

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 23.04.2021

CORAM

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

CRP.PD.No.780 of 2018

and

CMP.No.4299 of 2018

1. A.B.Sardar
2. Yousuf Ali Khan
3. Rabbani
4. Khadar Basha
5. Rashid
6. Syed Musa
7. Mubarak

... Petitioners

Vs.

1. S.P.Naseer
2. S.P.Aleem
3. Rahman Khan
4. Murad Khan
5. Syed Babu

... Respondents

PRAYER: The Civil Revision Petition is filed under Section 83(9) of the Wakf Act 1995 r/w Article 227 of the Constitution of India, to set aside the fair and decretal order dated 18.01.2018 and made in I.A.No.522 of 2016 in O.S.No.486 of 2016 on the file of the Principal Subordinate Judge's Court, Vellore.

For Petitioners : Mr.N.A.Nissar Ahmed

For Respondents : No Appearance

ORDER

This Civil Revision Petition is directed against the fair and decretal order dated 18.01.2018 passed in I.A.No.522 of 2016 in O.S.No.486 of 2016 on the file of the learned Principal Subordinate Judge, Vellore, thereby allowing the petition for interim injunction.

2. The petitioners are the defendants 1 to 4, 6, 9 and 10. The respondents 1 and 2 are the plaintiffs. The respondents 1 and 2 filed a suit for declaration to declare that the resolution passed by the petitioners as null and void and seeking permanent injunction restraining them from conducting any kind of administration work on the plaint schedule Mosque and also seeking permanent injunction restraining them from peaceful practice, worship, solemnizing of marriage, getting of conduct certificates, burying of dead bodies, pay yearly subscription and other regular religious practice.

3. The petitioners resisted the same stating that the suit itself is liable to be dismissed, as they filed a suit under the representing capacity on

behalf of the Muslim Residents of Kalavai Village attached to Nawab Jamiya Mosque, Kalavi Village, Arcot Taluk, Vellore District. The respondents 1 and 2 contested in the election conducted and they got defeated. Therefore, they filed a suit for their personal grievance and not on behalf of the sixteen family members of Nawab Jamiya Mosque. While being so, by an interim order, the Court below allowed the suit itself by restraining the petitioners from refusing and preventing the respondents 1 and 2 from the peaceful practice, worship solemnizing of marriage, getting of conduct certificates, burying of dead bodies, pay yearly subscription and other regular religious practice.

4. The learned counsel for the petitioners submitted that the respondents 1 and 2 being Muslims, they can worship the Masjid. When they were not members of the Masjid, they cannot be permitted to issue marriage certificate, conduct certificate and death certificate. They are also not allowed to pay any subscription to the Masjid when they are not members of the Masjid. The members alone are entitled for conduct certificate, marriage certificate and death certificate. They are also not

allowed to pay any subscription. When that being so, the Court below allowed the interim injunction application and thereby allowing the entire suit. He relied upon the judgment reported in CDJ 2009 MHC 3575 (*The Ad hoc committee, AL Jamiul Azhar Jumma Mosque -vs- K.S.Mohamed Nazar & Others*).

5. The Hon'ble Division Bench of this Court (Madurai Bench) had drawn a distinction between a right to entry and a right to worship. Not being synonymous with a right of becoming a member of the Jamath, this suitable difference has not been appreciated by the learned Tribunal, while granting interim injunction which would tantamount to allowing the suit itself.

6. As rightly pointed out by the learned counsel for the petitioners when the respondents 1 and 2 are not members of the Nawab Jamiya Mosque, they are not entitled to issue any conduct certificate, marriage certificate and death certificate. They are also not allowed to pay any subscription charges. It is meant only for members of the Nawab Jamiya

Mosque.

7. In view of the above, the order passed by the Court below is perverse and illegal, it is liable to be set aside. Accordingly, this Civil Revision Petition is allowed and the order passed in I.A.No.522 of 2016 in O.S.No.486 of 2016 dated 18.01.2018 is set aside. The Court below is directed to dispose of the suit within a period of six months from the date of receipt of a copy of this order. Consequently, the connected Miscellaneous Petition is closed. No costs.

23.04.2021

Speaking/Non-speaking order

Index : Yes/No

Internet : Yes/No

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To

1. The Principal Subordinate Judge, Vellore.
2. The Section Officer,
V.R.Section, High Court of Madras.

G.K.ILANTHIRAIYAN,J.

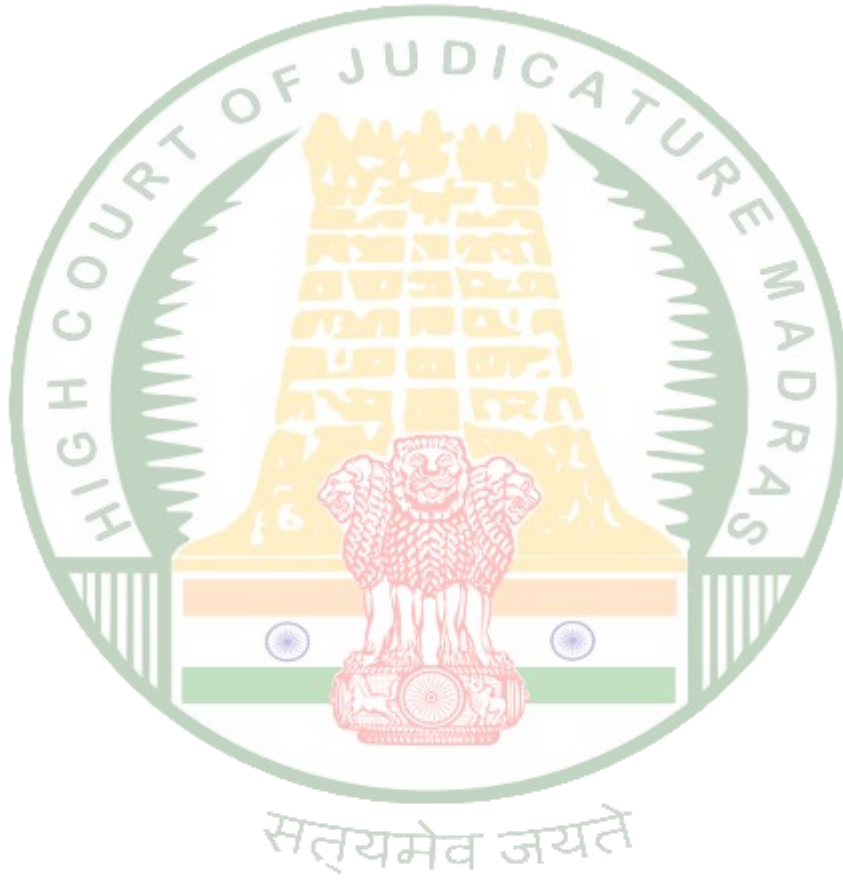
Kv



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