



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATE: 29.9.2021.

CORAM

THE HON'BLE MR.JUSTICE A.D.JAGADISH CHANDIRA

S.A.(MD) No.567 of 2021

and

C.M.P.(MD) No.7597 of 2021

1. K.Yasodhai Ammal
2. V.Indirani (Died)
3. S.Sudha
4. K.Maheswaran (Died)
5. N.Kavitha
6. Smt.M.Jothimani
7. Minor M.Ganeshkumar
8. Minor M.Shobana
9. A.Veera Sekaran
10. V.Saranya
11. A.V.Kandhasamy Adithiyan
12. A.V.Gogulavatshan

... Appellants/ Appellants/
Plaintiffs

vs.

1. Jamia Masjid Peria Pallivasal,
South 2nd Street,
Pudukkottai Town,
Pudukkottai District
rep. by its Present Muthavalli.

2. Chairman,
Tamilnadu Wakf Board,
Indira Nagar, Mylapore, Chennai.

3. Chief Executive Officer,
Tamilnadu Wakf Board,
Indira Nagar, Mylapore, Chennai. ... Respondents/ Respondents/
Defendants

Second Appeal filed under Section 100 of CPC against the Judgment and Decree dated 7.10.2020 passed in A.S.No.24 of 2015 on the file of the Additional Sub Court, Pudukkottai confirming the Judgment and decree dated 9.2.2015 passed in O.S.No.144 of 2012 on the file of the District Munsif Court, Pudukkottai.

For Appellant : Mr.R.Paranjothi

For RR 2 and 3 : Mr.D.S.Haroon Rasheed

JUDGMENT

The plaintiffs, who failed before both the courts below are the appellants before this court.

2. For the sake of convenience, the parties are referred to as per their status in the Original Suit.

3. The plaintiffs filed the suit for permanent injunction in respect of two shops and the buildings constructed on the eastern side in No.3268 , Barjimiyan Bazaar, Pudukottai Town.

4. The case of the plaintiffs is that the suit property belonged to one K.M.Mohammed Abdul Kadher Ibrahim Levai Sayub and he had leased out the shops to the first plaintiff's father in law viz., Muthurama Konar during the year 1950. It is the further case of the plaintiffs that the first plaintiff's father in law constructed a house in the suit property, after getting oral permission from K.M.Mohammed Abdul Kadher Ibrahim Levai Sayub and that he had been residing there and doing his business in the two shops with his two sons Krishnan and Ganesan. While so, on 5.8.1967, the said K.M.Mohammed Abdul Kadher Ibrahim Levai Sayub settled the suit property alongwith the his other properties to Periya Pallivasal vide a Wakf Nama entrusting the management to his sons Rahamathullah and Mustafa and subsequently, the when the plaintiff paid the rent to the said Trustees and after his demise, his two sons and the husband of the first plaintiff continued the tenancy and paid rent to the Trustees. The first defendant demanded rent for the suit property as Muthavalli of the Pallivasal and since the rent was not paid, the first defendant had filed O.S.No.1538 of 1989 on the file of the District Munsif Court and it was decreed ex parte and E.P.No.115 of 2004 was filed for recovery of possession. During the year 1990, Krishnan and Ganesan orally partitioned the suit property among themselves. The dispute arose between the original Trustees and hence, the plaintiffs had been paying the rent from the year 2009.

5. The first respondent/first defendant had filed written statement denying the averments, however, they have admitted the tenancy of the first plaintiff's father in law. They have denied that any constructions were made by the plaintiffs. It is the case of the defendants that original Trustees handed over the properties to the Pallivasal vide Registered deed and knowing about that fact, the plaintiffs' predecessor paid the rent, but, subsequently from June 1987 the plaintiffs did not pay the rent and committed wilful default and thereby O.S.No.1538 of 1999 was filed and E.P. was filed, but, subsequent to the enactment of the Tamil Nadu Wakf Validating Act and constitution of the Wakf Tribunal, the Execution Petition could not be proceeded. The plaintiffs also assured to vacate the suit property and the defendants never attempted to evict

the plaintiff unlawfully.

6. It is the case of the defendant that they have taken every steps to evict the plaintiff under due process of law and further, it was the case of the first defendant that the plaintiffs are evading to hand over the property without paying any rent and the rental arrears was Rs.1,27,500/- as on the date of filing of the suit and that the plaintiffs are not entitled to the relief and the plaintiffs are bound to pay the rent of Rs.3,000/- per month.

7. Based on the pleadings, the Trial Court framed the following issues:-

(i) Whether the plaintiffs are entitled to permanent injunction against the defendants?

(ii) To what other relief they are entitled?

