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CRP.(NPD).No.1231 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved On : 01.09.2022

Delivered On: 22.09.2022

CORAM :

THE HON'BLE MR. JUSTICE SATHI KUMAR SUKUMARA KURUP

CRP(NPD).No.1231 of 2020

and

C.M.P.Nos.6684 & 6687 of 2020

Mr.B.Thasthageer
Muthawalli of Chinna Thikkal @
Meer Muneer Thikkal
Son of Basheer .. Petitioner/Petitioner/Plaintiff
Vs.

1. A.O.Tamachandaran

2. A.Mohamad Sulaiman

3. A.Beer Mohamad .. Respondents/Respondents/Defendants

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the dismissal order in I.A.No.221 of 2019 in O.S.No.68 of 2019 dated 20.02.2020 pending on the file of the Tamil Nadu Waqf Tribunal at Chennai.



CRP.(NPD).No.1231 of 2020

WEB COPY

For Petitioner : Mr.Vinod Kumar for
Mr.S.Sathish Kumar

For Respondents : Mr.A.Mohammed Feroz for R1

Mr.N.A.Nissar Ahmed for R2

Mr.MMI. Khaleed for R3

ORDER

This Petition has been filed to set aside the dismissal order in I.A.No.221 of 2019 in O.S.No.68 of 2019 dated 20.02.2020 pending on the file of the Tamil Nadu Waqf Tribunal at Chennai.

2. The learned Counsel for the second Respondent submits that the Petitioner herein had filed a Suit in O.S.No.68 of 2019 along with Application in I.A.No.221 of 2019 seeking injunction before the Waqf Tribunal, Chennai.

3. While so, the learned Counsel for the Petitioner invited the attention of this Court to the order dated 20.02.2020 in O.S.No.68 of 2019



CRP.(NPD).No.1231 of 2020

in I.A.No.221 of 2019 passed by the learned Waqf Tribunal, Chennai.

WEB COPY

3.1. The learned Counsel for the Petitioner relied on the ruling reported in **2019(4) MLJ 267** in the case of **Mr.S.Arumugam and another Vs. Mr.A.N.Subramaniyan and another**, the relevant portion is extracted hereunder:

23. In this regard it is useful to refer the judgment of the Honourable Supreme Court in Anathula Sudhakar Vs. P.Buchi Reddy (Dead) by LRs and others reported in 2008 (4) Supreme Court Cases 594, wherein the Honourable Supreme Court has held that

“We may however clarify that a prayer for declaration will be necessary only if the denial of title by the defendant or challenge to plaintiff's title raises a cloud on the title of plaintiff to the property. A cloud is said to raise over a person's title, when some apparent defect in his title to a property, or when some prima facie right of a third party over it, is made out or shown. An action for declaration, is the remedy to remove the cloud on the title to the property. On the other hand, where the plaintiff has clear title supported by documents, if a trespasser without any claim to title or an interloper without any apparent title, merely denies the plaintiff's title, it does not amount to raising a cloud over the title of the plaintiff and it will not be necessary for the plaintiff to sue for declaration and a suit for injunction may be sufficient. Where the plaintiff, believing that defendant is only a trespasser or a wrongful claimant without title, files a mere suit for injunction, and in such a suit, the



WEB COPY



CRP.(NPD).No.1231 of 2020

defendant discloses in his defence the details of the right or title claimed by him, which raises a serious dispute or cloud over plaintiff's title, then there is a need for the plaintiff, to amend the plaint and convert the suit into one for declaration. Alternatively, he may withdraw the suit for bare injunction, with permission of the court to file a comprehensive suit for declaration and injunction. He may file the suit for declaration with consequential relief, even after the suit for injunction is dismissed, where the suit raised only the issue of possession and not any issue of title.

But what if the property is a vacant site, which is not physically possessed, used or enjoyed? In such cases the principle is that possession follows title. If two persons claim to be in possession of a vacant site, one who is able to establish title thereto will be considered to be in possession, as against the person who is not able to establish title. This means that even though a suit relating to a vacant site is for a mere injunction and the issue is one of possession, it will be necessary to examine and determine the title as a prelude for deciding the de jure possession. In such a situation, where the title is clear and simple, the court may venture a decision on the issue of title, so as to decide the question of de jure possession even though the suit is for a mere injunction. But where the issue of title involves complicated or complex questions of fact and law, or where court feels that parties had not proceeded on the basis that title was at issue, the court should not decide the issue of title in a suit for injunction. The proper course is to relegate the plaintiff to the remedy of a full-fledged suit for declaration and consequential reliefs.



