

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.08.2020

CORAM:

THE HON'BLE MR.JUSTICE P.VELMURUGAN

C.R.P.(NPD).No.4696 of 2010

Kasim Maraicaair,
S/o.Ibrahim Maraicaair,
2/3, Pudhumanai Street, Nagapattinam Town,
Taluk and District Munsif.

... Petitioner

Vs

1.V.Abubucker Maraicaair Trust and Haji
Kathija Beevi Trust,
Rep by the Turn System Trustee Hameedu Kathija Nachiar,
No.5.Thattan Kula Street, Nagapattinam Town, Taluk &
District Munsif.

2.Esak Maraicaair,
S/o.Ibrahim,
No.71, Neela Keezha Veethi,
Nagapattinam Town, Taluk & District Munsif.

3.Asai Mariam,
D/o.Ibrahim,
No.71, Neela Keezha Veethi,
Nagapattinam Town, Taluk & District Munsif.

4.Sadiq Maraicaair,
S/o.Ibrahim,
No.71, Neela Keezha Veethi,
Nagapattinam Town, Taluk & District Munsif.

5.Julaika,
D/o.Ibrahim,
No.71, Neela Keezha Veethi,
Nagapattinam Town, Taluk &
District Munsif.

6.Abubucker Maraicair,
S/o.Ibrahim,
No.71, Neela Keezha Veethi,
Nagapattinam Town, Taluk &
District Munsif.

7.The Chairman,
Wakf Board,
Chennai.

8.The Inspector,
Wakf Board-Nagapattinam,
Nagore, Nagapattinam Town, Taluk &
District Munsif.

... Respondents

Prayer : Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the order and decreetal order dated 04.08.2010, made in Wakf O.P.No.9 of 2007, on the file of Wakf Tribunal (Sub Court, Nagapattinam).

For Petitioner : Mr.Ramesh Venkatachalapathy

For Respondents : Mr.M.S.Palaniswamy for R1
No appearance for R2 to R8

ORDER

This civil revision petition has been filed to set aside the fair and decreetal order dated 04.08.2010, made in Wakf O.P.No.9 of 2007, on the file of Wakf Tribunal (Sub Court, Nagapattinam).

2. The petitioner herein filed a wakf original petition before the Wakf Tribunal (Subordinate Court, Nagapattinam) in W.O.P.No.9 of 2007, against the respondents. After the enquiry, the Wakf Tribunal allowed the petition in part, filed by the petitioner and also they were not granted the relief of quantum of the share as claimed by the petitioner that is 2/11 shares in the surplus income of the Abubucker Maraicaire Trust and Haji Kathija Beevi Trust. Challenging the said order passed by the Tribunal, the petitioner is before this Court by way of this revision petition.

3. Admittedly, the property belongs to the first respondent Trust and also as per the trust deed, the income from the property has to be spent to fulfill the object of the Trust. If any surplus income, that has to go to the beneficiaries of the Trust. According to the petitioner, the petitioner is one of the beneficiaries. There are two branches in the beneficiaries and as per the

scheme decree, the wakf has to be administered in turn system that is every branch is one year.

4. The first respondent has to rend the account and the petitioner is entitled to 2/11 shares from the surplus income and therefore, the Trust is not disputed and the trust deed is also not disputed and the scheme of the trust is also not disputed. The trial court has also elaborately discussed about the Trust and also the object of the Trust and if any surplus income, then the first respondent trust has to account for that and from the surplus income, the petitioner's branch is entitled for the proportionate as per the surplus income of the Trust.

5. The learned counsel for the petitioner submitted that the petitioner and the respondents 1 to 6 are the legal heirs of the Ibrahim. The income of the Trust property should be shared, after meeting expenses of the charity mentioned in the Trust. The petitioner is the Vanjore Maraicair branch and he claiming only his branch shares alone. The Lathifabeevi branch legal heirs are in other turn and they are nothing to do with any surplus income during his terms of the administration. Therefore, the trial court has wrongly given

the finding that Lathifabeevi branches legal heirs are not impleaded in the suit. Therefore, the petitioner is not entitled to the shares. In order to prove the legal heirship, the petitioner filed document Ex.P1 dated 06.12.2009, that is, the legal heir certificate of one Ibrahim. The trial court also found that the petitioner is the legal heir of the said Ibrahim, therefore, given a finding that the petitioner is the legal heir of the Ibrahim and the petitioner is also a beneficiary, however, non implement of the Lathifabeevi branches legal heirs alone, the petitioner is not entitled to the shares. But on reading of the Ex.P1 legal heir certificate, the first respondent has not objected regarding the legal heir and the first respondent also has not filed any revision against the finding given by the Wakf Tribunal and other respondents also has not filed any revision or objection regarding the claim of the petitioner.

6. Therefore, under these circumstances, this Court finds that the finding given by the Tribunal regarding the entitlement on the 2/11 shares of the petitioner is not correct, since the petitioner proved by way of Ex.P1 that he is the legal heir of one Ibrahim and also comes under the branch of Vanjore Maraicair branch. Therefore, the petitioner and the respondents 1 to 6 are the legal heirs of Ibrahim and therefore, they are entitled for the shares.

As per the mohammedan law, male get two shares and the female get one share. Therefore, the petitioner is entitled to 2/11 shares.

7. In the result, the present revision petition filed by the petitioner is allowed and the order passed by the Wakf Tribunal is set aside regarding the quantum of shares alone. Therefore, the petitioner is entitled to 2/11 shares from the surplus income of the Trust. No costs.

13.08.2020

Index: Yes/No
Internet: Yes/No
gsk

To

1. The Wakf Tribunal (Sub Court, Nagapattinam).
2. The Chairman,
Wakf Board,
Chennai.
3. The Inspector,
Wakf Board-Nagapattinam,
Nagore, Nagapattinam Town, Taluk &
District Munsif.
4. The Section Officer, V.R. Section,
High Court, Madras.

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P.VELMURUGAN,J.

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