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C.R.P.Nos.3754, 3755 & 3952 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.12.2022

CORAM

THE HON'BLE Mr. JUSTICE **G.K.ILANTHIRAIYAN**

C.R.P.Nos.3754, 3755 & 3952 of 2018
and C.M.P.No.21916 of 2018

C.R.P.No.3754 of 2018 :-

1. A.Parthasarathy
2. A.Ganesan
3. C.Kausalya

... Petitioners

Vs.

1. Mohammed Shahiruddin (Died)
2. K.Shafieq Ahamed
3. The Tamilnadu Wakf Board
Rep. by its Chief Executive Officer,
Chennai.
4. M/s.A.T.H.Thameen rep.
by its Manager,
C.Abdul Hakeem Road,
Melvisharam – 632 502,
Vellore District.
5. Fazullah Khadri
6. Wahida Sultana
7. Paisur Rahuman
8. Jabin Sultana



C.R.P.Nos.3754, 3755 & 3952 of 2018

9. The Muthavalli
Eidgah and Burial Ground Committee,
Hirasathupuram,
Melvisharam,
Vellore District.

10. G.S.Iqbal
11. A.R.Munna Sherif
12. Abdul Rahman
(Notice to R3 to R12 dispensed with in this CRP)
13. Fazal Shereen Sultana
14. Mohammed Abrar
15. K.Saiqua Afreen
16. K.Mohammed Shuaib
17. Maimoona Bi

... Respondents

Prayer :- Civil Revision Petitions are filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order dated 07.09.2018 made in Tr.O.P.No.61 of 2017 on the file of the learned Principal District Court, Vellore, by allowing this Civil Revision Petition.

For Petitioners : Mr.N.Manoharan
For Respondents
R1 : Died
For R2 : No appearance
R3 to R12 : Given up
R13 to R17 : Not ready in notice

C.R.P.No.3755 of 2018 :-

1. A.Parthasarathy
2. A.Ganesan
3. A.Kausalya

... Petitioners

Vs.



C.R.P.Nos.3754, 3755 & 3952 of 2018

1. Mohammed Shahiruddin (Died)
2. K.Shafieq Ahamed
3. The Tamilnadu Wakf Board
Rep. by its Chief Executive Officer,
Chennai.
4. M/s.A.T.H.Thameen rep.
by its Manager,
C.Abdul Hakeem Road,
Melvisharam – 632 502,
Vellore District.
5. Fazullah Khadri
6. Wahida Sultana
7. Paisur Rahuman
8. Jabin Sultana
9. The Muthavalli
Eidgah and Burial Ground Committee,
Hirasathupuram,
Melvisharam,
Vellore District.
10. M.S.Ramasamy Iyer
11. B.Davood
12. B.Abdul
13. A.Yesupatham
14. M.Boopalan
15. M.Rajendiran
16. M.Parthiban
17. A.Booshanam
18. A.Pichandi
19. Paanchalai
20. Ravi
21. Malarkodi



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22. Lakshmi
23. Anandan
24. R.Santhoshkumar
25. C.Ponnusamy
(Notice to R3 to R25 dispensed with in this CRP)
26. Fazal Shereen Sultana
27. Mohammed Abrar
28. K.Saiqua Afreen
29. K.Mohammed Shuaib
30. Maimoona Bi

... Respondents

Prayer :- Civil Revision Petitions are filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order dated 07.09.2018 made in Tr.O.P.No.62 of 2017 on the file of the learned Principal District Court, Vellore, by allowing this Civil Revision Petition.

For Petitioners : Mr.N.Manoharan

For Respondents

- R1 : Died
For R2 : No appearance
R3 to R25 : Given up
R26 to R30 : Not ready in notice

C.R.P.No.3952 of 2018 :-

1. A.Parthasarathy
2. A.Ganesan
3. A.Kausalya

... Petitioners

Vs.

