



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 23.10.2019

CORAM :

THE HONOURABLE MS.JUSTICE **P.T.ASHA**

C.R.P. (PD) Nos.1206 and 1207 of 2011

and

M.P. (MD) No.1 of 2011

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In CRP No.1206 of 2011

1.Paramasia Kaniyan

2.Kadarkari Kaniyan

... Petitioners/Plaintiffs

Vs.

1.Tirunelveli Municipal Corporation,
through its Commissioner,
S.N.High Road,
Tirunelveli Junction

2.The State of Tamil Nadu,
through the District Collector,
Tirunelveli District.

3.K.Akbar Ali

... Respondents/Defendants

In CRP No.1207 of 2011

1.Paramasia Kaniyan

2.Kadarkari Kaniyan

... Petitioners/Defendants 1, 2

Vs.

1.K.Akbar Ali
2.Tamil Nadu Wakf Board,
Rep by its Secretary,
Chennai

...1st Respondent/Plaintiff

...2nd Respondent/3rd Defendant

PRAYER: Civil Revision Petitions are filed under Section 227 of Constitution of India against the decree and judgment passed in O.S.No. 200 of 2006 and O.S.No.113 of 1998 dated 13.02.2007 on the file of the Wakf Tribunal (Principal Sub Court), Tirunelveli.

For Petitioners
(In both petitions)

: Mr.Udayakumar
for Mr.H.Arumugam

For R1 & R2
in W.P(MD)No.1206/11

: Mr.Aayiram K.Selvakumar

For R3
in W.P.No.1206/11 &
R1 in W.P.No.1207/11

: No appearance

For R2
in W.P.No.1207 of 2011

: Mr.Ajmal Khan



C O M M O N O R D E R

The Civil Revision Petitions are filed challenging the judgment passed by the Wakf Tribunal in O.S.Nos.113 of 1998 and 200 of 2006.

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2. O.S.No.200 of 2006 was originally filed as O.S.No.182 of 1998 on the file of the District Munsif, Tirunelveli. This is a suit which has been filed by the revision petitioners herein in a representative capacity for and on behalf of the Kaniyan community people, Tirunelveli. The relief that is claimed in the above suit is for permanent injunction restraining the defendants from interfering with the plaintiff's right to worship the idols put up in the plaint scheduled property. Originally the suit is filed only against the respondents 1 and 2 herein and later, the third defendant, who is the plaintiff in the connected O.S.No.113 of 1998 had been impleaded.

3. The case of the plaintiff in O.S.No.182 of 1998 was that in the plaint schedule property, there was the idols of Vinayaga, Sudalaimadan, Mundan Swamy, Vairavan and Petchiammai temples. The temple is in existence from time immemorial and the plaintiff and their ancestors were worshipping the above deities. These temples are exclusive temples belonging to the Kaniyan community. The plaintiff would submit that in the southern side of the temple, the Thangamman koil first street is situated and in the northern side, Thangamman Koil second street is situated. In the western side of the plaint schedule property, there is a vacant site belonging to the Thambi Durai and Dharmar of Palaya Pettai. Further case of the plaintiff was that the first defendant attempted to put up a road connecting the Thangamman Koil first street and second street through the plaint schedule lands and by result of the said attempt, disturbance was caused to the worship of the deities. Immediately, the plaintiff representing the community had made their objections and the scheme for laying a road was put on hold. Thereafter, since the defendants were continuing in their attempts, the plaintiff was constrained to file the suit in question.

4. The third defendant, who is the plaintiff in the suit in O.S.No.113 of 1998 was impleaded as the third defendant in the suit vide order dated 25.11.1998 in I.A.No.553 of 1998. However, no pleadings have been made against the third defendant. The property, which is the subject matter of the suit, is an extent of 600 sq. meters from and out of total extent of 14.89 cents in Kodiappan Village comprised in T.S.No.173/7. The third defendant who is the main contesting defendant and the plaintiff in the connected suit filed written statement denying the claim of the plaintiff and contended that the plaint schedule property was a inam land which was originally given as gift to the Sadaya Pakkiri Lalamiyan Pallivasal after the abolition of the Minor Inam Act, the Settlement



Tahsildar had issued patta in respect of the entire lands comprised in T.S.No.1973/ Kodiappan Village to the said Pallivasal.

5. The third defendant would contend that neither the plaintiff nor their community people have ever been in possession or enjoyment of the plaint schedule property. He would further contend that the revenue records which have been produced by the plaintiff were only manipulated records. The third defendant has also taken a stand that the suit before the District Munsif Court is without jurisdiction since after the formation of the the Wakf Tribunal, all suits can only be filed before the Wakf Tribunal.

