

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 01.02.2021

Pronounced on : 01.03.2021

CORAM

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

CRP.PD.No.4710 of 2014 and
MP.No.1 of 2014

The Tamil Nadu Waqf Board,
Rep. by the Chief Executive Officer,
No.1, Jaffer Syrang Street,
Vallal Seethakathi Nagar,
Chennai-1

..Petitioner

Vs.

1.Janab Kalilulla
2.The Sub Registrar,
Kattumannar Koil,
Cuddalore District

..Respondents

PRAYER:

The Civil Revision Petition is filed under Article 227 of the Constitution of India against order and decree in IA.No.197 of 2013 in OS.No.24 of 2013 on the file of Waqf Tribunal cum Principal Subordinate Court, Cuddalore dated 21.01.2014.

For Petitioner : Mr.V.Lakshminarayanan

For Respondents

For R1 : Mr.D.Ashok Kumar

For R2 : Mr.T.M.Pappiah,
Special Government Pleader

ORDER

This civil revision petition is filed as against the fair and decreetal order passed in IA.No.197 of 2013 in OS.No.24 of 2013 on the file of Wakf Tribunal cum Principal Subordinate Court, Cuddalore dated 21.01.2014 thereby allowing the petition filed for rejection of plaint.

2. The suit property belong to Kollumedu Mosque and Madarasa Anwarlal Huda Wakf (Kollumedu Jamia Pallivasal Wakf). In order to make unlawful and unjust enrichment, the first respondent herein colluded with one, Sardhar who is the power agent of one, N.M. Ismail Sahib created sham and nominal document in the name and style of sale deed in favour of first defendant dated 21.09.2009 in respect of the suit property. It will not create any right or title to him since it is a wakf property and the creation and the registration of the document in respect of wakf property is void abinitio. Further, the vendor of the first defendant also created sham and nominal sale deed in his favour on 03.11.2007. Therefore, the petitioner filed suit for declaration declaring that the suit property is the absolute property of the Kollumedu Mosque and Madarasa Anwarlal Huda Wakf and also to declare that the sale deed

stands in the name of the first defendant dated 21.09.2009 as null and void with consequential permanent injunction.

3. While pending the suit, the first respondent filed petition for rejection of plaint on the ground that the petitioner Wakf Board was constituted as per the Wakf Act, 1954 in the year 1957. The said Wakf was registered on 02.08.1974 whereas the wakf property was sold out by the trustees of the mosque as early as on 29.05.1950. During that period, no Act was enforced to pertain the wakf property. Thereafter the suit property was sold out in the year 2007 to one, Ismail Sahib and thereafter in the year 2009, the first defendant purchased the same. In accordance with the Civil Procedure Code, the Wakf Tribunal has no jurisdiction to try the suit for declaration declaring that the sale deed as null and void. Only civil courts have got jurisdiction to try the suits in respect of the issues with civil in nature. Considering the submissions of the counsel on either side, the Waqf Tribunal cum Principal Subordinate Court, Cuddalore allowed the petition filed for rejection of plaint.

4. Heard, Mr.V.Lakshminarayanan, the learned counsel for the petitioner, Mr.D.Ashok Kumar, the learned counsel for the first

respondent and Mr.T.M.Pappiah, Special Government Pleader appearing for the second respondent.

5. The petitioner is the plaintiff who filed suit for declaration declaring that the suit property is the absolute property of the Kollumedu Mosque and Madarasa Anwarlal Huda Wakf and also to declare that the sale deed stands in the name of the first defendant dated 21.09.2009 as null and void with consequential permanent injunction as against the respondents. According to the petitioner, the first respondent herein purchased the suit property by the sale deed dated 21.09.2009. Since it is a wakf property, creation and registration of the document in respect of the wakf property is *void abinitio*. The suit property originally owned by one, Mohamed Sahib and he had acquired the same by means of sale deed dated 29.05.2050 registered in the Office of the Sub Registrar, Kattumannarkoil from one, Kadhar Batcha and Noor Sahib. They were in the capacity of the trustees of the Pallivasal known as Kollumedu Jamia Pallivasal Wakf. In turn, he sold out the suit property to one Mohamed Ismail Sahib by the sale deed dated 03.11.2007 registered in the Office of the Sub Registrar, Kattumannarkoil as document No.2136 of 2007.

Thereafter he executed power of attorney in favour of one, Sardhar by the General Power Attorney dated 10.08.2009 and the same was registered as document No.91 of 2009. The power agent executed sale deed in favour of the first respondent herein by the sale deed dated 21.09.2009 registered vide document No.2422 of 2009 with the Office of the Sub Registrar, Kattumannarkoil. Admittedly, in the year 1950, no Wakf Act was there. Therefore, the Wakf Act has no application unless and until the properties that are covered under Section 6 and 7 of the Wakf Act can be sustained. Therefore, the suit property is not covered under the Wakf Act and as such any proceedings before the Wakf Tribunal is not sustainable in respect of the suit property.

