

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.09.2021

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P.(PD).No.2657 of 2017

and

C.M.P.Nos.12629 of 2017 & 6174 of 2019

Jumma Masjid,
Represented by its Muthavalli K.M.Mohideen Kunhi,
No.178, Kutchery Road,
Mylapore,
Chennai – 600 004. .. Petitioner

(cause title accepted vide order of this Court
dated 27.04.2017 made in C.M.P.No.7012 of
2017 in C.R.P.No.SR.27032 of 2017)

Vs.

1.S.Vasantha

2.The Tamilnadu Wakf Board,
Represented by its Chief Executive Officer,
No.1, jaffer syrang street,
Vallal seethakathi nagar,
Chennai – 600 001. .. Respondents

Prayer: This Civil Revision Petition is filed under Article 227 of the Constitution of India, against the fair and decretal order dated 20.02.2017 made in I.A.No.10384 of 2015 in O.S.No.6719 of 2013 on the file of the Wakf Tribunal, I Assistant City Civil Court, Chennai.

For Petitioner : Mr.Mohammed Mudassir Ali
for Mr.M.J.Jaseem Mohamed

For R1 : Mr.S.Ramesh

For R2 : Mr.C.Shankar

ORDER

(The matter is heard through “Video Conferencing/Hybrid Mode”).

This Civil Revision Petition is filed against the fair and decretal order dated 20.02.2017 made in I.A.No.10384 of 2015 in O.S.No.6719 of 2013 on the file of the Wakf Tribunal, I Assistant City Civil Court, Chennai.

2.The petitioner is the defendant in O.S.No.6719 of 2013 on the file of the I Assistant City Civil Court, Chennai. The 1st respondent filed the said suit for permanent injunction restraining the petitioner and 2nd respondent from interfering with her peaceful possession and enjoyment of the suit schedule property. While the said suit was pending, the petitioner gave an application before the 2nd respondent on 14.10.2014 and on the same day, the 2nd respondent included 144 grounds including the suit property as Wakf property. The petitioner filed suit in O.S.No.5004 of 2014 for declaration that suit

property is Wakf property. This Court by the order dated 24.03.2015 in C.R.P.(PD).Nos.773 & 774 filed by the petitioners, directed the Trial Court to dispose of both the suits in O.S.No.6719 of 2013 and O.S.No.5004 of 2014 on merits as expeditiously as possible on or before 31.07.2015 without being influenced by any of the observations made in the said order.

3.The 1st respondent filed I.A.No.10384 of 2015 on 19.07.2015 for amendment of the plaint in O.S.No.6719 of 2014 to declare the order of the 2nd respondent dated 14.10.2014 registering the petitioner / Wakf as No.333 and including the suit schedule properties as sham, nominal, arbitrary, illegal, null and void and not binding on the 1st respondent in so far as it relates to suit schedule properties and other relief.

3(i).According to 1st respondent, she is the absolute owner of the suit properties and the suit property was originally owned by the joint family of Navarathanmull Sowcar, Javanthimull Sowcar, Simbumull Sowcar, Dhanraj Sowcar and Jamuthu Bai and after various partitions by the registered family sale deed dated 12.07.1929, the first item of the suit schedule was allotted to one N.Simbumull Sowcar. At paragraph Nos.4 & 5, she has given the details of

