

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 17.03.2021

PRONOUNCED ON : 07.04.2021
CORAM

THE HON'BLE Mr. JUSTICE **G.K.ILANTHIRAIYAN**

C.R.P.(N.P.D) No.3382 of 2016
and CMP Nos.17253 & 17254 of 2016

1.Nawab Jamiya Masjid,
Srimushnam by its Muthavalli

2.Nawab Jamiya Masjid,
Srimushnam by its Secretary

3.Nawab Jamiya Masjid,
Srimushnam by its Treasurer

... Petitioners

Vs.

1.Kamaludeen

2.Tamil Nadu Wakf Board
rep by its Chief Executive Officer,
Having office at No.1, Jafe Serong Street,
Vallal Sidakathi Nagar, Mannady,
Chennai – 600 001.

3.The Inspector of Wakf,
Cuddalore Zone having office at
No.512, Gandhi Road,
Noor Mohamed Sha Auliga Dargha,
Panruti, Cuddalore.

4.The Executive Officer,

Town Panchayat, Srimushnam having office at
Srimushnam, Kattumannarkoil Taluk,
Cuddalore District.

... Respondents

Prayer :- Civil Revision Petition is filed under Article 227 of the Constitution of India read with Section 83(9) of the Wakf Act, to set aside the Fair and Decretal Order of the Wakf Tribunal (Principal Sub Court) at Cuddalore in O.S.No.200 of 2015 dated 02.08.2016 and allow the Civil Revision Petition as prayed for with costs.

For Petitioners : Mr.G.Surya Narayanan
For Respondents : Mr.A.Murughan for R1
Mr.Mohammed Fayazdi for R2 & R3
Mr.S.Jaganathan,
Government Advocate (CS) for R4

ORDER

The Civil Revision Petition is filed against the order and doecree of the Wakf Tribunal (Principal Sub Court), Cuddalore dated 02.08.2016 made in O.S.No.200 of 2015, thereby dismissing the suit filed by the petitioners.

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2. The revision petitioners filed a suit before the Tribunal for declaration and recovery of possession with mense profit. The petitioners are the plaintiffs and respondents are the defendants. The suit

property was dedicated to the plaintiffs/Wakf. The first defendant has no right over the suit property. He created a forged and fabricated document in the name and style of sale deed and settlement deed and claiming that he has title over the property. The first defendant also filed a suit in O.S.No.140 of 2014, for declaration and injunction in respect of the very same property before the Sub Court, Chidambaram. In such circumstances, the first defendant attempted to alienate the suit property and hence the suit.

3. Resisting the same, the first defendant filed his written statement stating that when the petitioners impleaded the defendants 2 to 4 in the suit, they ought to have issued notice under Section 89 of the Wakf Act and as such the suit itself is not maintainable. The entire suit property measuring 0.69 ares comprising in R.S.No.93/4 has been classified as poramboke and as such the government is a necessary and proper party to the suit. Therefore, non impleadment of the Government as the party, the suit itself is bad for non-joinder of necessary party. The suit property does not belong to plaintiffs/Wakf and there is no cause of action to initiate the present suit. The suit property absolutely belonged

to the first defendant and it is a house and garden situated in the Mosque Street measuring about 30 feet breadth and 90 feet length with electricity connection and water connection.

4. Further he stated that the first defendant's grandfather occupied the suit property in the year 1911 and constructed a house and was residing in the suit property with his family members. Therefore, there is no title deed in respect of the suit property in favour of the first defendant or his grandfather. After death of his grandfather, his father continued to be in possession of the suit property and his father settled the suit property by a registered settlement deed dated 15.02.2002 in favour of the first defendant and the possession of the suit property was also handed over to the first defendant and he became absolute owner of the property and having valid title and possession and enjoyment of the suit property. The house is also assessed to house tax and regularly paying the house tax and other revenue dues. The house is aged about more than 100 years and as such the first defendant decided to demolish and reconstruct a new building and applied for permission to the Executive Officer, Town Panchayat, which is pending. Therefore, the

first defendant filed a suit in O.S.No.55 of 2009. In the mean while, the plaintiffs attempted to vacate the first defendant and also cause threat to him. In fact, when the plaintiffs attempted to trespass into the suit property, the first defendant filed a suit in O.S.No.140 of 2014 on the file of the Subordinate Court, Chidambaram.

5. The second and third defendants have filed their written statement supporting the case of the plaintiffs. They further stated that the first defendant has no right over the property and he created a forged and fabricated documents in respect of the suit property and tried to alienate the same.

