



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 12.04.2018
DELIVERED ON : 09.08.2018

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THE HON'BLE MR. JUSTICE M.V.MURALIDARAN

C.R.P. (MD) (PD) No.45 of 2015
and
M.P. (MD) No.1 of 2015

Sampath

.. Petitioner

vs

Syed Babu @ Mankarar

.. Respondent

Revision filed under Article 227 of Constitution of India against the order dated 07.11.2013 passed in I.A.No.295 of 2013 in W.O.P.No.6 of 2010 on the file of the Principal Sub Court (Wakf Tribunal), Thanjavur.

For Petitioner : Mr.V.Janakiramulu
For Respondent : Mr.R.Vijaya Kumar

ORDER

This Civil Revision Petition is directed against the order dated 07.11.2013 passed in I.A.No.295 of 2013 in W.O.P.No.6 of 2010 on the file of the Principal Sub-Court (Wakf Tribunal), Thanjavur, dismissing the petition filed by the petitioner under Order 7, Rule 11 of C.P.C. The petitioner is the first defendant in W.O.P.No.6 of 2010.

2. W.O.P.No.6 of 2010 has been filed by the respondent against the petitioner and two others for permanent injunction restraining them from interfering with the plaintiff's peaceful possession and enjoyment of the suit properties.

3. Pending O.P., the petitioner filed I.A.No.295 of 2013 under Order 7, Rule 11 of C.P.C., to reject the plaint alleging that Syed Babu @ Mankarar was not the Muthavalli of Hazarath Sheram Sha Thaikkal @ Kundu Thaikkal and he has no *locus standi* to file the suit against them and therefore, the same has to be rejected.



4. Resisting the petition, the respondent filed counter stating that the petition is not maintainable as the trial was in part. It is stated that whether Syed Babu @ Mankarar was Muthavalli or not has to be decided only during trial and the petitioner cannot raise the same at this stage.

5. Upon consideration of the rival submissions, the Tribunal dismissed the petition. Aggrieved by the same, the petitioner has filed this Civil Revision Petition.

6. I heard Mr.V.Janakiramulu, learned counsel appearing for the petitioner and Mr.R.Vijaya Kumar, learned counsel appearing for the respondent and also perused the materials available on record.

7. The point that arises for consideration is whether the Tribunal was right in rejecting the petition filed by the petitioner under Order 7, Rule 11 of C.P.C.

8. On a perusal of the typed set of papers, it is seen that the petitioner has filed his written statement, wherein he has admitted that the suit properties are Wakf properties. It is also stated that Syed Babu @ Mankarar, was not Muthavalli of the Wakf and only the Wakf Board had right to file the suit.

9. It is apposite to mention that in the plaint itself, the plaintiff has averred that *"the plaintiff Wakf is not under the management of the present Muthavalli Syed Babu. Though his tenure has been over, no new Muthavalli is appointed so far by the Wakf Board to supersede the present management"*.

10. In his written statement the defendant also admitted that Syed Babu @ Mankarar's tenure completed on 26.05.2006. Thus, according to the petitioner, Syed Babu @ Mankarar acted as Muthavalli for quite some time.

11. The main grievance of the petitioner is that since Syed Babu @ Mankarar was not the present Muthavalli, he has no right to institute the suit against the defendants. Whether Syed Babu @ Mankarar has any right to file the suit against the petitioner and other defendants is the point to be decided only in the main O.P. during trial and the petitioner, at this stage, cannot canvass such a point by filing petition under Order 7, Rule 11 of C.P.C. to reject the plaint.

12. Order 7, Rule 11 of C.P.C. provides as under:

"11. Rejection of plaint - The plaint shall be rejected in the following cases:-

(a) where it does not disclose a cause of action;



(b) where the relief claimed is undervalued, and the plaintiff, on being required by the Court to correct the valuation within a time to be fixed by the Court, fails to do so;

(c) where the relief claimed is properly valued, but the plaint is returned upon paper insufficiently stamped, and the plaintiff, on being required by the Court to supply the requisite stamp-paper within a time to be fixed by the Court, fails to do so;

(d) where the suit appears from the statement in the plaint to be barred by any law;

(e) where it is not filed in duplicate;

(f) where the plaintiff fails to comply with the provision of rule 9:

Provided that the time fixed by the Court for the correction of the valuation or supplying of the requisite stamp-paper shall not be extended unless the Court, for reasons to be recorded, is satisfied that the plaintiff was prevented by any cause of an exceptional nature from correcting the valuation or supplying the requisite stamp-paper, as the case may be, within the time fixed by the Court and that refusal to extend such time would cause grave injustice to the plaintiff."

13. Admittedly, the petitioner has not filed the petition seeking rejection of the plaint on the aforesaid grounds. He sought rejection of the plaint only on the ground that Syed Babu @ Mankarar has no right to file the suit against the defendants.

14. Section 83 (2) of the Wakf Act, 1995 provides:
"83 (2) Any mutawalli person interested in a wakf or any other person aggrieved by an order made under this Act, or rules made thereunder, may make an application within the time specified in this Act or where no such time has been specified, within such time as may be prescribed, to the Tribunal for the determination of any dispute, question or other matter relating to the wakf."

15. As rightly held by the Tribunal, as per Section 83(2) of the Wakf Act, any Muthavalli interested in the Wakf or any other person aggrieved may make an application. Since the Syed Babu @ Mankarar was the former Muthavalli of Hazarath Sheram Sha



Thaikkal @ Kundu Thaikkal and he was managing the affairs of the said Thaikkal, this Court is of the view that the respondent has right to file the suit before the Tribunal.

16. For the foregoing reasons, I am of the view that there is no infirmity and/or perversity in the order of the Tribunal. No valid grounds have been made out to interfere with the order of the Tribunal and the Civil Revision Petition is liable to be dismissed. It is made clear that this Court has not dealt with rights and title of parties in the suit properties in this Civil Revision Petition. It is the respective parties to establish their right and title over the suit properties before the Tribunal and the Tribunal may decide the same in accordance with law.

17. In the result, the Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar (Writs)

/True Copy/

Sub Assistant Registrar (CS-IV)

To

The Principal Subordinate Judge,
Principal Sub Court,
Thanjavur.

+ 1 CC TO Mr.R.VIJAYA KUMAR, ADVOCATE IN SR No. 77897

VSV
TE/KAK/SAR-4 : 27/08/2018 : 4P/3C

order made in
C.R.P. (MD) (PD) No.45 of 2015 and
M.P. (MD) No.1 of 2015
09.08.2018