her attorney on her title, as in the affidavit filed in support of the present petition. The husband of the 1st respondent purchased the property by the sale deed dated 21.08.2007 and her husband conveyed the property by way of sale deed dated 07.01.2008 to her. From the date of sale deed, she is in possession and enjoyment of the suit property. The petitioner tried to interfere with her possession and enjoyment of the suit property and hence, she filed the suit in O.S.No.6719 of 2013. After the 1st respondent filed suit in O.S.No.6719 of 2013 for permanent injunction against the petitioner, the petitioner filed suit in O.S.No.5004 of 2014 and the 1st respondent had pointed out that the suit schedule properties had not been declared as Wakf properties. The petitioner on the application given to the 2nd respondent on 14.10.2014, the 2nd respondent registered the petitioner as Wakf and included the suit schedule properties in the Wakf proforma under Section 36 of the Wakf Act, 1995. After filing of the suit by both the parties, the petitioner without any notice to the 1st respondent had included the suit property as Wakf property. The 1st respondent filed the present I.A.No.10384 of 2015 for amendment of the plaint, tracing the title of the 1st respondent of the suit property and to include the relief of declaration that the registration of the petitioner as Wakf and suit property as Wakf property by the 2nd respondent as arbitrary, null and void.

4.The petitioner filed counter affidavit and denied all the averments and submitted that the 1st respondent purchased the Wakf property without verifying the title. The 1st respondent purchased vacant land and tried to develop the property. The petitioner filed suit in O.S.No.5004 of 2014 for declaration that various sale deeds are null and void and for permanent injunction, since the property was a vacant land. The suit filed by the 1st respondent and the petitioner were taken up together and Court ordered that 1st respondent is entitled to an order of injunction and application filed by the petitioner was dismissed. In the C.R.P.(PD).Nos.773 & 774 of 2015 filed by the petitioner, this Court directed the Trial Court to dispose of both the suits on or before 31.07.2015 with a direction that in the event of any alienation or construction made by the 1st respondent in the suit property is at her own risk.

4(i).The petitioner filed suit in O.S.No.5004 of 2014 along with various documents and proceedings initiated in respect of the petitioner / Masjid to prove that the suit properties are Wakf properties. The vast extent of the properties were not registered with the Tamil Nadu Wakf Board and only lesser extent of 23 acres is registered with the 2nd respondent as Wakf

properties. On the application by the petitioner to the 2nd respondent, after due enquiry the 2nd respondent registered the properties as Wakf properties and issued certificates that suit properties and other properties as Wakf properties. The 1st respondent can challenge the Registration Certificate only before the Wakf Tribunal. The 1st respondent has not sought for the relief of declaration of title. The petitioner in the written statement has disputed the title of the 1st respondent and instead of filing the application to amend the prayer to include declaration of the title, the 1st respondent has sought for amendment of declaration of registration resolution passed by the 2nd respondent dated 14.10.2014 as null and void, which is not permissible under Law and prayed for dismissal of the application.

5.The learned Judge considering the averments in the affidavit and counter affidavit, allowed the I.A.No.10384 of 2015.

6.Against the said order dated 20.02.2017 made in I.A.No.10384 of 2015, the petitioner has come out with the present Civil Revision Petition.

7.The learned counsel appearing for the petitioner submitted that the

property was declared as Wakf properties as per Section 36 of the Wakf Act, 1995 and it is a statutory order and the said order is appealable after obtaining permission from the Wakf Tribunal. The said order of the 2nd respondent cannot be challenged in the Civil Court. The 1st respondent has to seek declaration that suit property belongs to her. The learned Judge failed to see that even if declaration is sought for, it can be only in respect of the properties and it ought to have been valued in accordance with law. The 1st respondent is introducing new cause of action. The learned Judge erroneously held that there is no change of cause of action. The learned Judge failed to see that this Court while remanding the matter by order dated 26.10.2016 made in C.R.P.(PD).No.3336 of 2016, has clearly observed that the petitioner has approached on the ground that the statutory bar in seeking amendment to the pleadings and as the order is cryptic, remanded the matter for fresh consideration by discussing all the issues. The learned Judge without considering the issue of the said statutory bar, again passed an order without appreciating the fact that registration of the Wakf properties in Section 36 or 40 of the Wakf Act, 1995 shall be challenged only before the Wakf Tribunal by way of an independent proceedings. The learned Judge allowed the I.A. only on the ground that the amendment sought for is only pre-trial amendment. The

learned Judge erred in holding that the amendment does not introduce a new cause of action, but failed to see that suit filed by the 1st respondent is only for permanent injunction to protect the property. The learned counsel appearing for the petitioner in support of his contention, relied on the following judgments:

