitioner herein and on 02.06.1999, had sold the same. Coming to know about the said sale, the 1st respondent/Mosque had issued a legal notice dated 19.07.1999, calling upon the respondents to vacate and hand over the vacant possession to them. In response to the said legal notice, the revision petitioner and the 3rd respondent had denied the very lease agreement and had set up an exclusive title upon the 3rd respondent. The petitioner had also filed O.S.No.411 of 2000 against the 1st respondent/Mosque for a permanent injunction. Therefore, the 1st respondent/Mosque had proceeded with the filing of a Waqf petition in W.O.P.No.23 of 2000 on the file of the learned Sub Judge, (Waqf Tribunal), Nagappattinam.

5. The 3rd respondent had filed counter questioning the competence of the person, who had instituted the suit but has not countenanced the other statement made by the 1st respondent/Mosque. The petitioner herein had contested the said O.P. by filing a counter statement, in which they had denied the lease and submitted that the 3rd respondent was never a lessee of the 1st respondent/Mosque. They had also questioned the jurisdiction of the Tribunal to entertain the petition, since according to them the property was not a Waqf property and therefore, they would contend that the Tribunal did not have the jurisdiction to entertain the said petition.

6. The Tribunal had taken up the application for enquiry and had framed three major issues which are

- (a) Whether the Tribunal had the jurisdiction to entertain the O.P.?
- (b) Whether the suit property belonged to the petitioner?
- (c) Whether the 3rd defendant/1st respondent therein and her predecessors in title enjoyed the petition premises as a lessee or as rightful owners.

7.The 1st respondent had examined one witness on their side, namely, one Khadher Hussain and marked Ex.P.1 to Ex.P.41. The revision petitioner and the 3rd respondent had examined one Venkatesan and Basheer Ahamed as R.W.1 and R.W.2 and marked Ex.R.1 to Ex.R.10. That apart, the Court has marked the Commissioner's Report and Plan as Ex.C.1 to Ex.C.4 and the Photographs taken by them as Ex.C.5.

8.The Waqf Tribunal has ultimately allowed the petition by holding that the 1st respondent/Mosque had proved that the petition premises had been gifted to them in the year 1910 and that the 3rd respondent and her predecessors in title had enjoyed the sites as tenants of the 1st respondent/Mosque and had been paying the ground rent. Aggrieved by this order, only the petitioner has preferred this Civil Revision Petition and their vendor has chosen to accept the order of the Tribunal and has not challenged the same.

9.Mr.K. Selvaraj, learned counsel would argue that the 1st respondent/Mosque had claimed title only on the basis of the payment of rent, for which, the documents had not been filed. He would also argue that under Section 5(2) of the Waqf Act in order for the properties to be treated as Waqf properties, there must be a publication. In the instant case, he would submit that the property was never registered as a Waqf property, since it was never as a Waqf property. He would further argue that the Tribunal below had given a finding that the properties could not be identified and having come to such a conclusion, the Tribunal had erred in allowing the petition. He would also draw the attention of this Court to the admission of P.W.1 that they do not have any documents to show that the 3rd respondent had paid lease rentals in respect of the sites to the 1st respondent/Mosque. He would also draw the attention to the admission of P.W.1 in cross examination that on a perusal of Ex.P.3, he was unable to say the Item Number under which the suit property has been described. The learned counsel would argue that since the 1st respondent/Mosque has come forward with the case without even identifying the property, the application is liable to be set aside.

10.The learned counsel for the petitioner had relied on the Judgment reported in (2017) 13 Supreme Court Cases 174 [Madanuri Sri Ramachandra Murthy v. Syed Jalal]. In support of his contention that a set procedure had to be followed before declaration as the Waqf property and such a progress had not been taken in the instant case and therefore, the petition filed by the 1st respondent/Mosque was liable to be dismissed.

11.Per contra, Mr.V.Lakshminarayan, learned counsel appearing on behalf of the Waqf Board would contend that the Waqf has been registered and a publication to that effect issued in the Government Gazette dated 24.12.1958. He would also draw the attention of this Court to Ex.B.27 to Ex.B.40 which would clearly show that the petition premises had been taken on lease by the 3rd respondent's father and his father and these exhibits are the rental receipts issued by the 1st respondent/Mosque in respect of the lands. Therefore, the learned counsel would submit that the 3rd respondent, who claimed under her father Basheer Ahamed, continued as a lessee and therefore, she cannot claim any independent right or title or interest over the property. He also pointed out Ex.P.7 which was a letter written by the 3rd respondent herself undertaking to pay the rent. Though this letter was refuted as fabricated by the petitioner herein, the 3rd respondent, who is the executant of the letter has not chosen to appear before the Court. He would also point out the two reports of the Advocate Commissioner, in and by which the petition premises had been identified and he would also further submit that Ex.B.3-Gift Deed would clearly prove that the property had been gifted to the 1st respondent/Mosque. The petitioner who had come forward with the case that the Survey Number of the petition premises has not been rightly given and also has not come forward to give the correct Survey Number or the subsequent re-Survey Number given to the petition premises.

12.Mr.S.M. Hameed Mohideen appearing for the 1st and 2nd respondents would more or less adopt the arguments of the 3rd respondent.

13.Heard the submissions of the parties and perused the material available on record.

14.The petitioner before this Court who is the subsequent purchaser from the 3rd respondent and who is the only person contesting the case, has filed the revision on two major grounds.

- (i) The property which is the subject matter of the W.O.P. is not a Waqf property,
and
- (ii) The 3rd respondent from whom they had purchased the property was not a lessee under the 1st respondent and there was a confusion with reference to the identity of the property.

15.As regards the first point, the learned counsel for the Waqf Board has produced the Gazette publication showing the 1st respondent as a Waqf registered with them and also the proforma showing the properties belonging to the 1st respondent/Mosque.

Therefore, it is clear that the property subject matter of the W.O.P. is a Waqf property belonging to the 1st respondent/Mosque. The 1st respondent has marked Ex.P.27 to Ex.P.40, starting from the year 1941, which clearly proves their case that the predecessors in the title of the 3rd respondent had taken the land on lease on paying the ground rent. In fact, the 3rd respondent herself had requested the 1st respondent /Mosque to permit her to put up a construction in the vacant land and permit her to pay the ground rent in respect of the petition premises. These documents clearly show that the 1st respondent is only a tenant under the 1st respondent and without permission of the Mosque has proceeded to alienate the suit property to the petitioner herein. The 3rd respondent has conveyed the non existent title to the revision petitioner. The Commissioner's report, particularly, the 2nd report clarified the identity of the petition premises and the petitioner who had come forward with the case that there is a discrepancy in the Survey Numbers, has not taken any steps whatsoever to substantiate this statement.

In the light of the above, I find no infirmity in the order passed by the learned Sub Judge, (Waqf Tribunal), Nagapattinam. Consequently, this Civil Revision Petition is dismissed. The Judgment and Decree passed by the learned Principal Sub Judge, Nagapattinam, dated 07.07.2004 in W.O.P.No.23 of 2000, is confirmed. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

mps
To

The Principal Sub Judge,
Nagapattinam.

+2cc to M/s.K.Selvaraj, Advocate Sr.74713
+1cc to M/S.K.M.Mohamed Shaik Dawood, Advocate Sr.74651

C.R.P. (NPD).No.2175 of 2004
& C.M.P.No.16397 of 2004

rsi[co]
srg 19/12/2018