8. During the trial, on the side of the plaintiffs, P.Ws.1 and 2 were examined and Exs.A1 to A21 were marked and on the side of the defendant, DW1 was examined and Ex.B1 was marked. After the full-fledged trial, the Trial Court dismissed the suit. Aggrieved over the dismissal of the suit, the plaintiffs filed first appeal in A.S.No.24 of 2015 on the file of the Additional Sub Judge, Pudukottai. Pending the Appeal, the plaintiffs filed I.A.No.169 of 2015 seeking for temporary injunction.

9. The Appellate Court framed the following points for determination:-

(i) Whether I.A.No.169 of 2015 deserves to be allowed for the reasons thereof?

(ii) Is the finding of the Trial Court that the appellants are not entitled to the relief of injunction is correct?

(iii) Whether the Appeal deserves to be allowed for the reasons mentioned in the grounds of appeal?

10. After analysing the oral and documentary evidence and the finding arrived by the Trial Court, the Appellate Court concurred with the finding of the Trial Court aggrieved against which, the present second Appeal has been filed.

11. The Trial Court, finding that the Original Suit is only for bare injunction and finding that admittedly, the suit properties are Wakf properties and that the defendants had taken steps to evict the plaintiffs in accordance with law, had dismissed the suit. The Appellate Court also, from the perusal of Ex.A21 which is petition in Wakf O.P.173 of 2012 held that it is evident that the Wakf O.P. was filed on 27.4.2012 by the defendants to evict the appellants herein and for arrears of rent and also after reading of the plaint in the suit, found that the suit had been filed only on 21.6.2012 subsequent to the filing of the Wakf O.P.

12. The courts below also found that it is clear that the suit was filed only after the first respondent had taken due process, inter alia, to evict the appellants from the suit property, had dismissed the suit and the appeal.

13. The learned counsel for the respondents/defendants would submit that the suit has been filed by the plaintiffs for bare injunction and not to evict other than by due process of law. The respondents had taken steps to evict them only by following due process of law in accordance with the provisions of Wakf Act, 1983 and the legal proceedings are pending before the Wakf Tribunal and till date, the defendants are following the procedures and they have not taken law into their hands to evict the plaintiffs by force and further, the plaintiffs are in arrears of rent to the tune of Rs.1,27,500/-.

14. The claim of the Appellants/plaintiffs is that they should not be evicted without following due process of law. A perusal of the materials available on record and the chronology of events, it is clear that the plaintiffs had filed the suit only after filing of the Wakf O.P. by the respondents/defendants and the respondents/defendants have not at all taken steps to evict the appellants/plaintiffs without following due process of law and rather, the steps taken by them is only by following the the same. Therefore, the findings arrived at by the courts below do not call for interference.

15. In the opinion of this court, the Appellant has not made any substantial question of law to admit this Second Appeal. The Hon'ble Apex Court in **Kirpa Ram (D) Tr.Lrs. vs Surender Deo Gaur (2020 SCC OnLine SC 935)** has categorically held as under:-

"23. Sub-section (1) of Section 100 of the Code contemplates that an appeal shall lie to the High Court if it is satisfied that the case involves a substantial question of law. The substantial question of law is required to be precisely stated in the memorandum of appeal. If the High Court is satisfied that such substantial question of law is involved, it is required to formulate that question. The appeal has to be heard on the question so formulated. However, the Court has the power to hear appeal on any other substantial question of law on satisfaction of the conditions laid down in the proviso of Section 100 of the Code. Therefore, if the substantial question of law framed by the appellants are found to be arising in the case, only then the High Court is required to formulate the same for consideration. If no such question arises, it is not necessary for the High Court to frame any substantial question of law.

<https://hcservices.ecourts.gov.in/hcservices> The formulation of substantial question of law or re-



formulation of the same in terms of the proviso arises only if there are some questions of law and not in the absence of any substantial question of law. The High Court is not obliged to frame substantial question of law, in case, it finds no error in the findings recorded by the First Appellate Court."

16. In view of the above, the Second Appeal fails and is, accordingly, dismissed without being admitted. No costs. The connected Miscellaneous Petition is closed.

17. At this juncture, the learned counsel for the appellants submit that they may be given opportunity to raise all the grounds before the Wakf Tribunal. It is needless to say that such an opportunity is always available to them.

Sd/-

Assistant Registrar (CS-III)

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Sub Assistant Registrar(CS)

ssk.

Note: In view of the present lock down owing to COVID 19 pandemic, a web copy of the order may be utilised 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

1. Additional Sub Court, Pudukkottai
 2. District Munsif Court, Pudukkottai.
 3. Chairman,
Tamilnadu Wakf Board,
Indira Nagar, Mylapore, Chennai.
 4. Chief Executive Officer,
Tamilnadu Wakf Board,
Indira Nagar, Mylapore, Chennai.
- +1 CC to M/s.D.S.HAROON RASHEED, Advocate (SR-30688[F] dated 29/09/2021)

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