(i) A Full Bench judgment of the Hon'ble Apex Court reported in **(2013) 9 SCC 485, (Mashyak Grihnirman Sahakari Sanstha Maryadit Vs. Usman Habib Dhuka and others)**;

(ii) A Division Bench judgment of the Hon'ble Apex Court reported in **(2013) 9 SCC 576, (Prithi Pal Singh and another Vs. Amrik Singh and others)**;

(iii) A judgment of the Hon'ble Apex Court dated **14.02.2019** in **Civil Appeal No.1669 of 2019** in the case of **(M.Revanna Vs. Anjamma (dead) by LRs & others)** and

(iv) A Division Bench judgment of the Hon'ble Apex Court reported in **(2019) 5 SCC 360, (Vijay Hathising Shah and another Vs. Gitaben Parshottamdas Mukhi and others)**.

He further submitted that the intention of the 1st respondent is not

bonafide. The person aggrieved has alternative remedy before the Wakf Tribunal. He ought to have approached the Wakf Tribunal. The present I.A.No.10384 of 2015 filed by the petitioner is only an after thought and the amendment sought for by the 1st respondent is by introducing a new case at the belated stage. He further relied on the following judgments:

(v) A Division Bench order of this Court reported in **2005 2 LW 615, (Mukram Sherif Vs. Moinudeen Sheriff and another)**;

(vi) An order of this Court reported in **2005 (4) CTC 593, (The Commissioner, Pondicherry Municipality, Pondicherry Vs. Janardhanam)**;

(vii) A Division Bench judgment of the Hon'ble Apex Court reported in **2007 (2) CTC 508, [Sardar Khan and others Vs. Syed Najmul Hasan (Seth) and other]** and

(viii) An order of the Madurai Bench of this Court dated **11.12.2012** in **C.R.P.(PD).(MD).No.1562 of 2012** in the case of **[Hazarath Khaja Syed Sulthan Alauddin Avulia Darha and Mosque through its Managing Trustee S.Shahjahan Vs. M.V.P.Dayalavel (died) and others]**.

The learned counsel appearing for the petitioner also submitted that the

present relief sought for by the 1st respondent by way of amendment can be filed only before the Wakf Tribunal and she is not entitled to seek the amendment in the present suit filed before the I Assistant City Civil Court, Chennai which has no jurisdiction and prayed for setting aside the award passed in I.A.No.10384 of 2015 and for allowing the Civil Revision Petition.

8.The learned counsel appearing for the 2nd respondent submitted that the 2nd respondent is supporting the case of the petitioner and contended that the suit properties are declared as Wakf properties as per Section 36 of the Wakf Act, 1995. The said declaration cannot be challenged in the Civil proceedings and the same can be challenged only before the Wakf Tribunal by way of appeal after obtaining the leave. The learned Judge failed to consider the statutory provisions which bars the Civil proceedings. The suit proceedings were brought in the proforma on 14.10.2014 and properties were declared as Wakf properties and declared on the same day. The 1st respondent filed I.A. subsequently before the Trial Court, which has no jurisdiction. By amendment, the 1st respondent is now introducing new cause of action by tracing her title to the suit property. In the year 2013, she has not pleaded in the plaint and the same cannot be permitted in the year 2015 by way of amendment and prayed

for allowing the Civil Revision Petition.