6. It is relevant to extract the judgment in the case of ***Bhanwar Lal and another Vs. Rajasthan Board of Muslim Walk & others*** dated 09.09.2013 rendered in Civil Appeal No.7902 of 2013, wherein the Hon'ble Supreme Court of India held as follows:

19. It would also be profitable to refer to that part of the judgment where the Court gave guidance and the need for a particular approach which is required to deal with such cases. In this behalf the Court specified the modalities as under:

"11. Before we take up the core issue whether the jurisdiction of a civil court to entertain and adjudicate

upon disputes regarding eviction of (sic from) wakf property stands excluded under the Wakf Act, we may briefly outline the approach that the courts have to adopt while dealing with such questions.

12. The well-settled rule in this regard is that the civil courts have the jurisdiction to try all suits of civil nature except those entertainment whereof is expressly or impliedly barred. The jurisdiction of the civil courts to try suits of civil nature is very expansive. Any statute which excludes such jurisdiction is, therefore, an exception to the general rule that all disputes shall be triable by a civil court. Any such exception cannot be readily inferred by the courts. The court would lean in favour of a construction that would uphold the retention of jurisdiction of the civil courts and shift the onus of proof to the party that asserts that the civil court's jurisdiction is ousted.

*13. Even in cases where the statute accords finality to the orders passed by the Tribunals, the court will have to see whether the Tribunal has the power to grant the reliefs which the civil courts would normally grant in suits filed before them. If the answer is in the negative, exclusion of the civil court's jurisdiction would not be ordinarily inferred. In *Rajasthan SRTC v. Bal Mukund Bairwa*, a three- Judge Bench of this Court observed "There is a presumption that a civil court has jurisdiction. Ouster of civil court's jurisdiction is not to be readily inferred. A person taking a plea contra must establish the*

same. Even in a case where the jurisdiction of a civil court is sought to be barred under a statute, the civil court can exercise its jurisdiction in respect of some matters particularly when the statutory authority or tribunal acts without jurisdiction.”

23. The suit is for cancellation of sale deed, rent and for possession as well as rendition of accounts and for removal of trustees. However, pleading in the suit are not filed before us and, therefore, exact nature of relief claimed as well as averments made in the plaint or written statements are not known to us. We are making these remarks for the reason that some of the reliefs claimed in the suit appeared to be falling within the exclusive jurisdiction of the Tribunal whereas for other reliefs civil suit would be competent. Going by the ratio of Ramesh Gobind Ram (supra), suit for possession and rent is to be tried by the civil court. However, suit pertaining to removal of trustees and rendition of accounts would fall within the domain of the Tribunal. In so far as relief of cancellation of sale deed is concerned this is to be tried by the civil court for the reason that it is not covered by Section 6 or 7 of the Act whereby any jurisdiction is conferred upon the Tribunal to decided such an issue. Moreover, relief of possession, which can be given by the civil court, depends upon the question as to whether the sale deed is valid or not. Thus, the issue of sale deed and possession and inextricably mixed with each other. We have made these observations to clarify the legal position. In so far as present case is concerned, since the suit was filed much before the Act came into force, going by the dicta laid down in Sardar Khan

case, it is the civil court where the suit was filed will continue to have the jurisdiction over the issue and civil court would be competent to decide the same.

7. The above judgment is applicable to the case on hand and the Wakf Tribunal has no jurisdiction to try the suit of civil in nature. That apart, there are so many sale deeds were executed and finally the suit property purchased by the first respondent herein. The plaintiff Wakf was registered with Wakf Board on 02.08.1974. The suit property was sold out in the year 1950 itself. Therefore, the Wakf Tribunal has got no jurisdiction to try the suit. Therefore, nothing warrants to interfere with the findings of the court below. As such, this Court finds no irregularity or infirmity in the order passed by the court below.

8. In view of the above discussion, this civil revision petition is dismissed. Consequently, connected miscellaneous petition is closed. No order as to costs.

