

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.08.2020

CORAM:

THE HON'BLE MR.JUSTICE P.VELMURUGAN

Civil Revision Petition (NPD) No.2410 of 2010
and M.P.No.1 of 2010 and M.P.No.1 of 2013

-
- 1.T..Muthusamy Pillai(Deceased)
 - 2.T.P.Natesan
 - 3.R.Sivagnanam
 - 4.M.Muthumanickam (Petitioners 2 to 4 died)
 - 5.S.Thenmozhi
 - 6.Shiyamalavalli
 - 7.T.S.Ramachandran
- Petitioners 5 to 7 are brought as
legal representatives of the deceased
3rd petitioner vide court order dated 21.4.2016.
8. M.Rajeswari
 - 9.M.Senthil Kumar
 - 10.M.Kanakasabai
 - 11.N.Sunderajan
 - 12.N.Sivanesan
 - 13.M.Lakshmi
 - 14.M.Padmanaban
 - 15.M.Gnanasundaram

Petitioners 8 to 12 brought on record as LR's
of the deceased 2nd petitioner T.P.Natesan
vide court order dated 16.10.2019.

Petitioners 13 to 15 were brought on record
as LR's of the deceased petitioner 4 M.Muthumanickam
vide court order dated 16.10.2019.

..Petitioners/
Respondents.

-Vs-

1.Chaganvally Dharga and Mosque Trust

Rep. by its Secretary

Anna Salai, Sultanpet, ParamathuVelur

Namakkal District-638 102.

2.Tamil Nadu Wakf Board

Rep. by Chief Administrative Officer

No.3, Santhome High Road

Chennai-600 004

At present 7/4, 9th Cross, Adyar

Chennai-600 020

..Respondents.
/Petitioners

Prayer: Civil Revision Petition filed under Section 83(9) of Wakf Act, 1995, praying to set aside the judgment and decree dated 30th March 2010 passed in Wakf O.P.No.63/1999 on the file of Salem and Namakkal at District Wakf Tribunal Court, Subordinate Judge at Salem.

For Petitioners : Mr.R.K.Bhavanantham

For Respondents : Mr.V.Raghavachari.

ORDER

The respondents filed a petition against the original petitioners in Wakf O.P.No.63 of 1999 on the file of Wakf Tribunal, Namakkal, Salem [Principal Subordinate Judge, Salem]. The said W.O.P., was filed seeking to

(a) to declare the petition mentioned properties are wakf properties and absolutely belonging to the petitioner wakf.

(b) directing the respondents to deliver vacant possession of petition

mentioned properties to the petitioner wakf

(c) directing the respondent to pay a sum of Rs.1656/- towards arrears of rent to the petitioner.

(d) directing the respondents to pay a sum of Rs.5000/- per month as damages for the use and occupation of petition mentioned properties from 1-6-99 till the date of delivery of possession of wakf properties to the petitioner.

(e) directing the respondents to pay cost of the petition to the petitioner.

2. The Tribunal, after enquiry, allowed the petition and granted the relief to the respondents herein. Challenging the said order passed by the Wakf Tribunal in Wakf O.P.No.63 of 1999 dated 30.03.2010, the respondents in the said W.O.P., filed the present revision petition before this court.

3. During the pendency of the Revision, original petitioners 1 to 4 died and therefore, by way of impleadment, petitioners 5 to 15 herein are brought on record.

4. The learned counsel for the petitioners would submit that to evict the tenant, only suit has to be filed before the civil court; Wakf Tribunal has no jurisdiction to entertain the eviction petition and the O.P., filed before the

Wakf Tribunal is without jurisdiction. Therefore, the said W.O.P., filed by the respondents herein before the Tribunal was without jurisdiction and the Tribunal also granted relief, which is unsustainable. The learned counsel for the petitioners in support of his contentions, placed reliance on the following decisions:-

(1) (2010) 8 Supreme Court Cases 726 [Ramesh Gobindram (died) Through Lrs Vs. Sugra Humayun Mirza Wakf]

(2) 2014-4-L.W.632 [Faseela M. Vs. Munnerul Islam Madrasa Committee & another]

5. The learned counsel for the respondents would submit that the Wakf Tribunal has got the jurisdiction to decide the fact that the properties belonged to Wakf. The petitioners herein who are respondents before the Wakf Tribunal also denied the title of the property of Wakf Board and on the contrary, they claimed title of the said property. Therefore, the Tribunal has got the jurisdiction to decide the issue that as to whether the property is Wakf Property or not. Therefore, the Tribunal has got the jurisdiction and Wakf Tribunal had rightly decided the petition filed by the respondents before the Tribunal and there is no merit in this Civil Revision petition.