9.The learned counsel appearing for the 1st respondent reiterated the averments in the affidavit filed in support of the petition and submitted that the learned Judge has considered the matter elaborately and allowed the I.A. by giving valid reason. The suit was filed before the I Assistant City Civil Court, Chennai and Wakf Tribunal was formed only in the year 2019. Before 2019, I Assistant City Civil Court is the Wakf Tribunal. When both the suits were pending before the Wakf Tribunal, the 1st respondent filed I.A. only before the Wakf Tribunal and the I Assistant City Civil Court, Chennai. In view of the same, the judgment Nos.V to Viii relied on by the learned counsel appearing for the petitioner are not applicable to the facts of the present case. He further contended that the application was decided only by the Wakf Tribunal and the learned Judge considering the materials placed before him and also the provisions of Order VI Rule 17, ordered I.A. by giving cogent and valid reason. After formation of the Wakf Tribunal in the year 2019, both the suits were transferred and the suit in O.S.No.6719 of 2013 filed by the 1st respondent was re-numbered as O.S.No.348 of 2019 and O.S.No.5004 of 2014 filed by the petitioner was re-numbered as O.S.No.349 of 2019 and both the

suits are pending in view of the interim order granted by this Court and prayed for dismissal of the Civil Revision Petition.

10.Heard the learned counsel appearing for the petitioner as well as the learned counsel appearing for the 1st respondent and the learned counsel appearing for the 2nd respondent and perused the entire materials on record.

11.From the materials available on record, it is seen that the 1st respondent has filed suit in O.S.No.6719 of 2013 for permanent injunction restraining the petitioner and 2nd respondent from interfering with her possession and enjoyment of the suit property claiming to be her absolute property. While the suit was pending, the petitioner gave an application to the 2nd respondent on 14.10.2014 and 2nd respondent registered the petitioner as Wakf and declared the suit property as Wakf property. In view of the said registration of Wakf and declaring the suit property as Wakf property, the 1st respondent filed the present I.A. for amendment of the plaint in O.S.No.6719 of 2014 to declare the order of the 2nd respondent dated 14.10.2014 registering the petitioner / Wakf as No.333 and including the suit schedule properties as sham, nominal, arbitrary, illegal, null and void and not binding on the 1st

respondent in so far as it relates to suit schedule properties and other relief. The said application was opposed on various grounds including the order of the 2nd respondent passed under Section 36 of the Wakf Act, 1995 and that it can be challenged only by filing an appeal after obtaining leave. The petitioner also contended that without seeking the relief of declaration of title of the suit property, the present amendment now sought for is not maintainable.

12.From the materials on record, it is seen that amendment sought for is pre-Trial amendment, however, the 1st respondent is seeking declaration of the order passed by the 2nd respondent after filing of the suit. The learned Judge considering the averments in the affidavit filed in support of the I.A. seeking amendment and nature of amendment sought for, allowed the I.A. The contention of the petitioner and the 2nd respondent that amendment now sought for by the 1st respondent is barred by provisions of Wakf Act and instead of seeking declaration of her title to the suit property, the present amendment is not maintainable and it can be decided only after full fledged Trial considering the evidence let in by the 1st respondent, petitioner and 2nd respondent. A reading of the plaint and amendment now sought for would show that the 1st respondent is not introducing new cause of action and new case. In view of the

submission of the learned counsel appearing for the 1st respondent that Wakf Tribunal was formed only in the year 2019 and the I Assistant City Civil Court, Chennai, a Wakf Tribunal has decided the issue, the judgments relied on by the learned counsel appearing for the petitioner are not applicable to the facts of the present case. Further the amendment now sought for is only pre-Trial amendment and the learned Judge considering the entire materials, allowed the I.A. by giving cogent and valid reason. In view of the same, there is no reason to interfere with the order of the learned Judge. The learned Judge has exercised his power conferred on him properly.

13. For the above reason, this Civil Revision Petition stands dismissed. In view of the submission of the learned counsel appearing for the 1st respondent that both the suits filed by the petitioner and 1st respondent were transferred and the suit in O.S.No.6719 of 2013 filed by the 1st respondent was re-numbered as O.S.No.348 of 2019 and O.S.No.5004 of 2014 filed by the petitioner was re-numbered as O.S.No.349 of 2019 and both the suits are pending before the Wakf Tribunal, the Wakf Tribunal is directed to dispose of both the suits as expeditiously as possible, in any event, within six months from the date of receipt of a copy of this order. Consequently, the connected

Miscellaneous Petitions are closed. No costs.

