



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated : 17.02.2020

CORAM

THE HONOURABLE MRS. JUSTICE R. THARANI

C.R.P.(MD)No.2195 of 2019

and

C.M.P.(MD)No.11459 of 2019

WEB COPY

1.Fathima Gani
2.S.M.A.Hazina John @ S.M.A.Hazina Banu
3.S.M.A.Nazira Banu .. Petitioners/Respondents 2 to 4
and L.R of deceased 1st Respondent (J.D)
Vs.

1.Hasarath Sayad Shaw Mian Sakkab
Sahib Kathir Thaikal Wakf.
Represented by its Junior Trustee,
Sayad Wajhan Nahi Sakkab,
Kondirajapalayam, East Main Street,
Thanjavur. .. 1st Respondent / Petitioner
(Decree Holder)

2.The Super indent,
Tamil Nadu Wakf Board,
27, Neethi Nagar,
Court Road,
(Nearby State Medical Shop)
Thanjavur. .. 2nd Respondent / Nil - parte

Prayer: This Civil revision petition is filed under Section 83(9) of Wakf Act 43/1995, to allow the civil revision petition by quashing the proceedings in E.P.No.29 of 2012 in W.O.P.No.11 of 1999 on the file of the learned Principal Subordinate Judge, cum Wakf Tribunal, Thanjavur.

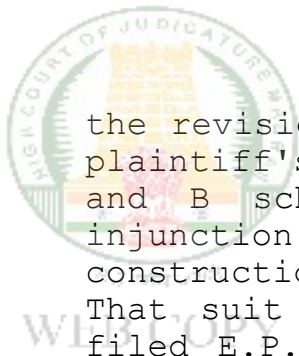
For Petitioner	: Mr.A.Arumugam
For 1 st Respondent	: Mr.R.Vijayakumar
For 2 nd Respondent	: Mr.S.A.Ajmal Khan

ORDER

Heard learned counsel appearing on either side.

2.This Civil Revision Petition has been filed against the order passed in E.P.No.29 of 2012 in W.O.P.No.11 of 1999 on the file of the learned Principal Subordinate Judge, cum Wakf Tribunal, Thanjavur.

3.The petitioners herein are the legal heirs of the first respondent, the first respondent herein is the decree holder and the second respondent herein is not a party to the suit. The first respondent filed a suit in W.O.P.No.11 of 1999 against the father of



the revision petitioners for a prayer of declaring the title of the plaintiff's institution and for directing the defendants to vacate A and B schedule property and to issue an order of mandatory injunction to demolish the thatched portion of the illegal construction put up by the defendant in the 'A' schedule property. That suit was decreed in favour of the plaintiff. The plaintiff filed E.P.No.29 of 2012 for delivery. The petitioner come forward with this revision petition to quash the proceedings in E.P.No.29 of 2012.

4.On the side of the petitioners, it is stated that the execution petition in E.P.No.29 of 2012 filed by the first respondent/decreed holder is barred under Section 87 of Wakf Act, 1995, since the decree dated 25.10.2006 in W.O.P.No.11 of 1999 is null and void as the Wakf is unregistered. Issuing notice through Wakf Tribunal to the Board of Wakf is mandatory under Section 90 of the Wakf Act and the decree is to be declared as void under Section 90(3) of the Wakf Act. The Wakf Tribunal exceeds its jurisdiction and has received an unregistered rental documents as evidence.

5.On the side of the petitioners, it is stated that the Wakf Board was not properly represented in the suit. Only juniors Trustee represented the Wakf and all other Trustee were not participated in the suit. It is stated that Wakf board is not added as a party in the suit. It is argued that amending a decree by filing an execution application in E.A.No.27 of 2017, is not maintainable. A decree can be amended only by the Court, which passed the decree and the execution Court cannot amend the decree and for the above reasons, the execution proceedings is to be quashed.

6.On the side of the respondents, it is stated that under Section 90 of the Wakf Board Act, the decree will not be binding upon the Wakf Board. There is no necessity to implead Wakf Board as a party. It is further stated that on 18.10.2006, the suit was decreed and the Wakf Board has not taken any steps to set aside the order within six months from the date of order. Execution petition was filed during the year 2012. For a period of two years, the petitioner did not file any counter. Since no counter was filed, delivery was ordered on 22.12.2014. Only after 5 years, the petitioner has come forward with the petition to strike off the execution petition. When the petitioner has not filed any counter in the execution petition itself, the petitioner has no *locus standi* to file this petition before this Court.

7.On the side of the respondents, it is stated that execution petition is now pending only for police protection and for permission to break open the lock. Since delivery was already ordered, there is no necessity to strike off of execution petition.

8.On the side of the second respondent, it is stated that the



Wakf Original Petition was not challenged. At the stage of execution petition, raising technical disputes which were not raised in the original pleadings, is not valid.

9. It is seen that the Wakf Board was not impleaded as a party in the original Wakf proceedings. Decree was passed in the original petition and no appeal is pending as on the date of that order. Though Wakf Board was not impleaded as the party, the Wakf Board has not taken any steps to set aside the decree within 6 months from the date of the order. The decree will be binding against the parties to the proceedings. The original petition was filed in the year 1999. The decree was passed on 18.10.2006. Execution petition was filed only in the year 2012. Instead of questioning the execution petition by filing counter, the petitioner has come forward with this petition. This petition was filed, after a lapse of 5 years after the date of filing of the execution petition. The petitioner fails to question the decree. The petitioner has approached this Court only after an order of delivery was passed in the execution petition. In the above circumstances, there is no merits in this revision petition.

10. Hence, the Civil Revision Petition is dismissed and the order passed in E.P.No.29 of 2012 in W.O.P.No.11 of 1999 on the file of the learned Principal Subordinate Judge, cum Wakf Tribunal, Thanjavur is confirmed. No Costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (P&A)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

MRN

To

The Principal Subordinate Judge cum Wakf Tribunal,
Thanjavur.

+1 CC to M/s.AJMAL ASSOCIATES, Advocate (SR-6846[F]

+1 CC to M/s.R.VIJAYKUMAR, Advocate (SR-7161[F] dated 19/02/2020)

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SMA/24/03/2020/3P/4C