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C.R.P.(MD)No.1341 of 2008

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 01.02.2021
CORAM

THE HONOURABLE MR. JUSTICE G.R.SWAMINATHAN

C.R.P. (NPD) (MD) No.1341 of 2008 and

C.R.P. (NPD) (MD) No.1482 of 2010 &

M.P. (MD) No.2 of 2008

C.R.P. (MD) No.1341 of 2008

Sivakasi Shaji Madahab Peria
Pallivasal Jamath,
Through its Present President
A.Rafi Ahamed, Peria Pallivasal Street,
Sivakasi.

(Cause title is accepted vide order dated 22.07.2008
made in M.P. (MD) No.1 of 2008) ... Petitioner/Defendant

Vs.

D.Syed Sarbudeen ... Respondent/Plaintiff

PRAYER : Civil Revision Petition is filed under Article 227 of Constitution of India, to set aside the Judgment and Decree of the learned Subordinate Judge (Wakf Tribunal), Srivilliputhur passed in O.S.No.59 of 2004 dated 11.07.2007.

For Petitioner : Mr.M.P.Senthil
For Respondent : Mrs.P.Jessi Jeeva Priya,
for Mr.G.Aravindhan.

C.R.P. (MD) No.1482 of 2010

D.Syed Sarbudeen ... Petitioner/Plaintiff

Vs.

Sivakasi Shaji Madahab
Pallivasal Jamath,
Through its Present President
Mohammed Honey,
Peria Pallivasal Street,
Sivakasi.

... Respondent/Defendant

PRAYER : Civil Revision Petition is filed under Article 227 of Constitution of India, to set aside the Decree and Judgment dated 11.07.2007 passed in O.S.No.59 of 2004 on the file of the Subordinate Judge (Wakf Tribunal), Srivilliputhur, by allowing this Civil Revision petition.



For Petitioner : Mrs.P.Jessi Jeeva Priya,
for Mr.G.Aravindhan.

For Respondent : Mr.M.P.Senthil

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C O M M O N O R D E R

Heard the learned counsel on either side.

2. These two civil revision petitions arise out of the Judgment and Decree dated 11.07.2007 made in O.S.No.59 of 2004 on the file of the Wakf Tribunal/Sub Court, Srivilliputhur.

3. Mr.D.Sayed Sarbudeen filed the suit seeking relief of declaration, permanent injunction and mandatory injunction. During the pendency of the suit, the plaintiff filed I.A.No.255 of 2005 for incorporating the second schedule for the purpose of maintaining the relief of mandatory injunction. In the said suit, Sivakasi Shabi Mathahab Pallivasal Jamath was shown as the defendant. The defendant filed written statement and an additional written statement. Their specific stand was that the property belonging to the plaintiff was distinct from the property owned by the defendant. According to them, the plaintiff's property bears Door No.41, Sakkaraiyava Street and the property belonging to the defendant bears Door No.28A, Seethakadhi Thaikkal Street. The specific stand of the defendant is that unless the identity of the suit schedule is located with reference to the title deeds of both the parties, it would not be possible to adjudicate the issue raised in the suit. Since the identity of the property was questioned, the Court below rightly appointed the Advocate Commissioner. Interestingly, the Advocate Commissioner did not take the assistance of the licensed surveyor before executing the warrant. Citing the same, the defendant raised their objections. The Advocate Commissioner also appears to have filed a perfunctory report. In fact the Court below in paragraph No.20 of the Judgment had rightly observed that it was not established by the plaintiff that the offending construction was being put up in the schedule property. Therefore, the Court below chose to decline the relief of mandatory injunction, but strangely it chose to grant other two reliefs sought by the plaintiff. That necessitated the filing of C.R.P. (MD) (NPD) No.1341 of 2008 by the defendant. Aggrieved by the partial dismissal of the suit, the plaintiff also filed C.R.P. (MD) (NPD) No.1482 of 2010.

4. The learned counsel appearing for the plaintiff took me to paragraph Nos.13 of the impugned Judgment and contended that the issue had been adjudicated in favour of the plaintiff in prior proceedings and that therefore this Court ought to sustain the

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5. I am not persuaded by the said contention. As rightly pointed out by the defendant, the present defendant was not a party to the prior proceedings and that therefore, the prior proceedings cannot be said to be binding on the defendant herein.

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6. I have already perused the entire Judgment. The case turns on the identity of the said property. Identity can be established only by carrying out the exercise by taking the assistance of a Municipal Surveyor. In this case, the assistance of the Municipal Surveyor was not at all availed by the Advocate Commissioner and therefore, the warrant could not be executed properly. The Court below ought to have reissued the warrant and directed the Advocate Commissioner to take the assistance of the Municipal Surveyor and submit a proper report. Such a course of action was not taken by the Court below. This omission is fatal and it goes to the root of the matter. The Court below could not have decided the issues raised in the suit without proper report from the Advocate Commissioner. That apart, the Court below also erred in relying on the earlier proceedings such as O.S. No.1068 of 1978 dated 28.01.1882 and A.S.No.33 of 1882 etc., to which the defendant was not a party. On these twin grounds, I am inclined to set aside the impugned Judgment and Decree.

7. It appears that the jurisdictional Sub Court is no longer functioning as Wakf Tribunal. Be that as it may, the impugned Judgment and Decree is set aside. The matter is remitted to the file of the jurisdictional Wakf Tribunal. The Wakf Tribunal is directed to dispose of the suit afresh in accordance with law. Of course, the pleadings as well as the evidence already taken will very much remain on record. The Wakf Tribunal is directed to appoint an Advocate Commissioner for identifying the disputed property by taking assistance of the municipal surveyor. After the report is submitted, objections will have to be invited from both the parties. Of course the Advocate Commissioner will be examined. This remand is made only for this limited purpose.

8. Subject to this, these civil revision petitions are allowed. No costs. Consequently, connected miscellaneous petition is closed.

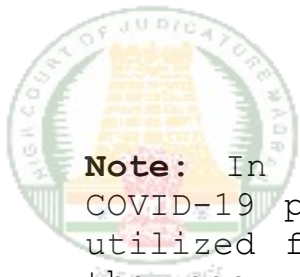
Sd/-

Assistant Registrar(CS-I)

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/ /2021

Sub Assistant Registrar(CS)



Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

The Subordinate Judge (Wakf Tribunal),
Srivilliputhur.

COPY TO
The Record Keeper,
V.R.Section, Madurai Bench of Madras High Court,
Madurai (2 COPIES).

+1 CC to M/s.M.P.SENTHIL, Advocate (SR-2746[F] dated 02/02/2021)

C.R.P. (NPD) (MD) No.1341 of 2008 and
C.R.P. (NPD) (MD) No.1482 of 2010 &
M.P. (MD) No.2 of 2008
01.02.2021

NS (CO)
TR (01.03.2021) 4P 5C