13.09.2021

krk

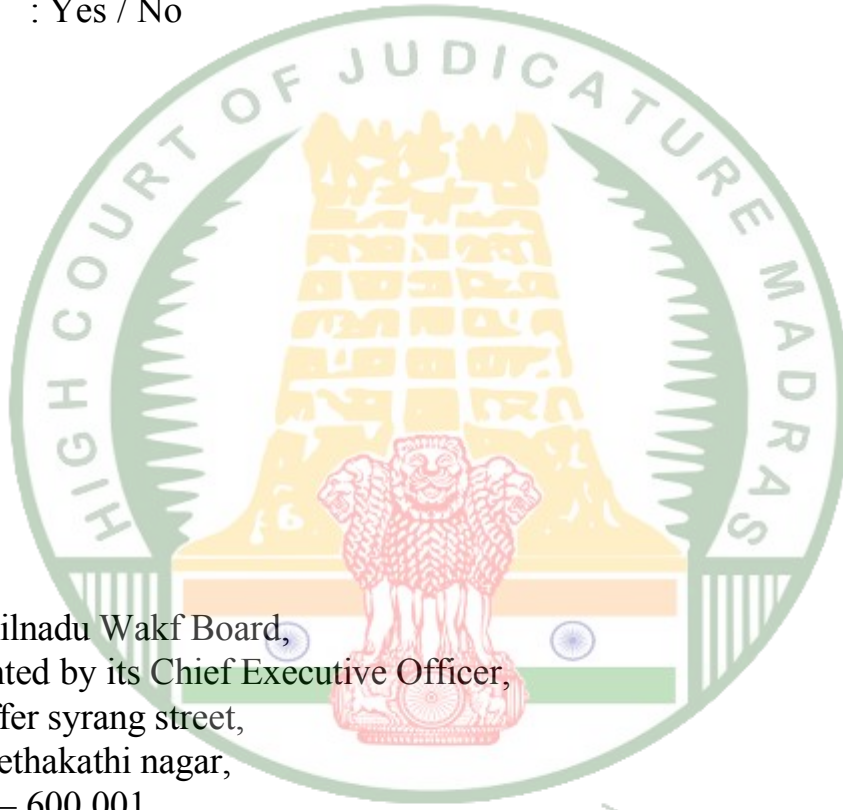
Index : Yes / No

Internet : Yes / No

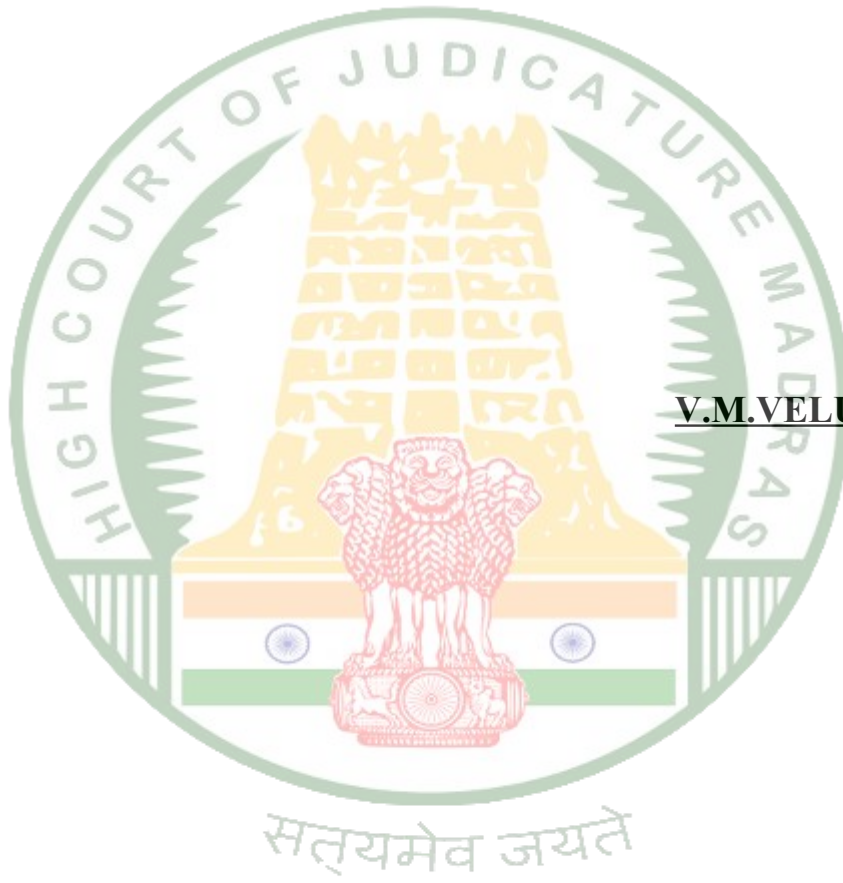
To

1.The Tamilnadu Wakf Board,
Represented by its Chief Executive Officer,
No.1, jaffer syrang street,
