

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.12.2020

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBRAMANIAN

C.R.P(PD)No. 6 of 2018

and

C.M.P.No. 12 of 2018

1.K.Parthasarathy

2.K.Sriram

...Petitioners

Vs.

1. Syed Sadiq Mosque and Dargah,
Rep. By its President Mr.Z.Jamaludeen,
Kundrathur Main Road,
Mangadu Village,
Chennai - 602 101.

2. The Chief Executive Officer,
Tamilnadu Wakf Board,
No.1, Jaffer Syrang Street,
Vallal Seethakathi Nagar,
Chennai - 600 001.

...Respondents

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India, against the order and decretal order dated 09.11.2017 made in I.A.No.112 of 2017 in Wakf O.S.No. 5 of 2016 on the file of the Principal Sub-Ordinate Judge, Chengelpet (Wakf Tribunal).

For Petitioners : Mr.R.Thiagarajan

For Respondents : Mr.T.Velumani for R1

Mr.V.Lakshminarayanan for R2

O R D E R

This civil revision petition has been filed by the defendants in Wakf O.S.No. 5 of 2016 on the file of the Sub-Court, Wakf Tribunal, Chengelpet (now transferred and renumbered as O.S.No.38 of 2018 on the file of the Wakf Tribunal in Kamarajar Salai, Chennai).

2. Challenge in this revision is to the order of the Trial Court dismissing the application filed under Order 7 Rule 11 of C.P.C., seeking rejection of the plaint. The plaintiff / first respondent herein filed a suit for permanent injunction

restraining the defendants 1 and 2 from interfering with his peaceful possession and enjoyment of the suit property. It is his plea that the suit properties are Wakf properties and belonged to the notified Wakf. Since dispute arose between one Manali Ramakrishna Mudaliar and the plaintiff, a suit came to be filed in O.S.No. 188 of 1988 for the relief of declaration of title by the plaintiff on the file of the Sub-Court, Poonamallee.

3. In the said suit, a compromise was entered into wherein, the title of the Mosque was declared in respect of the properties situated in Survey No.111 measuring about 7.38 acres, Survey No.101 /1A measuring about 3.50 acres and Survey No. 101/3 measuring about 16 cents in Kundrathur Village. The claim in respect of the other lands was dismissed. Contending that the said compromise is not legally valid, since it was obtained without the permission of the Wakf Board, the plaintiff has come up with this suit for injunction with reference to the property in Survey No.123 measuring 12 cents.

4. The defendants would resist the suit contending that their Vendor, Mrs.M.S.Rani was the owner of the property in Survey No.123 and neither the defendants in O.S.NO.188 of 1988 nor the plaintiff in the present suit had nothing to do with the suit property. Pending suit, an application was filed by the defendants seeking rejection of the plaint on the ground that it does not disclose cause of action or that it is based on a illusory cause of action. It was also claimed that the suit was barred by limitation. The learned Trial Judge, upon consideration of the pleadings found that the application under Order 7 Rule 11 has to be dismissed. The learned Trial Judge found that both the parties are setting up their title under different persons and therefore, those questions can be examined only after trial and it cannot form the basis for rejection of the plaint. On the said conclusion, the learned Trial Judge dismissed the application.

5. I have heard Mr.R.Thiagarajan, learned counsel for the petitioners, Mr.T.Velumani, learned counsel for the first respondent and Mr.V.Lakshminarayanan, learned counsel for the second respondent / Wakf Board.

6. Mr.R.Thiagarajan, learned counsel appearing for the petitioners would vehemently contend that neither the petitioners nor their vendor was a party to the earlier proceedings and therefore, the suit based on the compromise in O.S.No. 188 of 1988 cannot be said to be with cause of action. The learned counsel would also further plead that the suit itself is an abuse of process of Court. I am unable to accept the contentions of the learned counsel for the petitioner. The plaintiff has to come to Court seeking a relief of permanent

injunction on the basis of a certain string of title. The defendants have projected a different source of title and contend that the plaintiff has no title to the property.

7. The question whether the compromise decree in O.S.No. 188 of 1988 is valid and whether the compromise decree would invest title to the suit properties in the plaintiff are the questions that have to be answered on evidence. The rejection of the plaint under Order 7 Rule 11 is an extraordinary remedy which can be resorted to only when the Court is satisfied with the absence of cause of action or existence of a statutory bar. The averments in the affidavit filed in support of the application for rejection of the plaint namely, I.A.No. 112 of 2017, does not disclose presence of either of the two elements stated above. The defendants want the Court to look into their defence and reject the plaint which is prohibited under law. I am of the considered opinion that the Trial Court was justified in dismissing the application.

8. In view of the above, I do not think that the Trial Court was wrong in dismissing the application. This civil revision petition therefore fails and it is accordingly dismissed. Consequently, connected miscellaneous petition is closed. No costs. It is made clear that the Trial Court will dispose of the suit without being influenced by any of the observations made in this order or in the order impugned in this revision. It would be open to the defendants to raise all the issues including the absence cause of action and limitation before the Trial Court.

s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar

kkn

To:

1. Principal Sub-Ordinate Judge,

Chengelpet (Wakf Tribunal)

+1 CC to Mr.R.Thiagarajan, Advocate sr 41145.

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and

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VD(CO)

SP(07/01/2021)