

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.11.2022

CORAM:

THE HON'BLE MRS. JUSTICE T.V.THAMILSELVIC.R.P.Nos.645, 647, 648, 663, 681, and 682 of 2019andC.M.P. Nos.4317, 4399, 4291, 4458, 4318 and 4449 of 2019

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|-----------------|-----------------------------------|
| 1. Murugan, | .. Petitioner
(in 645 of 2019) |
| 2. Rajendran, | .. Petitioner
(in 647 of 2019) |
| 3. Sakarapani, | .. Petitioner
(in 648 of 2019) |
| 4.Samidurai, | .. Petitioner
(in 663 of 2019) |
| 5. Jayalakshmi, | .. Petitioner
(in 681 of 2019) |
| 6.Indira | .. Petitioner
(in 682 of 2019) |

Versus

M. Sirajuddin Syed	.. Respondent (In all petitions)
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Common Prayer: These Civil Revision Petitions are filed under Article 227 of the Constitution of India, seeking to strike out the plaint in O.S.

Nos.283/2018, 284/2018, 285/2018, 286/2018, 287/2018 and 289 of 2018 pending on the file of the learned Principal District Munsif Court, Tindivanam.

For Petitioners : Mr. V. Achuthanandan

For Respondent : No Appearance

(In all petitions)

COMMON ORDER

These Civil Revision Petitions have been filed under Article 227 of the Constitution of India, seeking to strike out the plaint in O.S. Nos.283 to 287 and 289 of 2018 pending on the file of the learned Principal District Munsif Court, Tindivanam.

2. The respondent herein is the plaintiff and the petitioners herein are the defendants in the Original Suit.

3. The case of the petitioners is that the respondent in all these petitions has filed the suits in O.S. Nos.283 to 287 and 289 of 2018 on the file of the Principal District Munsif Court, Tindivanam, seeking for declaration and other consequential reliefs. The Suit Schedule property in

O.S. Nos.283 to 287 and 289 of 2018 is a Wakf Property created by Late Mr.A.H.M.Khader Hussain Sahib along with his two sons and it was registered as D.C.No.1085/2010, dated 14.02.1910. The Wakf Deed has been mentioned about the purpose and object for its creation. The Wakf created to maintain the Mosque, Chatiram, pond, to perform annual fathiha to Ahim Ali Sahib, Ayisha Khanam Ammal. Sadhaq Hussain Sahib and for his descendants, to maintain the tomb, apart from other religious and pious obligation. While being so, a Writ Petition was filed in W.P No.36258 of 2007 by A. Mohamed Salem Khan and two others, seeking a Writ of Mandamus directing the Chief Executive Officer and the Superintendent of Wakfs to get the registration of the Wakf Property which is the subject matter of Document No.1085 of 1910. This Court by order dated 09.01.2008 directed the respondents-Wakf officials therein to complete the process of registration of properties as Wakf Properties after conducting a proper enquiry. In pursuance to the directions of this Court, the Wakf Board has registered the subject properties pertaining to Document No.1085 of 1910 as Wakf Properties. Being aggrieved by the order of the registering the document made by the Wakf Board, the respondent herein filed in W.P.No.26252 of 2008 before this Court. This

Court by its order dated 22.01.2009 set aside the order of registering the properties as Wakf properties on the sole ground that the respondent herein was not heard. Thereafter, the Wakf Board conducted an enquiry and the respondent herein made his submissions in the enquiry. After elaborate enquiry, the Wakf Board by its order dated 03.11.2009 directed the muthawalli of the Wakf to register the suit schedule property in O.S. Nos.283 to 287 and 289 of 2018. Challenging the same, the respondent herein filed Writ Petition in W.P. No 262 of 2010 before this Court. In the meanwhile, as the respondent attempted to alienate some other properties, steps were taken by the muttawalli of the Wakf by giving their objection to Sub -Registrar. However, the Sub- Registrar over ruled the objection and proceeded with registration. Against the registering the property, the Muthawalli of the above mentioned Wakf filed in W.P.No.16916 of 2011 before this Court. This Court having clubbed both the above mentioned Writ Petitions together by common order dated 20.12.2011 dismissed the W.P.No.262 of 2010 giving liberty to the petitioners to approach the Wakf Tribunal and allowed the W.P.No.16916 of 2011 confirming the registration of Wakf properties by wakf board which is the subject matter in O.S. Nos.283 to 287 and 289 of 2018. Against the order of the above

mentioned Writ Petitions, the respondent herein preferred Writ Appeals in W.A.Nos.292 of 2012 and 349 of 2012. This Court disposed of the said Writ Appeals with directions to the respondent herein to file appropriate proceedings before the Wakf Tribunal as against the order of the Wakf Board dated 03.11.2009. Thereafter, the respondent herein preferred an application before Wakf Tribunal, Villupuram in O.P.No. 165 of 2015. The Wakf Application was transferred to Wakf Tribunal, Chennai after constitution of the State Wakf Tribunal and remembered as O.A No. 194 of 2018. While being so, the respondent herein suppressing all these facts filed O.S. Nos.283 to 287 and 289 of 2018 before the Principal District Munsif, Tindivanam seeking for declaration declaring the Suit Schedule properties as properties of the respondent and to remove the petitioners herein from the suit schedule properties. Hence, the petitioners have filed these Civil Revision Petitions to strike off the plaint in O.S. Nos.283 to 287 and 289 of 2018 pending on the file of the Principal District Munsif, Tindivanam filed by the respondent herein.