Vallal seethakathi nagar,
Chennai – 600 001.

2.The learned I Assistant Judge,
City Civil Court,
Chennai.



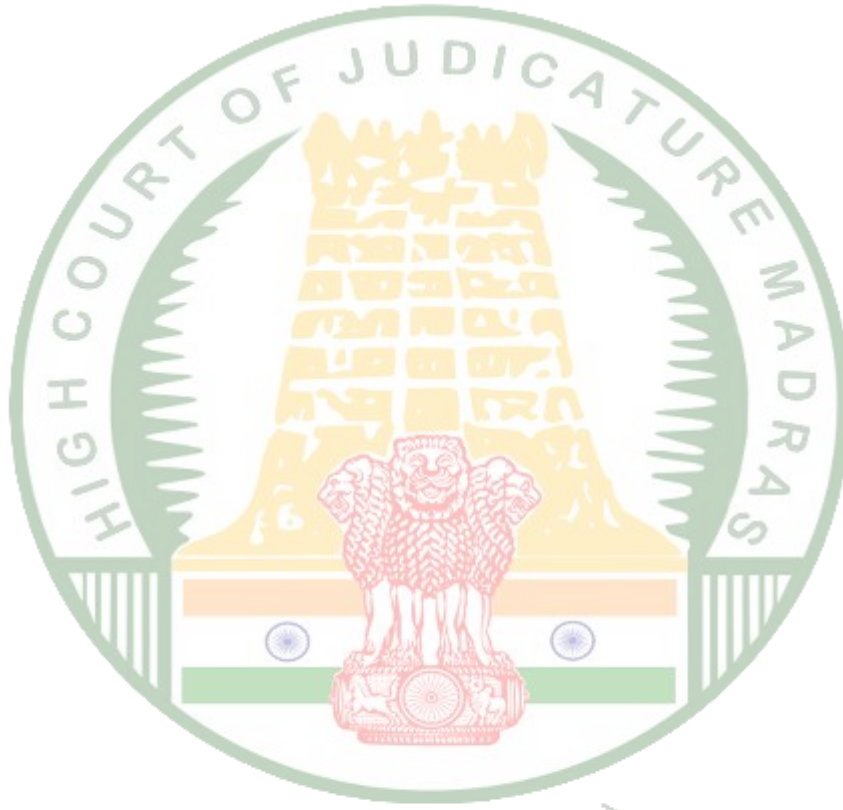
WEB COPY



V.M.VELUMANI, J.
krk

WEB COPY

C.R.P.(PD).No.2657 of 2017



13.09.2021

सत्यमेव जयते

WEB COPY