



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 25.07.2019

CORAM:

WEB COPY

THE HONOURABLE **MR. JUSTICE S.S.SUNDAR**

C.R.P (NPD) (MD) No.664 of 2006

- 1.Kajiyar Mohammed Sulaiman,
Muthavalli, Kajiyar Thaikka
- 2.Puhari
- 3.Nagoor Meeran
- 4.Sahul Hameed
- 5.Hasan Mohaideen
- 6.Meeran Maideen Kutty
- 7.Masthan
- 8.Syed Mohammed
- 9.Mohammed Yusuf
- 10.Sahul Hameed
- 11.Mohammed Ghose Samathani
- 12.Meran Maideen
- 13.Umer
- 14.Ameer
- 15.Shek Abdul Kadher
- 16.Samsudeen
- 17.Ismayil
- 18.Karim
- 19.Sammad
- 20.Eshak
- 21.Abubakker
- 22.Sulaiman
- 23.Mohammed Maideen
- 24.Mohammed Saleem
- 25.Mohammed Mustak
- 26.Kajiyar Ahamed Lebbai
- 27.Kajiyar Meeran Maideen
- 28.Kajiyar Mohammed Maideen
- 29.Meeran Maideen
- 30.Mohammed Masthan
- 31.Mohammed Maideen
- 32.Bashera Beevi
- 33.Noorjahan Beevi

: Petitioners

Vs.

1.Padhavi Abdullah (died)

2.Abubakkar

<https://hcservices.ecourts.gov.in/hcservices/>



3.Tamil Nadu Wakf Board,
No.3, Santhom High Road,
Mylapore, Chennai,
through its Secretary.

4.Abdul Rahman

: Respondents

(R-4 is brought on record as legal representatives of deceased R-1, vide Court order dated 20.09.2017, made in CMP(MD)Nos.6524 to 6526 of 2017 in CRP(NPD) (MD)No.664 of 2006)

Prayer: Civil Revision Petition filed under Article 227 of Constitution of India, to set aside the Fair and Decreetal order passed in O.S.No.81 of 2001, on the file of the Principal Sub Court, Tirunelveli, dated 20.01.2006.

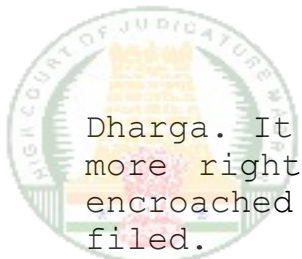
For Petitioners	: Mr.M.P.Senthil
For R1	: Died
For R2	: No Appearance
For R3	: Mr.T.S.Mohammed Mohaideen
For R4	: Mr.D.Nallthambi

ORDER

This Civil Revision Petition is filed against the order passed by the Wakf Tribunal (Principal Sub Court, Tirunelveli) in O.S.No.81 of 2001.

2.The revision petitioners are the plaintiffs in the suit in O.S.No.81 of 2001. The suit came to be filed for declaration of title and consequential relief of recovery of possession from the defendants 1 and 2. The suit property is an extent of 30354 square feet (approximately 70 cents) in T.S.No.1427 in Melapalayam Village, Tirunelveli District.

3.It is the case of the plaintiffs that the suit property in entirety belonged to one Kajiyar Thaikka, a Wakf. It is further stated that a Dharga was constructed in the suit property after one Haaji Pakkirmasthan Saibu Olimulla was buried in the said place. It is also stated that the entire Wakf was under the control of plaintiff's father or plaintiff's paternal uncle as Mukthavalli by rotation. It is stated that the plaintiffs are now managing the properties by rotation as Mukthavalli. It is the case of the plaintiffs that one Abdul Rahman Idurush Thangal, who came as a preacher from Kerala died and that the body of the said Abdul Rahman Idurush Thangal was also permitted to be buried on the south side corner. It is admitted that in the said place of burial, the followers of the said Abdul Rahman Idurush Thangal, constructed a



Dharga. It is the case of the plaintiffs that the defendants have no more right in the suit property. Stating that the defendants had encroached upon the property of the plaintiffs, the suit came to be filed.

4.The suit was contested by the defendants by filing a detailed written statement. It is the case of the second defendant that the said Abdul Rahman purchased an extent of 53 cents in the suit property for a sum of Rs.750/- and that the said property measuring an extent of 53 cents is in the absolute possession and enjoyment of the defendants. It is further stated that the said property was bequeathed in favour of Dharga and that it is now in the enjoyment of first defendant as Haqdar.

