

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.09.2021

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(NPD)No.2839 of 2012
and C.M.P.No.12774 of 2021

1.Wadhooth Khan

Alimullah (died)
(For themselves and on behalf of the Worshippers,
Periapalli Vasal, Mohalla)

2.Maqbool

.. Petitioners

*(2nd petitioner died. Proposed 3rd petitioner
transposed as 2nd petitioner, vide order of this
Court dated 23.08.2021 made in C.M.P.No.8374
of 2021 in C.R.P.No.2839 of 2012).*

Vs.

1.Periya Pallivasal @ Udayargudi Mosque
and Tahikka Wakf, rep. By its Muthavalli,
Udayargudi Village,
Kattumannar Koil post and Taluk.

2.Ramzan Thaikka,
rep. By its Muthavalli for the time being,
Udayarkudi, Kattumannar Koil post and Taluk.

3.Hussain Sherff,
Ramzan Thaikkal, Udayargudi Village,
Kattumannar Koil post and Taluk.

4.Tamil Nadu Wakf Board,
Rep. By its Secretary,
having Office at No.1, Jaffar Sharang Street,
Vallal Seethakhadi Nagar,
Chennai 1.

.. Respondents

Prayer: Civil Revision Petition filed under Section 83 (9) Proviso of Wakf Act, 1995, against the judgment and decree dated 04.04.2012, made in O.S.No.55 of 2009, on the file of the Wakf Tribunal (Principal Sub Court) at Cuddalore.

For Petitioners : Mr.Srinath Sridevan

For Respondents : No appearance (For R1)

Mr.S.Kumara Devan (For R2)

Mr.C.Premkumar (For R3)

Mr.Mohammed Fayaz Ali (For R4)

ORDER

(The matter is heard through 'video conferencing/hybrid mode')

This Civil Revision Petition is filed against the judgment and decree dated 04.04.2012, made in O.S.No.55 of 2009, on the file of the

Wakf Tribunal (Principal Sub Court) at Cuddalore.

2.The petitioners filed O.S.No.55 of 2009, on the file of the Wakf Tribunal, (Principal Sub Court) at Cuddalore, against the respondents, to declare the title of the 1st respondent over the suit properties and also to restrain the respondents 2 and 3 from in any manner dealing or interfering with the 1st respondent's right, title, interest, possession and enjoyment of the suit properties. The said suit was dismissed by the judgment and decree dated 04.04.2012. Challenging the said judgment and decree, the petitioners filed the present Civil Revision Petition. Pending Civil Revision Petition, the 2nd petitioner (Alimullah) died and the proposed 3rd petitioner was transposed as 2nd petitioner in the Civil Revision Petition, vide order of this Court dated 23.08.2021 made in C.M.P.No.8374 of 2021.

3.The case of the petitioners is that the suit properties belong to the 1st respondent - Periya Pallivasal and it was notified by the 4th

respondent. The 1st respondent is in possession and enjoyment of the suit properties. The petitioners are worshippers of the 1st respondent Mosque and they offer their daily Namaz and participate in all religious ceremony carried on by the 1st respondent Mosque. The petitioners are also interested in the administration, management and protection of the 1st respondent Mosque and its properties. According to the petitioners, the suit properties belong to the 1st respondent and most of the properties are given as Inam land for the benefit of the 1st respondent Mosque. The petitioners 1 and 2 came to know that the 2nd respondent claimed some right over the suit properties, without any right, title and interest of the properties. The 2nd respondent is not notified Wakf of Thaikka and it has no Inam properties. The suit properties are covered by the Inam title deed No.1007 and suit properties are endowed for the pious, religious and charitable purposes. The 3rd respondent declared himself as Muthavalli of the 2nd respondent and obtained patta in the name of the 2nd respondent. The 2nd respondent is not owner of the suit properties and not entitled to claim any right, title and interest over the suit properties. The 1st

respondent alone has title to the suit properties.

4.The respondents 2 and 3 filed written statement and submitted that the suit properties do not belong to the 1st respondent. The 1st respondent was never in possession and enjoyment of the suit properties. There is no connection between the respondents 1 and 2. The 2nd respondent is a notified Wakf by the Gazette notification dated 06.05.1959. The 2nd respondent is the Thaikka situated in the village of Udayarkudi. Without any notice to the 2nd respondent, the Assistant Settlement Officer, Thiruvannamalai conducted Board. The application filed by the 2nd respondent for impleading was dismissed by the Assistant Settlement Officer, Thiruvannamalai. The 2nd respondent filed appeal before the Special Tribunal in S.T.A.No.10 of 1989 and also filed suits in O.S.Nos.710 to 712 of 1986 against three individuals viz., Mohamed Farook, Mumtaz Begum and Rabiyyathul Basira, for declaration and possession of the suit properties. The suits as well as the First Appeals were ended in favour of the 2nd respondent. Second Appeal was also

