



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 24.07.2019

CORAM:

THE HONOURABLE MR.JUSTICE S.S.SUNDAR

WEB COPY

T.R.C.M.P. (MD) No.284 of 2019

and

C.M.P. (MD) No.6584 of 2019

S.M.A.Farook (Died)

1.Fathima Gani

2.S.M.A.Hazina John

3.S.M.A.Nazeera Banu

... Petitioners/Respondents/
Defendants 2 to 4

Vs.

Hasarath Sayad Shaw Mian Sakkab

Sahib Kathir Thaikkal Wakf,
represented by its Junior Trustee,
Sayad Wajhan Nahi Sakkab.

... Respondent/Petitioner/
Plaintiff

Prayer: Transfer Civil Miscellaneous Petition filed under Section 24 of C.P.C., to withdraw the Execution Petition in E.P.No.29 of 2012 in W.O.P.No.11 of 1999 from the file of the Subordinate Court, Thanjavur, and to transfer the same to the file of the Waqf Tribunal, Chennai.

For Petitioners

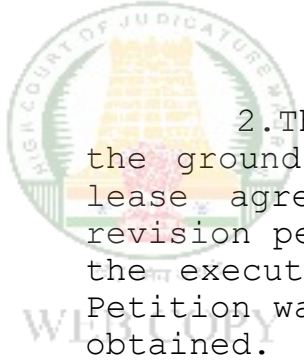
:Mrs.P.Yasmin Begum

ORDER

This Transfer Petition is filed by the defendants 2 to 4 in W.O.P.No.11 of 1999 on the file of the Subordinate Court, Thanjavur, to transfer the Execution Petition in E.P.No.29 of 2012 in W.O.P.No.11 of 1999 from Subordinate Court, Thanjavur to Special Wakf Tribunal at Chennai.

2.The brief facts that are necessary for the disposal of this petition are as follows:

2.1.The respondent, as plaintiff, filed Waqf Original Petition against the revision petitioners in W.O.P.No.11 of 1999 on the file of the Subordinate Court, Thanjavur and the same was decreed as prayed for and decree was for recovery of possession/ejectment. During the pendency of W.O.P., it is stated that the petitioners' father expired and the petitioners herein were brought on record as legal representatives of the deceased first defendant. Pursuant to the decree, execution petition in E.P.No.29 of 2012 was filed to execute the decree, after a period of six years from the date of decree for ejectment.



2.The Execution Petition was contested by the petitioners on the ground that after the decree was obtained, there was a fresh lease agreement between the respondent and the father of the revision petitioners. In that pretext, an attempt was made to stall the execution petition. It is also admitted that the Execution Petition was allowed on 22.12.2012 and an order of delivery was also obtained. It is at that stage, the petitioners have come before this Court by way of this petition, saying that a notification dated 16.08.2018 has been issued for transferring the cases, pertaining to Wakf properties to newly constituted Wakf Tribunal, Chennai, and that therefore, the Wakf Tribunal, Chennai, is the only Court to deal with all the properties pertaining to Wakf. The petitioner has also relied Section 83 of the Wakf Act, 1995.

3.The suit was filed in the year 1996 and it is seen that the matter was transferred to Wakf Tribunal, namely, Principal Subordinate Court, Thanjavur and numbered as W.O.P.No.11 of 1999. The Wakf Tribunal has decreed the suit by directing the defendants, namely, the revision petitioners, to handover possession of 'B' and 'C' schedule properties within a period of three months. It is also pertinent to mention that the said decree was passed on 25.10.2006. Despite a direction was issued to the revision petitioners to hand over possession, the petitioners have not done so and hence, the respondent filed an Execution Petition in 2012 and obtained an order of delivery and it is at that stage, the petitioner has come forward before this Court with clear intention to stall the proceedings.

4.It is true that the Wakf Tribunal, which is now constituted at Chennai, has jurisdiction to decide all cases pertaining to Wakf properties. However, the Wakf Tribunal constituted at Chennai may not sit as an Executing Court in all cases and for convenience, the decree can be transmitted to any other Court having jurisdiction to deal with execution. In that view of the matter, this Court is of the view that the transfer of Execution Petition is not necessary and hence, this petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (AS)

// True Copy //

Sub Assistant Registrar(CS)

To

1.The Subordinate Judge, Thanjavur.

2.The Waqf Tribunal, Chennai.

+1cc to M/S.P.YASMIN BEGUM, Advocate, SR.No.77884

cmr

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