CRP.(NPD).No.1231 of 2020

WEB COPY

24. Admittedly, the suit properties are vacant lands. The first appellate Court has given undue advantage to the fact that the second defendant is walking through the vacant land and therefore, the plaintiffs are not in possession of the property. Such an assumption of the first appellate Court is not based on the proper appreciation of evidence. Merely because the second defendant has walked on the vacant land to go to his house, it cannot be construed that he is having control over the entire vacant land. D.W.1 evidence also clearly indicate that the defendants have access from the other side also. The same makes it clear that the suit property is not only pathway, which has access to the defendants' property. Therefore, the finding of the first appellate Court that the plaintiff has not established possession is not proper. Admittedly, the first plaintiff is a title holder and his title is also proved and the suit property is a vacant land. Only possession follows title. In view of the same, the plaintiffs are certainly entitled for permanent injunction and the substantial questions of law are answered in favour of the appellants.”

4. The learned Counsel for the second Respondent submits that the Petitioner herein has no *locus standi* in O.S.No.68 of 2019. Further, he would submit that the lease deed was executed between the Petitioner and the Respondents who are in enjoyment of the property. Based on the lease deed, the Petitioner has also leased out a portion of schedule mentioned property to the family member of the First Respondent and thereby cannot claim to be in possession. The Petitioner has also not filed any proof to show that the documents filed by the Respondent herein were cancelled by



CRP.(NPD).No.1231 of 2020

him in accordance with law. Therefore, even though the Petitioner is the Muthuwalli of the Waqf and the Waqf being owner of the property and the property was also vacant land, cannot maintain this Petition for injunction as he is not in actual possession of the properties. Aggrieved by the same, the Petitioner had approached this Court by way of Civil Revision Petition.

5. The learned Counsel for the third Respondent submitted that the Revision Petitioner borrowed money from the third Respondent. The third Respondent had filed the Suit in O.S.No.97 of 2017 pending before the Civil Court. The third Respondent had also filed Petition seeking attachment before Judgment. He also submits that the Suit in O.S.No.68 of 2019 filed by the Petitioner herein is not maintainable and it is to be dismissed. This Civil Revision Petition is not maintainable.

6. On consideration of the rival submissions and on perusal of the Order passed by the learned Waqf Tribunal, it is found that the Revision Petitioner herein as Petitioner in I.A.No.221 of 2019 in O.S.No.68 of 2019 filed before the learned Waqf Tribunal which was vehemently objected by the learned Counsel for the Respondents 1 to 3.



CRP.(NPD).No.1231 of 2020

WEB COPY

The Respondents 1 to 3 are tenants. The third Respondent specifically stated that the Petitioner herein is not interested in Dargah and the third Respondent in the counter stated the fact that the Petitioner has no locus standi to file the Suit as his term Muthuwalliship ended prior to the filing of the Suit. The third Respondent had specifically stated that the Suits of the Petitioner Muthuwalli entered on 02.01.2019. No order was passed by the Tamil Nadu Board extending its period. The Petitioner has also not filed any document regarding the Order passed by the Waqf Board regarding Muthuwalli after 02.01.2019, which is stated as follows:

“The second Respondent also produced another document wherein the Petitioner herein has executed lease agreement in respect of 1006.50 square feet of land in favour of one A.Noorul Ameen. Further, according to the first Respondent he is conducting Weekly Sandai in respect of the property in their possession and has also produced photographs and receipts given for the shops. From the documents filed by the Respondents it is clear that the Petitioner is not in actual physical possession of the schedule mentioned property. He himself has executed agreement in favour of the second Respondent authorized him to lease out the schedule mentioned property and he himself has executed lease deed in favour of third parties. Further he has also leased out portion of schedule mentioned property to the family member of the first Respondent and thereby cannot claim to be in possession. The Petitioner has also not filed any document to show that the documents filed by the Respondent herein were cancelled by him in accordance with law. Therefore, even though the Petitioner is the Muthuwalli of the Waqf and the Waqf being



CRP.(NPD).No.1231 of 2020

WEB COPY

owner of the property and the property was also vacant land cannot maintain this Petition for injunction as he is not in actual possession of the properties. Therefore, this point is answered against the Petitioner.”

6.1. It is the contention of the learned Counsel for the Respondents that the Revision Petitioner had borrowed money from the third Respondent. The third Respondent had filed O.S.No.97 of 2019 pending before the Civil Court. The third Respondent also had sought (ABJ) Attachment Before Judgment. Only to wreck vengeance with the third Respondent and other Respondents, Petitioner herein had filed the Suit in O.S.No.68 of 2019. Suppressing the fact that he had laid out plots the properties of the Wakf on lease to other parties and also the Respondents 1 to 3 are in possession of the Waqf properties as tenants. Based on the document filed by the Respondents 1 to 3, the Waqf Tribunal had arrived at a conclusion that the Petitioner cannot maintain injunction against the Respondents. Therefore, the Waqf Tribunal had dismissed the I.A.No.221 of 2019. In the light of the Order passed by the learned Waqf Tribunal, the contention of the learned Counsel for the Petitioner in this Revision Petition is found unacceptable and unreasonable.



