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CRP.No.946 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.12. 2022

CORAM:

THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

C.R.P. (PD) No. 946 of 2021

and

CMP.No.7640 of 2021

Ahle Sunnathwal Jamath Majeed -E - Kathiripettai
Rep. by its Muthawalli,
A.R. Isthiyak Ahmed,
No.40, C.N.A. Road,
Katherpettai, Vaniyambadi,
Tirupattur District.

.. Petitioner

Versus

1.A.R. Abu Backer Siddique
2.A.R. Mohamed Faizal

...Respondents

Civil Revision Petition is filed under Article 227 of the Constitution of India, to struck off the suit in O.S.No.92 of 2020 on the file of the District Munsif, Vaniyambadi.

For Petitioner : Mr. A. Ajimath Begum

For Respondents : Mr.N. Ishtiaq Ahmed

**ORDER**

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This Civil Revision Petition has been filed by the petitioner herein to struck off the suit in O.S.No.92 of 2020 on the file of the District Munsif, Vaniyambadi.

2. The respondents herein are the plaintiffs and the respondent herein is the defendant in the suit in O.S. No.92 of 2020 on the file of the learned District Munsif Court, Vaniyambadi.

3. The case of the petitioner is that the respondents herein have filed the suit in O.S. No.92 of 2020 on the file of the District Munsif Court, Vaniyambadi, seeking for bare injunction restraining the petitioner/defendant and its men and agents or any body claiming under them from disturbing their possession except under due process of law. Pending the aforesaid suit, the defendants have filed the present Civil Revision Petition seeking to struck off the suit in O.S. No.92 of 2020 filed by the plaintiffs since the suit property belonged to Wakfs property which has to be decided by the Waqf Tribunal.



4. The learned counsel for the petitioner would submit that the Waqf Act, 1995 is a recent parliamentary statute which has constituted a special Tribunal for deciding disputes relating to Waqfs. The obvious purpose of constituting such a Tribunal was that a lot of cases relating to Waqfs were being filed in the Courts of India and they were occupying a lot of time of all the Courts in the Country thereby pending cases are being increased in the Courts. Hence, a Special Tribunal has been constituted for deciding such matters. Whereas, all matters pertaining to Wakfs should be in the first instance before the Wakf Tribunal constituted under Section 83 of the Waqf Act, 1995 and should not be entertained by the Civil Court or by the High Court straightaway under Article 226 of the Constitution of India.

5. It has been further submitted that under Section 83(1) of the Waqf Act, 1995 states as follows:

"83. Constitution of Tribunals, etc. (1) . The State Government shall, by notification in the official Gazette, constitute as many Tribunals as it may think fit, for the determination of any dispute, question or other matter relating to a Waqf or Waqf property, eviction of tenant or determination of rights and obligations of the lessor and the lease of such property under this Act and define the local



limits and jurisdiction under this Act of each or such
WEB COPY *Tribunals."*

According to the aforesaid Section 83(1), the Waqf Tribunal can decide all disputes, questions or other matters relating to a Waqf or Waqf property. The words "any dispute, question or other matters relating to Waqf or Waqf property". Any dispute, question or other matters whatsoever and in whatever manner which arises relating to a Waqf or Waqf property can be decided by the Waqf Tribunal. The word "Waqf" has been defined in Section 3(r) of the Waqf Act, 1995 and hence once the property is found to be a Waqf property as defined in Section 3(r), then any dispute, question or other matter relating to it should be agitated before the Wakf Tribunal.

6. The learned counsel for the petitioner would further submit that under Section 83(5) of the Waqf Act, 1995, the Tribunal has all powers of the Civil Court under the Code of Civil Procedure, and hence it has also powers under Order 39 Rules 1, 2 and 2 A of the Code of Civil Procedure to grant temporary injunction and enforce such injunctions. Thus, while a full fledged remedy is available to any party if there is any dispute, question or other matter relating to a Waqf or Waqf property in the Waqf



Tribunal, the plaintiffs have filed the suit O.S. No.92 of 2020 before the District Munsif Court, Vaniyambadi which should not be entertained by the Civil Court.

7. The learned counsel for the petitioner has placed a reliance of the Judgment of the Supreme Court in the case of "*Rashid Wali Beg Vs. Farid Pindari and others*" wherein it has been observed as follows:

“56. In the case on hand, the property is admitted to be a waqf property. Therefore, to allow the plaintiff to ignore the Waqf Tribunal and to seek a decree of permanent injunction and mandatory injunction from a civil court, would be ignore the mandate of [section 83](#) and [85](#) which speak of any dispute, question or other matter relating to a waqf or a waqf property. There is also one more issue. In the written statement, the Defendant No.1 has admitted the existence of the waqf and also admitted that the father of the plaintiff by name Riyaz Ahmad is the mutawalli. But the claim of the plaintiff that he is the beneficiary of the waqf has been denied. Therefore, a question as to the nature of the waqf and whether the plaintiff is a beneficiary of the waqf, has also arisen in this case. This question has necessarily to be decided by the Tribunal and not the civil court.”

In view of the aforesaid observations made by the Supreme Court, the



learned counsel for the petitioner/defendant seeks to strike off the suit in O.S.No.92 of 2020 filed before the Civil Court.

8. The learned counsel for the respondents would submit that even though there is a dispute with regard to Waqf property, the Civil Court has jurisdiction to decide the matter. Hence, there is no necessity to file before the Waqf Tribunal to decide the issue of the suit property.

9. Heard, the learned counsel for the petitioner and the learned counsel for the respondent as well as perused the materials available on records.

10. Having considered the facts and circumstances of the case and submissions of the learned counsel on either side, it is seen that the issue over the property belonged to Waqf which is also admitted by the learned counsel for the petitioners. While being so, according to the aforesaid observations of the Supreme Court made in the case of "*Rashid Wali Beg Vs. Farid Pindari and others*", the plaintiff can seek remedy before the Waqf Tribunal since he claims over the Waqf property. When there is a



remedy before the Waqf Tribunal, the plaintiff shall not approach the Civil Court directly. As the issue of the suit property belonged to Waqf, it has to be decided by the Waqf Tribunal which has been constituted for the specific purpose. Hence, this Court is inclined to allow the Civil Revision Petition. The Trial Court shall return the plaint to the plaintiff, for presentation to the Waqf Tribunal thereby the suit in O.S. No.92 of 2020 is struck off filed before the Trial Court.

11. With the aforesaid directions, this Civil Revision Petition is allowed. Consequently, connected miscellaneous petition is closed if any.
No Costs.

19.12.2022

Lbm

Index : Yes/No

Speaking Order : Yes/No



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V. BHAVANI SUBBAROYAN, J.,

Lbm

To:

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

C.R.P. (PD) No. 946 of 2021
and
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