filed. This Court heard the S.T.A.No.10 of 1989 and Second Appeal Nos.1466 to 1468 of 1992 together, set aside the order passed by the Assistant Settlement Officer, Thiruvannamalai, granting patta in favour of the 1st respondent. The Muthavalli of the 1st respondent admitted before the Assistant Settlement Officer, Thiruvannamalai, that the 1st respondent Periya Pallivasal has nothing to do with the suit properties. In view of the above admission, now the petitioners cannot claim that the suit properties belong to the 1st respondent. The Division Bench of this Court, by the judgment dated 30.01.1997, held that the 2nd respondent alone is the absolute owner of the suit properties. Contrary to the Division Bench judgment of this Court, the petitioners cannot claim any title to the suit properties and prayed for dismissal of the suit.

5.The learned Judge framed the following issues:

“1. Whether the suit is not maintainable as permission under Section 92 of C.P.C. was not obtained from the Court?

2.Whether the 1st defendant is the owner of the suit property?

3.Whether the plaintiffs are entitled to declaration and injunction as sought for?

4.Whether the plaintiffs are entitled to alternative relief?

5.To what other relief or reliefs the plaintiffs are entitled to?”

6.Before the learned Wakf Tribunal (Principal Subordinate Judge), Cuddalore, the 1st petitioner examined himself as P.W.1 and one Maliq John was examined as P.W.2 and petitioners marked 6 documents as Exs.A1 to A6. The 3rd respondent examined himself as D.W.1 and marked 7 documents as Exs.B1 to B7. The Wakf Tribunal (Principal Subordinate Judge), Cuddalore, considering the pleadings, oral and documentary evidence, dismissed the suit.

7. Against the dismissal of the suit in O.S.No.55 of 2009 by the order dated 04.04.2012, the petitioners have come out with the present Civil Revision Petition.

8. The learned counsel appearing for the petitioners submitted that the Wakf Tribunal (Principal Subordinate Judge), Cuddalore, ought to have seen that the judgment passed in S.T.A.No.10 of 1989 was not binding on it with respect to the issue of title of the suit properties. The Wakf Tribunal (Principal Subordinate Judge), Cuddalore, having held that the suit is maintainable, ought to have granted decree, as prayed for by the petitioners. The Wakf Tribunal (Principal Subordinate Judge), Cuddalore, erroneously dismissed the suit only based on the judgment in S.T.A.No.10 of 1989. The judgment in S.T.A.No.10 of 1989 is by a Special Tribunal and the said order will be binding only on the parties to the said proceedings and it will not be binding on the 1st respondent. The said proceedings are not with regard to title of the suit properties. The learned Judge failed to consider the holding of the Assistant Settlement

Officer, Thiruvannamalai, that the 2nd respondent has no connection with the suit properties. The 2nd respondent, without impleading the 1st respondent, has filed S.T.A.No.10 of 1989 and the judgment passed in S.T.A. is not binding on the 1st respondent. The Tribunal failed to consider Exs.A5 and A6 viz., settlement Jamabandhi register and settlement deed respectively, which shows that the 1st respondent is owner of the properties.

9.The petitioners filed C.M.P.No.12774 of 2021 to permit them to mark the documents viz., certified copy of TD 1107 dated 28.09.1861 and copy of the judgment of Sub-Court, Cuddalore in O.S.No.53/1952 dated 24.08.1955, as additional documents in the above Civil Revision Petition. The said C.M.P. is taken up along with this Civil Revision Petition.

10.The learned counsel appearing for the petitioners further contended that the suit properties are Inam land and the same was made

in the year 1817 and recorded in TD 1107 dated 28.09.1861. The 2nd respondent was established only after the year 1907 and hence, the 2nd respondent could not have been the grantee under the original Inam. By the judgment dated 24.08.1955, made in O.S.No.53 of 1952 on the file of the Sub Court, Cuddalore, a scheme decree was framed, which shows that the Thaikka which was under the maintenance of the 1st respondent was a travellers shed (Muzaffar Khana). The 2nd respondent is only an interloper, established to grab the properties of the 1st respondent and prayed for allowing the Civil Revision Petition.

