



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: **18.09.2019**
CORAM :

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

C.R.P. (MD) No.2176 of 2011

and

M.P. (MD) No.2 of 2011

1.S.Paramasivampilla

2.U.Panjam

3.K.Rajendran

4.M.Navaneetham ... Petitioners/Respondents/Plaintiffs

vs.

1.The Tamilnadu Wakf Board
through its Chief Executive Officer,
having his office at Thiruvallavayanallur Village,
Vadipatty Taluk, Madurai District.

...1st Respondent/Petitioner/Proposed Party

2.Ibrahim Kani ... 2nd Respondent/Respondent/Defendant

Prayer:- This Petition is filed under Article 227 of the Constitution of India, to call for the records of the lower Court and set aside the fair and ex order passed in I.A.No.921(A) of 2009 in I.A.No.391 of 2008 in O.S.No.418 of 2009 dated 18.11.2009 on the file of the III Additional Subordinate Judge, Madurai.

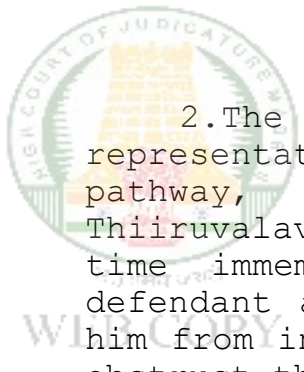
For Petitioners : Mr.K.Guhan

For R1 : Mr.SAS.Alludeen
Standing Counsel

For R2 : Mr.B.N.Raja Mohamed

ORDER

The above Civil Revision Petition is filed at the behest of the revision petitioners/plaintiffs, challenging the order dated 18.11.2009, passed in I.A.No.921(A) of 2009 in I.A.No.391 of 2008 in O.S.No.418 of 2009 by the learned III Additional Subordinate Judge, Madurai.



2.The suit in O.S.No.418 of 2009 had been filed in an representative capacity for declaring that the suit property is a pathway, which is in the usage of the villagers of Thiiruvallavayanallur as a public pathway by their usage from the time immemorial and for permanent injunction, restraining the defendant and his men and agents and those who are claiming under him from in any way putting up any structures whatsoever therein to obstruct the said pathway.

3.The suit has been filed on 04.08.2008 and the proposed party namely, the Tamilnadu Wakf Board/first respondent herein had filed an application for impleading themselves as necessary party in the said suit. In the said application, the first respondent herein/Tamilnadu Wakf Board contended that the property in question belongs to the Wakf Board and the revenue records in respect of the suit property stand in the name of Wakf Board. That apart, the suit property has been published in the Official Gazette of Wakf Board as early as 1959 itself. Further, the first respondent herein/Wakf Board would contend that the plaintiffs have made an attempt to interfere with their ownership and possession of the suit property. Therefore, they sought to be impleaded as necessary party in the suit proceedings.

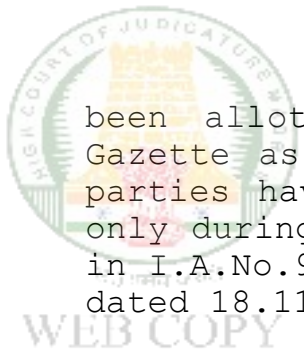
4.Though the Wakf Board has filed the said application under Order I Rule 10 CPC, the same has to be filed invoking the provisions of Order XXI Rule 4 CPC, but the wrong quoting of the said provision is not fatal to the present case, particularly, when the contents clearly indicate that the Wakf Board seeks to impleaded in the suit as a necessary party.

5.The said application was opposed vehemently by the revision petitioners herein/plaintiffs stating that the suit property is a pathway, which is in the usage of the villagers of Thiiruvallavayanallur as a public pathway from the time immemorial.

6.The learned III Additional Subordinate Judge, Madurai, after hearing the parties, was pleased to allow the said application. Challenging the said order, the revision petitioners/plaintiffs are before this Court.

7.The learned counsel appearing for the revision petitioners/plaintiffs would submit that the revision petitioners are having the rights over the suit property and it is for them to choose the person, against whom, they have to seek the relief in the lis filed and that Wakf Board has no interest whatsoever in the suit property.

8.On a careful consideration, this Court is unable to appreciate the said contentions since the Wakf Board has come forward with the categorical case that the property in question



been allotted to the Wakf Board and published in the Official Gazette as early as 1959. It is needless to state that both the parties have to prove their respective claim and that can be done only during trial. I do not find any infirmity in the order passed in I.A.No.921(A) of 2009 in I.A.No.391 of 2008 in O.S.No.418 of 2009 dated 18.11.2009.

9.This Civil Revision Petition is dismissed accordingly. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (Crl.side)

/ True Copy /

Sub Assistant Registrar(CS-)

To

The III Additional Subordinate Judge,
Madurai.

+1 CC to M/s.V.RAMAKRISHNAN, Advocate(SR-87639[F] dated 19/09/2019)

C.R.P. (MD) No.2176 of 2011
18.09.2019

mm

ES/03.10.2019/3P/3C