6. Heard and perused the records.

7. It is the case of the respondents herein that the 1st respondent-Chaganvally Dharga and Mosque is the Trust and 2nd respondent -Tamil Nadu Wakf Board is Wakf Board. The property was granted to the 1st respondent Trust and originally the properties were given to one T.P.Ramasami Pillai on lease on 01.10.1957 on a monthly rent of Rs.45/- payable on every English Calendar Month and he had paid rent till 31.3.1974 and thereafter, he has not paid rent. In spite of repeated demands made by the then Trustees of the 1st respondent herein, the rent has not been paid by T.P.Ramasami Pillai. The advance amount of Rs.552/- paid by T.P.Ramasamy Pillai was also adjusted towards the rent for the period from 01.04.1974 to 31.3.1975. The said T.P.Ramasamy Pillai was in arrears of rent and there was wilful default from 01.04.1975. After the death of T.P.Ramasami Pillai, the petitioners 1 to 4 (deceased) were occupying the petition Wakf Property, who are the legal heirs of T.P.Ramasami Pillai. The petitioners 1 to 4 have not paid rent to Respondent-Wakf and they are holding possession of the petition mentioned properties as the heirs of T.P.Ramasami Pillai who was the tenant of the properties of respondent wakf. The petitioners are in wilful default and rent as per the provisions of Wakf Act, 1995, not paid by the petitioners. The petitioners are encroachers of the Wakf properties.

8. On the other hand, it is the case of the petitioners herein that the 1st respondent Wakf rented out the property to them and getting income from the said property. The respondents filed Wakf O.P., to evict them from the said properties.

9. The contention of the learned counsel for the petitioners is that the Tribunal has no jurisdiction to decide the case, if at all, they got the jurisdiction, the respondents can only file civil suit for recovery. It is further stated that the petitioners were tenants. Original tenancy was made to T.P.Ramasami Pillai under a registered deed dated 06.02.1945 of the vacant site alone on a monthly rent of Rs.25/-. As per the condition in the lease, Ramasamy Pillai put up construction and raised superstructure for the purpose of running rice mill and flour mill, godown and other constructions for his business. Huge machineries have been installed in the building at the cost of Rs.1 lakh including the construction expenses. This was done under the authority given under the Rend Agreement. But subsequently, since they have not evicted the property, Ramasami Pillai the original tenant become the owner of the property. They are entitled for the adverse possession and the Wakf O.P., is barred by limitation and the said petition ought to have been filed before termination of tenancy i.e., 08.07.1977 but the same was not filed

within 12 years. The petition was barred by limitation and filed beyond the period of tenancy agreement. Thereby, the petitioners have become the owners of the petition mentioned properties and they are in continuous and unobstructed possession for over the statutory period which was admitted by the respondents in this case. In such circumstances, the petition for eviction is not maintainable. Even assuming that the respondent-Trust claim the properties and to evict the petitioners, they can file civil suit before the jurisdictional court and not before the Tribunal.

10. After considering the entire arguments put forth on both sides, it is seen that though the 1st respondent is the Trust and 2nd respondent is the Wakf Board, they filed the petition against the petitioners 1 to 4 for declaration, eviction, damages and for arrears of rent. Though the petitioners denied the averments in the W.O.P, in paragraph 5 of their counter affidavit filed before the Tribunal, the deceased petitioners 1 to 4 on the other hand, admitted that the petitioners were the tenants originally and also admitted the original tenancy agreement was made to T.P.Ramasami Pillai under Registered Lease dated 06.02.1945; T.P.Ramasami Pillai constructed Rice mill superstructure and running the business. The petitioners also stated that earlier there was suit in O.S.191 of 1952 and scheme was framed. One

P.T.Doraisamy, Advocate was appointed as Advocate Commissioner/Receiver. However on and from 1951, disputes arose relating to the management of the Dharga. The scheme suit itself was to resolve those disputes. Subsequently, the respondent trust also rented out the suit properties to Ramasami Pillai as tenant. T.P.Ramasami Pillai had been paying rent. The respondents terminated the tenancy agreement on 08.07.1977 and after tenancy period, they have not paid rent. In such circumstances, the respondents not filed petition for arrears of rent alone but filed petition for eviction. Further, the said Wakf O.P., for eviction has been filed beyond the period of 12 years and they claimed adverse possession.