11.The learned counsel appearing for the respondents 2 and 3 contended that the petitioners have come out with the case that the suit properties belong to the 1st respondent and it is Inam properties. The petitioners have not produced and marked any documents to show that the suit properties are Inam properties, granted to the 1st respondent. They failed to prove their case before the Wakf Tribunal, as they failed to produce oral and documentary evidence to substantiate their case. The

Wakf Tribunal, (Principal Subordinate Judge), Cuddalore, considered all the materials in proper perspective and dismissed the suit by giving cogent and valid reason. The petitioners have not made out any case to set aside the judgment of the Wakf Tribunal, (Principal Subordinate Judge), Cuddalore. The two documents now sought to be marked as additional documents have no relevance to the issue in the suit. These two documents do not show that the suit properties belong to the 1st respondent. The reason given by the petitioners for marking the documents are not valid and are not in compliance with the provisions of C.P.C. and prayed for dismissal of the Civil Revision Petition as well as the Civil Miscellaneous Petition.

12.The learned counsel appearing for the 4th respondent submitted that the suit filed by the petitioners itself is not maintainable, as the 2nd respondent Wakf was notified in the year 1959. As per the provisions of the Wakf Act, 1995, if there is any dispute with regard to properties of Wakf, they have to challenge the same within one year from the date of

notifying the Wakf. The 1st respondent has not filed any suit for seeking declaration that suit properties are 1st respondent's properties. The petitioners have no locus-standi to file the suit. The learned counsel appearing for the 4th respondent further submitted that contrary to the provisions of the Wakf Act, 1995, without issuing notice, the suit filed by the petitioners is not maintainable and prayed for dismissal of the Civil Revision Petition.

13. Though notice has been served on the 1st respondent and their name is printed in the cause list, there is no representation for them either in person or through counsel.

14. Heard the learned counsel appearing for the petitioners, respondents 2 & 3 as well as 4th respondent and perused the entire materials available on record.

15. From the materials on record, it is seen that it is the specific

case of the petitioners that suit properties are Inam properties granted to the 1st respondent. In addition to that, they have pleaded that the 2nd respondent has come into existence only after the year 1907 and it is not a notified Wakf, while the 1st respondent is a notified Wakf. It is the further case of the petitioners that properties belonging to 2nd respondent were properties purchased by the 2nd respondent and the said properties are not Inam properties.

16. When the petitioners have come out with the case that the suit properties belong to the 1st respondent as per the Inam, they have to prove the said case by producing the Inam, by which the properties were granted to the 1st respondent. The petitioners failed to produce any Inam records before the Tribunal to show that the properties were Inam properties granted to the 1st respondent. They produced only patta and adangal to show that the suit properties belong to the 1st respondent. The Wakf Tribunal, (Principal Subordinate Judge), Cuddalore, considered the said documents and found that the 1st respondent's name was not found in

any of the documents relied on by the petitioners. The 1st petitioner, examined as P.W.1, has admitted this fact in the cross-examination. The 4th respondent- Tamil Nadu Wakf Board has stated that the 2nd respondent is a notified Wakf. The respondents 2 and 3 also produced Gazette Notification dated 06.05.1959, to show that the 2nd respondent is a notified Wakf. In addition to the same, P.W.2, examined by the petitioners, has admitted in cross examination that the 2nd respondent is a notified Wakf. The respondents 2 and 3 examined 3rd respondent as D.W.1 and marked 7 documents as Exs.B1 to B7, to show that the properties belong to the 2nd respondent. It is the case of the respondents 2 and 3 that the Assistant Settlement Officer, Thiruvannamalai, erroneously failed to grant patta in favour of the 2nd respondent. The Assistant Settlement Officer, Thiruvannamalai, also dismissed the application filed by the 2nd respondent for impleading the 2nd respondent in settlement proceedings. Challenging the said order, the 2nd respondent filed S.T.A.No.10 of 1989. The said S.T.A. was taken up by the Division Bench of this Court, along with the Second Appeals filed by the 2nd

respondent in S.A.Nos.1466 to 1468 of 1992. The 2nd respondent also filed three suits in O.S.Nos.710 to 712 of 1986, with regard to suit properties against Mohamed Faook, Mumtaz Begum and Rabiyaathul Basira. After conclusion of trial, First Appeal and Second Appeals were filed before this Court. The Division Bench of this Court heard both S.T.A. and Second Appeals, together. By judgment and decree dated 30.01.1997, the Division Bench of this Court set aside the order of the Assistant Settlement Officer, Thiruvannamalai and held that the 2nd respondent is the owner of the suit properties and is entitled to patta. The respondents 2 and 3 produced the said orders before the Wakf Tribunal, copy of the delivery receipt in E.P.No.18 of 2001, Gazette notification, proforma and adangal extract with regard to suit properties. All these documents substantiate the claim of the respondents 2 and 3 that the suit properties belong to 2nd respondent. The contention of the learned counsel appearing for the petitioners that the judgment in S.T.A., even though passed by the Division Bench of this Court, the same was passed only as a Special Tribunal and the same is binding only on the parties to

the said proceedings, is without merits. Once it is held that the 2nd respondent is owner of the suit properties, it binds on all the persons, until the said order is set aside. The 2nd respondent also has taken the possession of the suit properties in E.P.No.18 of 2001. The petitioners or anybody else have not challenged the said proceedings and the said proceedings have attained finality.

