

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 18.06.2018

Coram

The Hon'ble Mr. Justice M.M.SUNDRESH
and
The Hon'ble Mr. Justice N.ANAND VENKATESH

O.S.A.No.29 of 2018
and
C.M.P.No.1589 of 2018

E.Feroz

.. Appellant

Vs

1.Khan Sahib Mahdi Hussain
Sahib Wakf Estate
rep. by its Muthavalli
Shanoo Khaleel (deceased)

Shanoo Khaleel (deceased)

2.A.Mohammed Ali

A.Asgar Ali (deceased)

Hasina Begum (deceased)

3.Zahir Hussain alias Niaz

4.Farida Begum

5.Asif Hussain

6.Naseera Begum

7.M.A.Subban

8.Mumtaz Begum

M.A.Sattar (deceased)

9.Modi Habibullah

10.Shameem Mecci

11.Yusuf Hussain,

rep by P.A.Holder, Mr.Shameem Mecci,

12.A.A.Khaleel

13.Modi Azeem

14.Reshma

15.Kiran

16.A.Shahin Alam

17.Abbas Hussain

18.Mohammed Hussain

19.Khalid Mohammed Modi

20.Dr.Nahid Khaleel

21.Salma Khaleel

22.Sarwari Begum

23.Nawreen Fathima

24.Arshed Ali

.. Respondents

Appeal preferred under Order XXXVI Rule 9 of O.S. Rules r/w Clause 15 of Letters Patent against the judgment and decree dated 04.10.2017 passed in Memo of Objections in C.S.No.1306 of 1992.

Civil Suit praying that this Hon'ble Court be pleased to pass a decree and judgment against the defendants:-

a) directing proper administration of Khan Sahib Mahdi Hussain Sahib Wakf Estate, and for that purpose

b) to have the accounts of the wakf estate taken from 1980;

c) to appoint fit and proper person as Muthavalli or Receiver of the said wakf estate;

d) to ascertain the respective shares of the each beneficiaries of the said wakf estate and give proper direction for distribution of their shares in accordance with the terms of the said wakf deed;

e) to declare that the family arrangement dated 06.08.1989 made among some beneficiaries as null and void and not binding upon Khan Sahib Mahdi Hussain Sahib wakf estate.

For Appellant ... Mr.S.J.Jagadev
For Respondents.. Mr.T.Mohan

JUDGMENT

(Judgment of the Court was delivered by N.ANAND VENKATESH, J.)

This original side appeal has been filed against the order permitting the third defendant to mark 51 documents in the course of chief examination.

2.Learned counsel appearing for the appellant would state that out of 51 documents, 34 documents are photocopies of the originals and another 15 documents are those where the third defendant is not even a party. Learned counsel therefore would submit that this objection with regard to the very admissibility of the documents has to be taken out then and there even before proceeding with the trial.

3.It is seen that when a similar objection was raised at the time when the third defendant had filed an application for receipt of documents, the Division Bench of this Court by an order dated 17.04.2017 made in O.S.A.No.95 of 2017, has held as

under:

17.(c) Though obvious, we make it clear that in the course of progress of trial, as and when objections to marking of 51 documents are raised, learned Master shall record objections at his discretion and proceed in accordance with the established trial procedures qua marking of document with objection.

4.In fact, the Division Bench after holding so, had set aside the order passed by the learned single Judge in not allowing the third defendant to mark these documents.

5.The appellant has also filed a detailed memo of objections on 04.07.2017 when those documents were sought to be marked. Learned single Judge took all these objections into consideration and found that those documents can be marked after recording the objections submitted by the appellant. It can also be seen from the records that the appellant in the course of trial had also marked photocopies of the documents subject to the objections that were raised by the respondents.

6.Once the objections are recorded and documents are marked, no prejudice will be caused to the appellant since the very admissibility of the documents will become an issue.

7.The suit is at the stage of trial and it is of the year 1992. We therefore direct the Additional Master I to complete the trial within a period of eight weeks from the date of receipt of a copy of this order and thereafter, the suit may be placed for final disposal before the learned single Judge.

8.In view of the above, the Original Side Appeal is disposed of in terms of O.S.A.No.95 of 2017. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS IV)

//True copy//

Sub Assistant Registrar

mmi

To

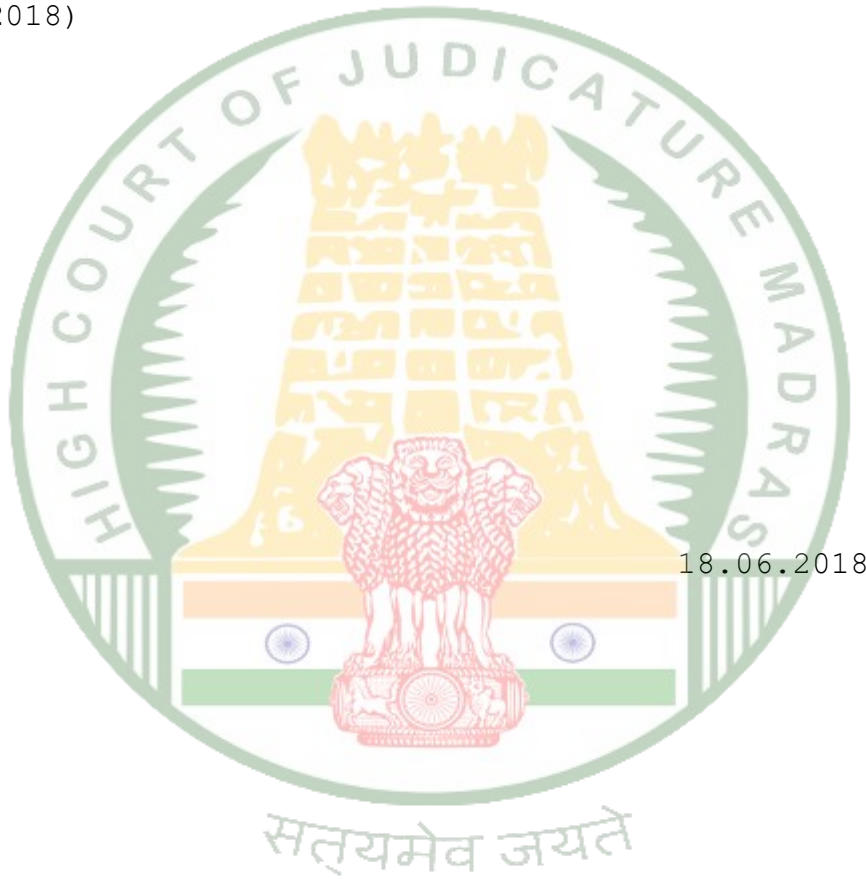
1.The Sub Assistant Registrar,
Original Side, High Court, Madras.

2.The Additional Master-I,
High Court,
Madras -104.

+1cc to Mr.M.Murali, Advocate SR.No.37978

O.S.A.No.29 of 2018

CA(CO)
GN(11/07/2018)



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