



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 07.08.2019

CORAM

THE HON'BLE MR.JUSTICE S.S.SUNDAR

C.R.P(PD) (MD)No.774 of 2010

and

M.P.(MD)No.1 of 2010

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Akbar Ali

: Petitioner/Plaintiff

.. Vs ..

1.Sundararaj
2.Johnson Durai
3.Selva Abraham
4.Ebanezar Raj
5.Mangala Christy
6.Yesudas

7.Tamil Nadu Wakf Board,
Through its Executive Officer,
No.7/4, 9th Cross Street,
Indhira Nagar, Adayar,
Chennai - 20.

: Respondents/Defendants

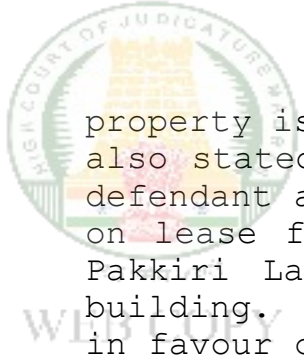
PRAYER: Civil Revision Petition filed under Section 83 of Wakf Act, 1995, praying to set aside the Judgment and Decree passed in O.S.No.23 of 2008 on the file of Wakf Tribunal (Principal Subordinate Judge), Tirunelveli, dated 04.12.2009.

For Petitioner : Mr.M.P.Senthil
For Respondents 1 - 6 : Mr.M.S.Jawaharlal
For Respondent 7 : Mr.T.S.Mohammed Mohideen

ORDER

This Civil Revision Petition is directed against the judgment and decree of the Wakf Tribunal (Principal Sub Court), Tirunelveli, in the suit in O.S.No.23 of 2008.

2.The revision petitioner is the plaintiff in the suit in O.S.No.23 of 2008. The revision petitioner filed the suit for declaration that the suit properties belong to Sadaiya Pakkiri Lalamian Pallivasal, Palayapettai and for recovery of possession of the suit property from defendants 2 to 6. It is the case of the revision petitioner that the suit property described as item Nos.1 to 5 in the plaint was granted as inam to the Pallivasal namely Sadaiya Pakkiri Lalamian Pallivasal, Palayapettai. It is stated that the Pallivasal is a notified Wakf. It is the specific case of the petitioner that after abolition of Minor Inam under Act 30/1963, the Settlement Tahsildar, Kovilpatti, by his proceedings for grant of ryotwari patta, dated 20.09.1967, directed to issue ryotwari patta in the name of the Pallivasal and that therefore, the suit properties in Town Survey No.1975 belong to the Mosque as the



property is a Minor Inam settled in favour of the Pallivasal. It is also stated by the revision petitioner that the father of the first defendant and the father of other defendants took the suit property on lease from the previous Muthavalli of the Wakf by name Sadaiya Pakkiri Lalamian Pallivasal, Palayapettai and put up a temporary building. Since the first defendant has now executed two documents in favour of the defendant Nos.2 to 6, the plaintiff states that the defendants wanted to grab the property fraudulently by creating documents and that the plaintiff is constrained to file the suit for declaration of title and recovery of possession.

3.The defendants contested the suit by claiming title to the property. It is the case of the defendants that the suit properties belong to the defendants as they are the ancestral properties of defendants and that the house bearing Door No.18, which is located in the suit property, is their ancestral house. It is further contended that the father of the first defendant and the grant father of other defendants had executed a registered usufructuary mortgage deed in favour of one Shri.S.Maria Kanagaraj and that the said mortgage was later redeemed in 1977. The defendants also pleaded title by adverse possession by stating that the suit property was in the enjoyment of the defendants for more than 100 years. Except the mortgage, there is no other pleading with regard to the prior title of the defendants. In other words, the defendants could not even be pleaded their title from a known source except pleading that the property is their ancestral property.