6. The Court below has framed the following issues :

- i) *Whether the plaintiffs are entitled to the relief of declaration, mandatory injunction and mesne profits and permanent injunction ?*
- ii) *What reliefs the plaintiffs are entitled to ?*

The Court below has also framed the following additional issue:

- i) *Whether the suit property is a plaintiffs Wakf property ?*

7. On the side of the plaintiffs witness was examined as PW.1 and documents were marked as Exs.A1 to A14. On the side of the defendants witness was examined as DW.1 and documents were marked as Exs.B1 to B22. On a perusal of the evidence on record, the Court below dismissed the suit. Aggrieved by the same, the present Civil Revision Petition.

8. The learned counsel for the petitioners would submit that the petitioners produced the documents to show that the Masjid name is shown in the revenue records and it is also shown that it is a Government poramboke land. It would mean that the Masjid is entitled to seek possession as the person entitled to the property. The Court below has erroneously dismissed the suit on the ground that the plaintiffs did not prove that who constructed building in the suit property and as such concluded that the first defendant put up construction without any proof, when the document related to the vesting of the property in favour of the plaintiffs had been produced and marked as documents. The plaintiffs Masjid was also granted patta in the year 1970 itself. When that being so, the settlement deed produced by the first defendant cannot be

considered, since the plaintiff to whom the property can be given in charity.

9. The case of the plaintiffs is that the first defendant encroached the suit property and he is in possession of the suit property and as such the plaintiffs filed a suit for recovery of possession. While being so, the Court below concluded that the plaintiffs failed to prove that who is in possession of the suit property. Though, the suit property is classified as poramboke, admittedly the Masjid is situated in the land, which is classified as poramboke and it is also evident from the revenue records, which were marked on the side of the plaintiffs. Especially, Ex.A10 particulars extracted from Bound Register clearly shows that the property belongs to the plaintiffs. Ex.A9 is also an evidence dated 06.05.1959 published in the Government Gazattee.

10. Per contra, the learned counsel for the first defendant contented that the suit itself is not maintainable under law, since the mandatory provisions of Section 89 of Wakf Act is not complied with, when the Wakf Board is added as second defendant in the suit. The suit

property is comprised in RS.No.93/4 at measuring 0.69 ares, which is admittedly classified as poramboke, when that being so, the Government of Tamil Nadu is the owner of the property and the Government of Tamil Nadu is necessary party to the suit. Therefore, the suit itself is bad for non-joinder of necessary parties. The suit property belonged to the first defendant, it is a house and garden situated in Mosque Street at measuring 30 feet breadth towards south to north and 90 feet length towards east to west. After constructing the house, electricity connection was obtained in No.357 and water connection also provided with. There is a compound wall on the eastern boundary of the suit property.

11. In the year 1911 itself, the first defendant's grandfather got the suit property and he constructed the house. He was residing in the suit property with his family members. After his demise, the first defendant's father and the first defendant continued the possession and enjoyment of the suit property. The suit property survey number to be changed as RS.No.93/1A1 and classified as Village Natham. The father of the first defendant executed a registered settlement deed dated 15.02.2002 in favour of the first defendant and thereafter all the revenue

documents were muted in his name and he has been regularly paying the house tax and other revenue dues for the suit property. In fact, the house is more than 100 years and it is a dilapidated condition and therefore, the first defendant intended to demolish and reconstruct a new building, for which he applied for permission and approval. Since it is pending, the first defendant was constrained to file a suit in O.S.No.55 of 2009 on the file of the District Munsif-cum-Judicial Magistrate, Kattumannarkoil for mandatory injunction to grant approval for the construction of new building. While being so, all the revenue records the suit property is classified as poramboke.

12. He further contented that the suit property is not at all situated in the land comprising in survey No.93/4 and as such the suit property is not Wakf property. While being so, the plaintiffs threatened the first defendant with henchmen to vacate the suit property. Therefore, the first defendant was constrained to file the suit for declaration and injunction in O.S.No.140 of 2014 on the file of the Subordinate Court, Chidambaram. Therefore, the plaintiffs have no title over the property and the Court below has rightly dismissed the suit.

13. Heard Mr.G.Surya Narayanan, learned counsel for the petitioner. Mr.A.Murugan learned counsel appearing for the first respondent; Mr.Mohammed Fayazdi learned counsel appearing for the second and thirds respondent and Mr.S.Jaganathan, learned Government Advocate (Civil Side) appearing for the fourth respondent.

14. The petitioners have filed a suit for declaration and recovery of possession in respect of the suit property. They have also filed a suit for mandatory injunction, directing the first defendant to demolish the superstructure and hand over the vacant possession of the suit property.