17.The Division Bench of this Court considered S.T.A.No.10 of 1989 and S.A.Nos.1466 to 1468 of 1992 together. In the judgment in S.A.Nos.1466 to 1468 of 1992, the Division Bench held that the 2nd respondent is owner of the suit properties and is entitled to patta. The judgment in S.A.Nos.1466 to 1468 of 1992 is binding on the 1st respondent and petitioners also. It is pertinent to note the 1st respondent has not claimed the ownership of the suit properties. The 1st respondent remained exparte before the Tribunal as well as before this Court. When the 1st respondent is not claiming title, the petitioners have no *locus standi* to file the suit.

18.As far as C.M.P.No.12774 of 2021 is concerned, the petitioners are seeking permission to mark two additional documents viz., TD 1107 dated 28.09.1861 and scheme decree in O.S.No.53 of 1952. According to the petitioners, the suit properties were recorded as Inam land in TD 1107. The 2nd respondent was established only after the year 1907 and hence, could not have been the grantee under the Inam. It is not the case of the petitioners that the suit land are granted to the 1st respondent as Inam. Secondly, the judgment in O.S.No.53 of 1952, sought to be marked, relates to scheme suit, where a scheme decree was passed for proper maintenance of the 1st respondent. A consideration of these two documents do not show that the 1st respondent is owner of the suit properties and the Inam is granted to the 1st respondent. Order XLI Rule 27 of C.P.C. reads as follows:

“27 . Production of additional evidence in Appellate Court— (1) *The parties to an appeal shall not be entitled to produce additional evidence, whether oral or documentary, in the Appellate Court, But if—*

(a) the Court from whose decree the appeal

is preferred has refused to admit evidence which ought to have been admitted, or

[414] [(aa) the party seeking to produce additional evidence, establishes that notwithstanding the exercise of due diligence, such evidence was not within his knowledge or could not, after the exercise of due diligence, be produced by him at the time when the decree appealed against was passed, or]

(b) the Appellate Court requires any document to be produced or any witness to be examined to enable it to pronounce judgment, or for any other substantial cause, the Appellate Court may allow such evidence or document to be produced, or witness to be examined.

(2) Wherever additional evidence is allowed to be produced by an Appellate Court, the Court shall record the reason for its admission."

As per this provision, a party who is seeking to produce additional document in appellate stage has to establish that inspite of due diligence, they could not produce the said document before the Trial Court. In the present case, except stating that the petitioners came to know two documents only recently, no other averments were made in the affidavit for not obtaining and producing the said documents before the Wakf Tribunal, (Principal Subordinate Judge), Cuddalore. Further, only when the appellate Court is of the view that additional documents are required

to decide the issue, it can receive the additional documents. The two documents sought to be marked do not disclose that the 1st respondent is the grantee of suit properties, as per the TD 1107 dated 28.09.1861, sought to be marked. The petitioners are claiming that the suit properties was not granted to the 2nd respondent, as the 2nd respondent came into existence only after the year 1907. The petitioners have not mentioned when the 1st respondent came into existence and it is not the case of the petitioners that the suit properties were granted as Inam to the 1st respondent. The xerox copy of the judgment in O.S.No.53 of 1952 is only with regard to maintenance of 1st respondent and it has nothing to do with the title of the suit properties and hence, these documents are not necessary to decide the issue.

19.Considering the materials in its entirety, this Court is of the view that the Wakf Tribunal, (Principal Subordinate Judge), Cuddalore, has considered all the materials in proper perspective and dismissed the suit in O.S.No.55 of 2009, by giving cogent and valid reason. There is no

error or irregularity in the judgment of the Wakf Tribunal, (Principal Subordinate Judge), Cuddalore, warranting interference by this Court.

For the above reason, both the Civil Revision Petition and the Civil Miscellaneous Petition are dismissed. No costs.

29.09.2021

Index :: Yes/No
gsa

To

The Wakf Tribunal,
Principal Subordinate Judge,
Cuddalore.



WEB COPY

C.R.P.(NPD).No.2839 of 2012

V.M.VELUMANI, J.

gsa



C.R.P.(NPD)No.2839 of 2012

WEB COPY

29.09.2021