11. It is settled proposition of law that once the petitioners admitted that they are the tenants at one point of time, now they are estopped from raising the claim of title over the suit properties based on adverse possession. The settled proposition of law is that there cannot be any adverse possession in Trust Property. The petitioners cannot claim for title. However, the respondents filed the petition for eviction of the tenants. As contended by the learned counsel for the petitioners, as per the decision of the Honourable Supreme Court reported in **(2010) 8 Supreme Court Cases 726 (Ramesh Gobindram (dead) through LRs Vs.Sugra Humayun Mirza Wakf)** the

Tribunal has no jurisdiction to entertain the petition for eviction of the tenant from land. The Honourable Supreme court in another decision **2014-4-LW-632 [Faseela M. Vs. Munnerul Islam Madrasa Committee & another]**, followed the above cited decision (cited supra) and held that the tribunal has no jurisdiction to entertain the petition relating to eviction against the tenant. It is held that Sections 6 and 7 of the Act not only confer exclusive jurisdiction upon the Wakf Tribunal for determination of certain disputes regarding wakf but also take jurisdiction of the civil court away in respect of such disputes. In the said decision, the Apex Court set aside the order of the Wakf Tribunal. It is further held that the suit for eviction against the tenant relating to a wakf property is exclusive triable by the civil court as such suit is not covered by the disputes specified in Sections 6 and 7 of the Act. Further, the Apex Court directed that the civil court to proceed with the suit.

12. In the case on hand, the respondents have stated that the property belonged to the 1st respondent Trust and also administered by the Wakf Board and the petitioners also admitted in their counter that they were the tenant. In such view of the matter, it cannot be stated that the issue is barred by limitation as against Trust property. Therefore, as per the decision of the Honourable Supreme Court (cited supra), for evicting the tenant from the wakf

properties, Wakf Tribunal has no jurisdiction but only to approach the civil court for relief. The petitioners also in their counter, have clearly stated that wakf has no jurisdiction but to approach the civil court to evict the tenant. Therefore this court finds that Wakf Tribunal has no jurisdiction to entertain the petition for eviction of the tenant and the order passed by the wakf Tribunal is set aside. However, the respondents are at liberty to file the suit before the civil court.

13. With the above direction, the Civil Revision Petition is allowed. The order passed by the Wakf Tribunal dated 30.03.2010 in W.O.P.No.63 of 1999 on the file of Principal Subordinate Judge, Salem, is set aside. The respondents are at liberty to approach the civil court for its relief. No costs. Consequently, connected miscellaneous petitions are closed.

14.08.2020

Index:Yes/No

Internet:Yes/No

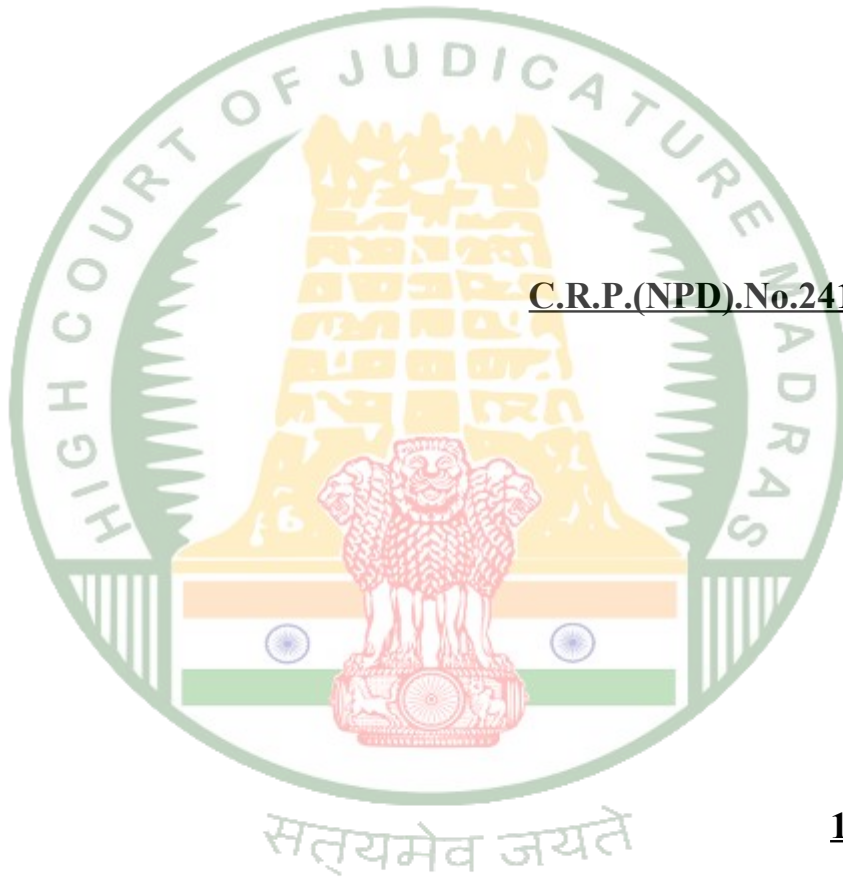
nvsri

WEB COPY

C.R.P.(NPD).No.2410 of 2010

P.VELMURUGAN, J.

nvsri



C.R.P.(NPD).No.2410 of 2010

14.08.2020

WEB COPY