15. On a perusal of Exs.A3 and A4, the suit property classified as Government Poramboke, in which the plaintiffs Masjid is also situated. If at all the property allotted to the Masjid it would not have been reflected in the revenue records as Government Poramboke. When the plaintiffs filed a suit for recovery of possession that too with a mandatory injunction directing the first respondent to demolish the construction and handed over the vacant possession, the plaintiffs have to

prove its title over the suit property. The plaintiffs failed to prove that who constructed building in the suit property and nothing pleaded about the first defendant is trespasser and occupied the suit property. The cause of action for the suit itself is that the first defendant attempted to alienate and encumber the suit property. Therefore, the plaintiffs are not sure about the suit property and when that being so, the plaintiffs have to prove the case when it is filed for declaration and recovery of possession. Except the revenue documents, no other evidence was produced by the plaintiffs to prove their title over the property. In the revenue records, the suit property is admittedly classified as Government Poramboke, in which, the plaintiffs Masjid is situated. According to the first defendant, the suit property is completely different from which the Masjid is situated and as such the suit property is not a Wakf property. However, the plaintiffs failed to prove their case by letting in evidence.

16. P.W.1 categorically admitted that in the suit property there is a house aged about 50 years and also admitted that the first defendant's father was in possession and enjoyment of the same. The electricity service connection stands in the name of the first defendant and he is

paying the electricity charges. He also admitted that the documents in respect of the title over the property is with the Wakf Board and he is ready to produce the same. But even then they failed to produce any document in respect of the title over the property. Therefore, the first defendant and his predecessor are in the possession and enjoyment of the suit property for not less than 50 years at the time of filing the suit. Therefore, they are entitled for adverse possession in respect of the suit property.

17. As rightly pointed out by the learned counsel for the first defendant that when the plaintiffs filed a suit in respect of the property classified as Government Poramboke and also seeking for recovery of possession, they ought to have added the Government of Tamil Nadu as party to the suit. If the Government of Tamil Nadu added as a party they would have very well prove the nature of the suit property and title of the suit property.

18. On a perusal of the deposition of P.W.1, it is completely contrary to the pleadings in the plaint. Therefore, the plaintiffs are not

very sure about the suit property and their claim is vague and bald without any document. Therefore, the Court below rightly dismissed the suit.

19. In view of the above discussion, this Court finds no illegality or infirmity in the order passed by the trial Court. Accordingly, the Civil Revision Petition stands Dismissed. No costs. Consequently connected miscellaneous petitions are closed.

07.04.2021

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Index: Yes/No

Internet: Yes/No

Speaking Order: Yes/No

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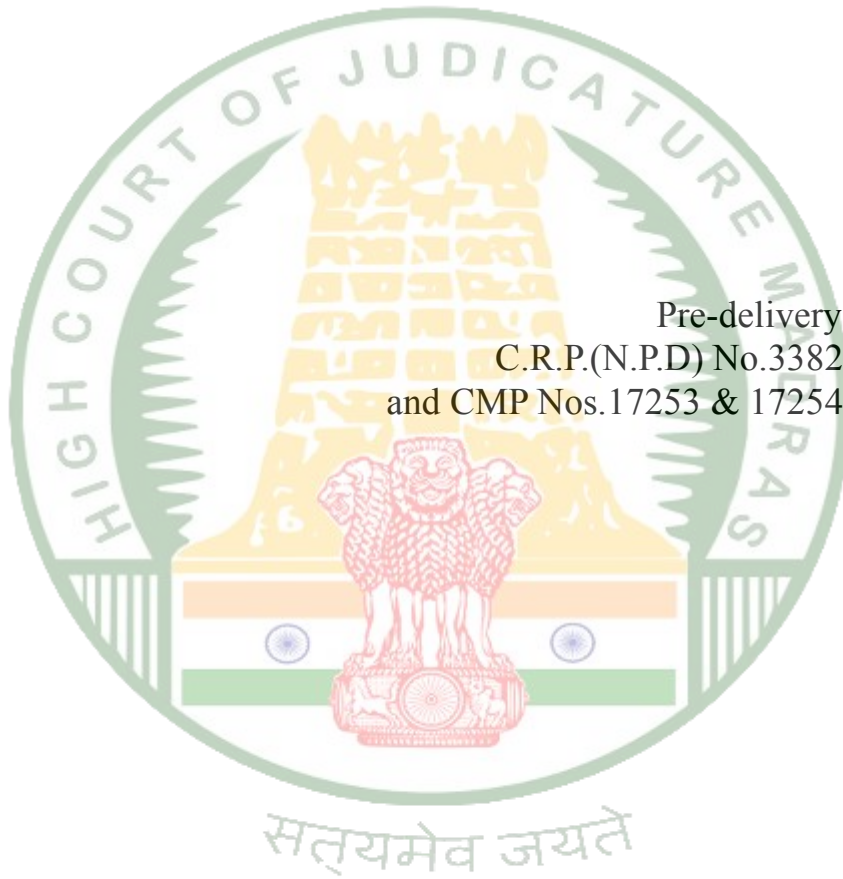
The Wakf Tribunal (Principal Sub Court)
Cuddalore

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G.K.ILANTHIRAIYAN.J,

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