4.The learned counsel for the Petitioners would submit that the suit schedule properties are Wakf properties as per the order dated 03.11.2019

of Wakf board and the said order is under challenge before Wakf Tribunal in O.P.165 of 2015 which is renumbered as O.A.No.194 of 2018. When the subject matter is pending and under Trial before Wakf Tribunal, Chennai, the respondent herein has filed the O.S. Nos.283 to 287 and 289 of 2018 frivolously before the Trial Court in order to abuse the process of court.

5. It has been further submitted that Section 85 of the Wakf Act, 1995, clearly states that no suit or other legal proceedings shall lie in any court in respect of any dispute, question or other matter relating to any Wakf property or other matter which is required by or under this Act to be determined by a Tribunal. So, the learned District Munsif, Tindivanam has no jurisdiction to entertain the suit in O.S. Nos.283 to 287 and 289 of 2018.

6. Heard the learned counsel for the petitioners and perused the material available on record. There is no representation for the respondent.

7. On a perusal of the records, it is seen that there were lot of litigations between the Wakf Board and the plaintiff/respondent herein with regard to title of the properties whether the properties are wakf properties or not. Even though O.S. No.119 of 2006 decreed in favour of the plaintiff/respondent herein, as per the direction of this Court in W.P. No.36258 of 2007, the Wakf Board after proper enquiry, registered the said properties as Wakf properties by order dated 03.11.2009. Against the registration of the properties, the plaintiff/respondent has filed W.P. No.262 of 2010 before this Court and the same was dismissed giving liberty to approach the Walk Board for appropriate relief and at the same time, W.P. No.16916 of 2011 filed by the Wakf Board was allowed by common order dated 20.12.2011 with regard to registration of the said properties as Wakf Board properties. Assailing the aforesaid common order, the plaintiff has filed two Writ Appeals in W.A. Nos.292 and 349 of 2012 wherein this Court by it common Judgment dated 18.02.2015, directed the plaintiff/respondent herein to file appropriate proceedings before the Wakf Tribunal as against the order of the Wakf Board dated 03.01.2019. In pursuant to the aforesaid order, the plaintiff/respondent herein has filed O.P. No.165 of 2015 and the same is renumbered as O.A.

No.194 of 2018 seeking relief to declare the order dated 03.11.2009 passed by the Tamil Nadu Wakf Board as null and void and permanent injunction against the defendants therein. In the aforesaid O.A. No.194 of 2018, the plaintiff/respondent herein submitted that by virtue of the partition deed No.1085 of 1910, the said properties are the private properties belonging to the plaintiff's family members and they were in common enjoyment of the same whereas the plaintiff has filed the original suit in O.S. Nos.283 to 287 and 289 of 2018 seeking for declaration the property particularly in S.No.199/1 out of the total extent of suit schedule properties in partition deed No.1085 of 1910. Thus, the plaintiff has approached the Wakf Tribunal with regard to the title of the properties, which is pending for disposal. Further, the plaintiff/respondent herein, again, has filed O.S. Nos.283 to 287 and 289 of 2018 before the Trial Court for the same relief. Hence, the plaintiff has no right to approach the Civil Court for the same relief when O.A.No.194 of 2018 is pending for disposal filed by the plaintiff/respondent herein. When the subject matter is in issue pending before the Wakf Tribunal, the District Munsif, has no jurisdiction to entertain the suit in O.S. Nos.283 to 287 and 289 of 2018 and the plaintiff/respondent herein has to approach the Wakf

Tribunal for his relief as per the direction of this Court in W.A. Nos.292 and 349 of 2012. Hence, having considered the facts and circumstances of the case, in the interest of justice, this Court is inclined to allow these Civil Revision Petitions in order to avoid multiple litigation and miscarriage of justice.

8. Accordingly, these Civil Revision Petitions are allowed. No costs. Consequently, connected miscellaneous petitions are closed.

07.11.2022

Lbm

Index : Yes/No

Speaking Order : Yes/No

Copy To:

1. The Principal District Munsif Court, Tindivanam.
2. The Section Officer, V.R.Section
High Court, Madras.

T.V.THAMILSELVI, J.

Lbm

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