WEB COPY 01.03.2021

Speaking/Non-speaking order

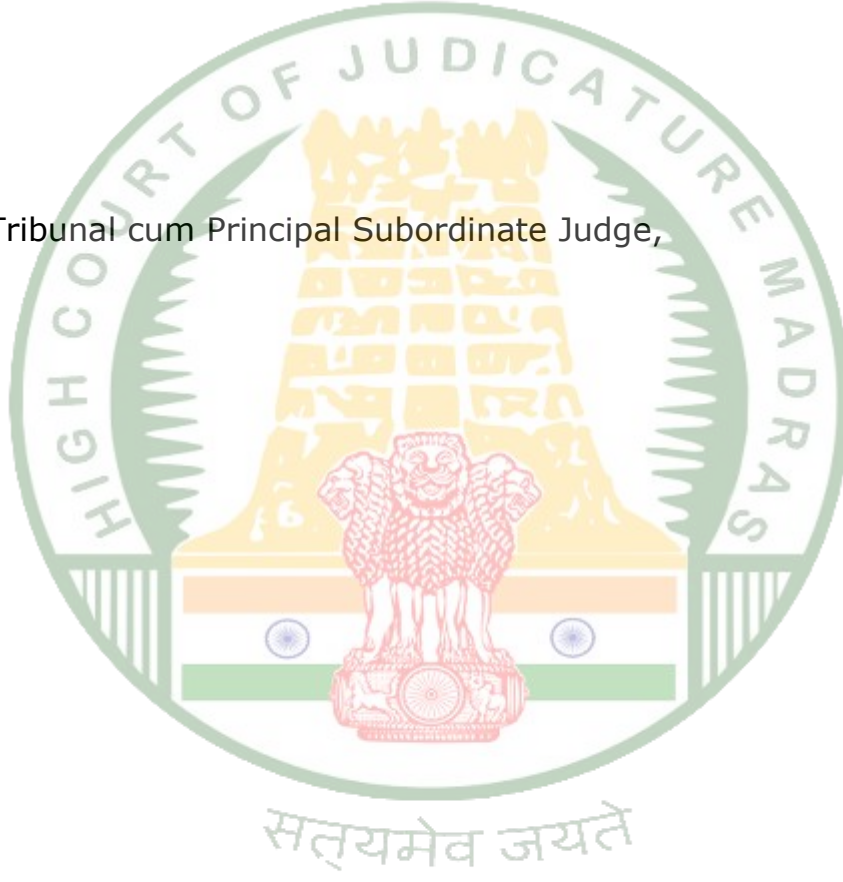
Index : Yes/No

Internet : Yes/No

lok

To

The Waqf Tribunal cum Principal Subordinate Judge,
Cuddalore

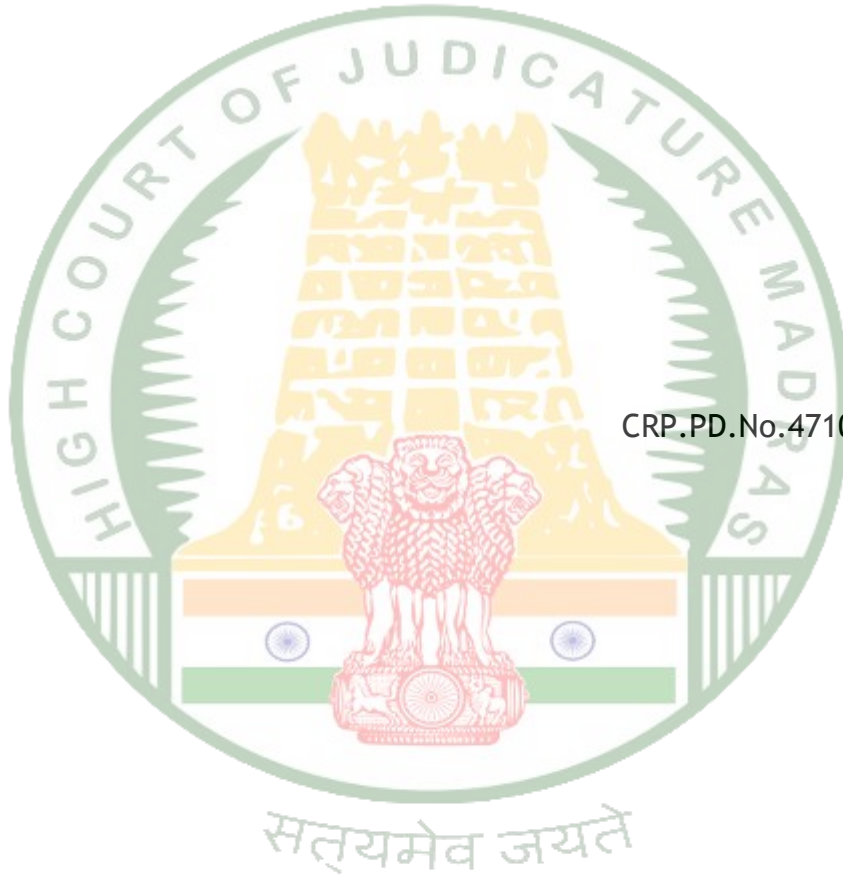


WEB COPY

CRP.PD.No.4710 of 2014

G.K.ILANTHIRAIYAN,J.

lok



CRP.PD.No.4710 of 2014

WEB COPY

01.03.2021