5.The Wakf Tribunal after considering the pleadings and evidence held that an extent of 53 cents of land had been purchased by the defendants' predecessors from the plaintiffs' predecessors in interest and that the suit, insofar as the property that was sold in favour of the predecessors of defendants, is not sustainable. The Wakf Tribunal framed a specific issue with regard to the title of first defendant in respect of an extent of 53 cents. After considering the document of sale and other evidence, the lower Court came to the conclusion that the first defendant has proved his ownership in respect of 53 cents of the land and that the plaintiffs have not proved their case by letting in proper evidence. Against the said order, the present revision petition has been filed.

6.In this case, there is no dispute that the property that was sold in favour of the predecessors of first defendant was also in the possession and enjoyment of the plaintiffs' predecessors in interest. The dispute is only in respect of 53 cents of land alleged to have been sold by the predecessors in interest of the plaintiffs. The plaintiffs filed a suit for declaration of title for an extent of 70 cents. It is submitted by petitioner's counsel that the title relating to an extent of 16 cents cannot be negatived.

7.In a suit for declaration of title and injunction and for consequential injunction and recovery of possession, the plaintiffs have to prove their title and lawful possession.

8. In the present case, the defendants claim right in respect of an extent of 53 cents as per the sale deed under Ex.B.1. The first defendant's claim of title on the basis of the sale deed obtained from the predecessors in interest of the plaintiffs is accepted by the Tribunal. In such circumstances, the judgment and decree of the Court below cannot be faulted as the plaintiffs, has not come forward with any plea disputing the case of first defendant with regard to the 53 cents. The burden of proof lies on the plaintiffs to prove their title to the total extent claimed or at least to show that the plaintiffs have retained any of the property after selling the property to the defendants.



9. In the course of evidence, it is admitted by the plaintiffs that there is a Dharga, the place where the mortal remains of a saint is buried. However, the dispute is only with respect to the property, which is in the enjoyment of the defendants, namely, the extent of 53 cents, i.e., available with the first defendant pursuant to the valid sale deed stated to have been executed by the predecessors in interest of the plaintiffs. The plaintiffs, though stated that they are in enjoyment of a portion of the property, with an old Dharga, there is no cause of action for them to file the suit as against the property, which is in their enjoyment, as the defendants have no claim or right over any portion beyond 53 cents.

10. The Wakf Tribunal has upheld the title of first defendant to an extent of 53 cents. There is no dispute with regard to the property sold by the plaintiff's predecessors in interest in favour of the defendants.

11. The learned counsel for the revision petitioner contented that the suit ought to have been decreed insofar as the remaining extent of 17 cents. Having regard to the relief sought for in the suit and the attending circumstances, this Court has already expressed that the whole suit was focused only on the property, which is now in the enjoyment of the first defendant, based on the sale deed said to have been obtained from the plaintiff's predecessors in interest. The defendants have not denied the fact that the plaintiffs are also in enjoyment of a portion of the property belonging to the plaintiffs in the same survey number on the northern side and use the same as part of Dharga.

12. In such circumstances, this Court is unable to appreciate the argument of the learned counsel appearing for the appellant that the suit ought to have been decreed insofar as the remaining extent of property available as per the revenue records. The plaintiffs' possession and enjoyment in respect of northern portion has not been denied. However, in the absence of any pleading, this Court is unable to hold that the plaintiffs are entitled to a decree in respect of the remaining portion of the property. Had the plaintiffs prayed for the remaining extent with reference to measurement and specific boundaries, the Tribunal would have granted such relief. However, it is made clear that the defendants have no claim beyond the extent of 53 cents.

13. For the reasons aforesaid, this Civil Revision Petition is dismissed. There shall be no order as to costs.

Sd/-

Assistant Registrar (CO)

/TRUE COPY/

Sub Assistant Registrar



To

1.The Principal Subordinate Judge,
(WAKF Tribunal), Tirunelveli.

2.The Section Officer, V.R. Section,
Madurai Bench of Madras High Court,
Madurai. (2 Copies)

- +1. C.C. to M/S.M.P.SENTHIL, Advocate SR.No. 77812
- +1. C.C. to M/S.D.NALLATHAMBI, Advocate SR.No. 77821
- +1. C.C. to M/S.T.S.MOHAMED MOHIDEEN, Advocate SR.No. 77721

C.R.P (NPD) (MD) No.664 of 2006
25.07.2019

DAS

JM/30.08.2019/5P/7C