4.The lower Court taking note of the fact that the possession of the defendants is admitted by the plaintiff found that the plaintiff has not proved the existence of any tenancy as pleaded by them in the plaint. Though the plaintiffs produced before the Court the settlement patta that was granted by the Settlement Officer pursuant to the enquiry under the Minor Inam Abolition Act, found that the said document being a revenue document, would not prove the title of the plaintiff. It is further observed by the Wakf Tribunal that settlement proceedings of the Settlement Officer directing issuance of ryotwari patta to the plaintiff would not prove the title of the plaintiff as there is admission to the effect that the predecessor in interest of the defendants by name Chithirai Nadar was in enjoyment. The Tribunal after considering the entire evidence dismissed the suit filed by the revision petitioner. Aggrieved by the same, the plaintiff, who has filed the suit as Muthavalli of Sadaiya Pakkiri Lalamiyan Pallivasal, has preferred the above Civil Revision Petition.

5.The learned Counsel appearing for the revision petitioner produced before this Court the document which is marked as Ex.A3. This document is the proceedings of the Settlement Tahsildar-II, Kovilpatti, dated 20.09.1967 passed under Section 11 of the Tamil Nadu Minor Inam Abolition Act (Act XXX of 1963). The settlement proceedings is relating to the revenue Village by name 39, Kandiaperi which is located in Tirunelveli Taluk. The Wakf Tribunal



discarded this document by stating that the document Ex.A3 would not show the right title of the plaintiff. The lower Court construed the order as a revenue patta and hence, did not give any importance to the said document.

6.Ex.A3 indicates that under Tamil Nadu Minor Inam Abolition Act (Act XXX of 1963) the land which was classified as Minor Inam was taken over under the Act and hence, the land in entirety vest with the Government subject to the preexisting right of the ryots or holders to get ryotwari patta. The proceedings were in respect of several survey fields including Survey Nos.1975 in the Village, 39, Kandiaperi in Tirunelveli Taluk. It is to be seen that the Settlement Officer in exercise of his power under Section 11 of the Tamil Nadu Minor Inam Abolition Act directed issuance of ryotwari patta in respect of several fields of land including the land in Suvey No.1975 in the name of Sadaiya Pakkiri Lalamian Pallivasal. Once a patta is granted under the Minor Inam Abolition Act, one can draw an inference that the Pallivasal has been recognised as the person entitled to get ryotwari patta under the provisions of the Act XXX of 1963. Once the land is taken over, the land vests with Government free from all the encumbrances subject to the preexisting right to get ryotwari patta as contemplated under the Act. The order of the Settlement Tahildar directing issuance of the ryotwari patta in the name of the Pallivasal is a *prima facie* document to prove the title. No doubt, it is true that a person, who has a rival claim, may still question the title before Civil Court. However, till such time the Civil Court decides the question of title in favour of a rival claimant the order of Settlement Officer granting ryotwari patta is valid and the Civil Court cannot ignore the decision of the Settlement Officer as in the case of revenue patta. However, the document Ex.A3 has been construed as a revenue patta by the Trial Court. In such circumstances, this Court is unable to sustain the order of the Wakf Tribunal deciding the question of title after discarding the settlement patta granted by the Settlement Officer in favour of the plaintiff. The Civil Revision Petition is, therefore, allowed and remitted to the Wakf Tribunal so as to consider the claim of the revision petitioner based on the proceedings of the Settlement Officer, dated 20.09.1967. The parties are entitled to lead fresh evidence in support of their claim for title. The revision petitioner is also required to prove that T.S.No.1975 in 39, Kandiaperi Village, Palayapettai is the suit property. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (AD-II)

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To

The Wakf Tribunal (Principal Subordinate Judge),
Tirunelveli.

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+1 CC to MR.T.S.MOHAMED MOHIDHEEN, Advocate (SR-80452[F] dated
07/08/2019)

+1 CC to MR.M.S.JAWAHARLAL, Advocate (SR-80535[F] dated
08/08/2019)

+1 CC to MR.M.P.SENTHIL, Advocate (SR-80552[F] dated 08/08/2019)

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