6. The third defendant had also proceeded to file the suit in O.S.No.113 of 1998 before the Wakf Tribunal seeking a declaration that the suit property belongs to the Sadaya Pakkiri Lalmiyan Pallivasal and consequentially directing the defendants 1 and 2 who are the plaintiffs in the suit in O.S.No.182 of 1998 to hand over possession to him. The contents in the written statement filed to the suit in O.S.No.182 of 1998 was reiterated in the said suit. The written statement filed in O.S.No.113 of 1998 was also on the same lines as the plaint in O.S.No.182 of 1998. The suit filed by the plaintiff was also transferred to the Wakf Tribunal to be tried along with O.S.No.113 of 1998 and thereafter, re numbered as O.S.No.200 of 2006. By the judgment and decree dated 13.02.2007, the Tribunal was pleased to dismiss the suit filed by the plaintiff namely O.S.No.200 of 2006 (earlier O.S.No.182 of 1998) and decreed the suit in O.S.No.113 of 1998. Aggrieved by the two orders, the plaintiff in O.S.No.200 of 2006 is before this Court.

7. Heard the learned counsel and perused the papers.

8. Mr.Udayakumar, learned counsel for the petitioner would strenuously contend that the plaintiffs have proved their possession of the property by showing their enjoyment of the suit property. There were signs of worship in the form of idols which have already been noted by the Appellate Court and which is evident from the report in Ex.C.1. The photographs have also been marked on the side of the plaintiffs. That apart, the plaintiffs have also examined P.W.2 and P.W.3 who are also the members of the community to show that the temple belongs to their community and that community members have been extending worship at the place. He would therefore pray that the orders may be set aside.

9. The learned counsels appearing on behalf of the third defendant and the Wakf Board submitted that Ex.B.3 and Ex.B.4 would go to show that the property in question belongs to the Sadaya Pakkiri Lalamiyen Pallivasal and they have been in possession and enjoyment of the same. The plaintiffs are encroachers into the property and there is no worship over the property. He would contend that the plaintiffs traced title to the inams which has been granted



Settlement Tahsildar under the Minor Inam Act has also granted them patta. He would therefore, submit that no exception to the order under revision can be taken.

10. The learned counsel for the first respondent Corporation would support the arguments adduced by the learned counsel for the third respondent.

11. Heard the learned counsels and perused the papers.

12. The petitioner would contend that they are in possession of the suit property as evidenced by Ex.A.2 which is a copy of the patta. The said patta has been issued on 31.03.1995. However, it is seen that the patta does not indicate the suit schedule survey number, namely 1973/7. This document has been projected as the proof of possession by the plaintiffs. Considering the fact that the said document does not relate to the suit property survey no right would flow from this document to the plaintiff.

13. That apart, the plaintiffs have not let in any evidence whatsoever to show that the community members are worshipping at the temple and that the functions/festivals are being conducted for several years in the said temple. In the absence of proof of enjoyment, the plaintiffs cannot seek to have an injunction that too an injunction from laying the road. Admittedly, a portion of the suit property is also punjai land and the remaining extent is patta land belonging to the Trust as is evident from the documents Ex.B.3 and Ex.B.4 which is as early as in the year 1967. Mere existence of a few deities without there being proof of enjoyment in the form of regular or specified periods of enjoyment will not confer any right on the plaintiffs. The Tribunal has considered the oral and documentary evidence having rejected the suit filed by the plaintiffs and decreed the suit filed by the third defendant. I do not find any infirmity in the well considered judgment.

14. In the result, these revisions are dismissed. No costs. Consequently, connected miscellaneous petition is also dismissed.

Sd/-

Assistant Registrar ()

// True Copy //

Sub Assistant Registrar(CS)

CM



To

1. The Wakf Tribunal (Principal Sub Court), Tirunelveli.

2. The Commissioner, Tirunelveli Municipal Corporation,
S.N.High Road,Tirunelveli Junction

3. The District Collector, State of Tamil Nadu,
Tirunelveli District.

+1 CC to Mr.AAYIRAM K.SELVAKUMAR, Advocate (SR-93945[F] dated
23/10/2019)

+1 CC to Mr.H.ARUMUGAM, Advocate (SR-94120[F] dated 24/10/2019)

+1cc to Mr.S.A.Ajmal Khan, Advocate SR.No.94094

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and

M.P. (MD) No.1 of 2011

23.10.2019

VB(08.01.2020) 5P 7C