CRP.(NPD).No.1231 of 2020

WEB COPY

6.2. In the light of the fact that the contention of this Respondent before the learned Waqf Tribunal is accepted by the learned Waqf Tribunal based on the documentary proof filed before the learned Waqf Tribunal by the Respondent who are tenants. When the Petitioner was already Muthuwalli and his term expired on 02.01.2019 then the Petitioner cannot claim himself to be the protector of Waqf Properties and file a Suit for injunction restraining the Respondents from interfering in possession of the Waqf property. The Respondent had clearly stated that the Petitioner is not residing in the vicinity of the suit property for which he filed the Suit. He is not in possession of the Suit property as Muthuwalli. The term Muthuwalliship ended on 02.01.2019. Therefore, as on date of filing Suit, he is not in possession of the properties. Further, the third Respondent had specifically stated that the Suit had been filed to wreck vengeance against the third Respondent as the third Respondent had instituted a Suit for recovery of money from this Petitioner before the Civil Court in O.S.No.97 of 2017. Also, the third Respondent had clearly stated that he is not acting in the interest of either the Wakf or with the Dharga and he had indulged in mismanagement by laying out plots and had sold part of the Suit properties to third parties.



CRP.(NPD).No.1231 of 2020

WEB COPY

6.3. Considering the specific finding by the learned Wakf Tribunal with the term Muthuwallship ended on 02.01.2019, the learned Wakf Tribunal had clearly stated that he is not in possession of the Suit properties/Wakf properties and he is not at all Muthuwalli of the Wakf to maintain the Suit for injunction.

6.4. In the light of the well reasoned order of the learned Wakf Tribunal dated 20.02.2020, this Court exercising powers under Article 227 of Constitution of India, does not find any acceptable reason to interfere with the well reasoned finding of the learned Wakf Tribunal. Only when there is miscarriage of justice, the High Court can exercise the powers under Article 227 of Constitution of India and interfere with the Orders passed by the Courts/Tribunals under the jurisdiction of the High Court. Here, in this case, the Petitioner is not at all Muthuwalli on the date of filing of the Suit. Therefore, this Revision is dismissed. The contention of the learned Counsel for the Petitioner is rejected.

6.5. The learned Counsel for the Petitioner relied on the reported



CRP.(NPD).No.1231 of 2020

WEB COPY

ruling reported in **2019(4) MLJ 267** in the case of ***Mr.S.Arumugam and another Vs. Mr.A.N.Subramaniyan and another***. The facts of the case in the reported ruling is different. The Plaintiff had filed the Suit for permanent injunction. The second Defendant was in enjoyment by walking through the vacant land. Therefore, the trial Court had given a finding that the Suit property is a vacant land. The Plaintiff cannot maintain the Suit. The High Court arrived at a conclusion that the Plaintiff in the Suit was the title holder of the property. The second Defendant walking on the vacant land to go to his house it cannot be construed that he had been in control over the entire vacant land. Therefore, when the Plaintiff is the title holder of the property, he is certainly entitled for permanent injunction. Therefore, the finding of the learned trial Judge is set aside in the Second Appeal. The fact herein are different. As on the date of filing of the Suit in O.S.No.68 of 2019, the Petitioner herein as Plaintiff was not Muthuwalli of the Wakf. His term had expired on 02.01.2019. Therefore, the averments in the Plaint that he is the Muthuwalli of the Wakf properties on the date of filing of the Suit itself against the rules regarding Wakf properties. Therefore, he cannot maintain the Suit for injunction. Further, the Respondents/Defendants before the



CRP.(NPD).No.1231 of 2020

Wakf Tribunal were the tenants of the Wakf properties and they had admitted in their written statements as tenants of the Wakf properties through proper document, they had proved it in the enquiry before the learned Wakf Tribunal. Based on the said documents and the contention of the Respondents, the Interim Application in I.A.No.221 of 2019 filed by the Revision Petitioner as Plaintiff/Petitioner was dismissed as per Order dated 20.02.2020. Therefore, the rulings cited by the learned Counsel for the Petitioner cannot at all be accepted as applicable to the facts of the case. Hence, rejected.

In the light of the above discussion, this ***Civil Revision Petition is dismissed.*** The order passed by the learned Wakf Tribunal, Chennai in I.A.No.221 of 2019 in O.S.No.68 of 2019 dated 20.02.2020 is confirmed. Consequently, connected Miscellaneous Petitions are closed. No costs.

22.09.2022

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Index: Yes/No

Internet: Yes/No

Speaking Order/Non-speaking Order



CRP.(NPD).No.1231 of 2020

WEB COPY

To

1. The learned Tamil Nadu Waqf Tribunal,
Chennai.
2. The Section Officer,
V.R.Section,
High Court, Madras.



WEB COPY



CRP.(NPD).No.1231 of 2020

SATHI KUMAR SUKUMARA KURUP, J.

dh

Pre-delivery Order made in
CRP(NPD).No.1231 of 2020

22.09.2022