1. Mohammed Shahiruddin (Died)
2. K.Shafieq Ahamed



C.R.P.Nos.3754, 3755 & 3952 of 2018

3. The Tamilnadu Wakf Board
Rep. by its Chief Executive Officer,
Chennai.

4. M/s.A.T.H.Thameen rep.
by its Manager,
C.Abdul Hakeem Road,
Melvisharam – 632 502,
Vellore District.

5. Fazullah Khadri

6. Wahida Sultana

7. Paisur Rahuman

8. Jabin Sultana

9. The Muthavalli
Eidgah and Burial Ground Committee,
Hirasathupuram,
Melvisharam,
Vellore District.
(Notice to R3 to R9 dispensed with)

10. Fazal Shereen Sultana

11. Mohammed Abrar

12. K.Saiqua Afreen

13. K.Mohammed Shuaib

14. Maimoona Bi

... Respondents

Prayer :- Civil Revision Petitions are filed under Article 227 of the Constitution of India, to strike off the suit in O.S.No.403 of 2017 on the file of the learned Wakf Tribunal/Sub Court, Vellore and the same by allowing this Civil Revision Petition.



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C.R.P.Nos.3754, 3755 & 3952 of 2018

For Petitioners : Mr.N.Manoharan
For Respondents
R1 : Died
For R2, R5 to R9 : No appearance
For R3, R4, R10 to R14 : Not ready in notice

COMMON ORDER

The Civil Revision Petitions in C.R.P.Nos.3754 & 3755 of 2018 are directed as against the fair and decreetal orders dated 07.09.2018 passed by the learned Principal District Judge, Vellore, in Tr.O.P.Nos. 61 & 62 of 2017 respectively, thereby transferring the suits in O.S.Nos.18 & 14 of 2016 respectively, from the file of the learned District Munsif cum Judicial Magistrate, Arcot, to the file of the learned Principal Subordinate Judge/ Wakf Tribunal, Vellore. The Civil Revision Petition in C.R.P.No.3952 of 2018 has been filed to strike off the suit in O.S.No.403 of 2017 on the file fo the learned Wakf Tribunal/Sub Court, Vellore.

2. The petitioners filed suit in O.S.No.18 of 2016 on the file of the District Munsif cum Judicial Magistrate Court, Arcot, for permanent as against the respondents 5 to 8 and others. The respondents 5 to 8 also filed suit before the same Court in O.S.No.14 of 2016 for permanent injunction



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as against the petitioners and others. All the parties are one and the same in respect of the very same properties and there are two suits. The respondents 1 & 2 filed another suit in O.S.No.403 of 2017 on the file of the Wakf Tribunal/Principal Subordinate Court, Vellore, in respect of some other properties as against the petitioners and respondents 5 to 8 & others.

3. While pending all three suits, the respondents 1 & 2 viz., the plaintiffs in O.S.No.403 of 2017 filed petitions in Tr.O.P.Nos.61 & 62 of 2017, to transfer other two suits viz., O.S.Nos.14 & 18 of 2016 filed by the petitioners and respondents 5 to 8, from the file of the District Munsif cum Judicial Magistrate Court, Arcot, to the file of the Principal Subordinate Court/Wakf Tribunal, Vellore, to be tried along with the suit in O.S.No.403 of 2017. Both the petitions were allowed by the Court below and aggrieved by the same, the petitioners filed the Civil Revision Petitions in C.R.P.Nos.3754 & 3755 of 2018. The petitioners also filed another Civil Revision Petition in C.R.P.No.3952 of 2018 to strike of the plaint in O.S.No.403 of 2017, pending on the file of the Principal Subordinate Court/Wakf Tribunal, Vellore.



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4. The respondents 1 & 2 filed the transfer petitions to transfer the suits in O.S.Nos.14 & 18 of 2016, filed by the petitioners and respondents 5 to 8 respectively, on the ground that the suit schedule properties are one and the same in all the suits. The Court below also recorded that the disputes involved in the suit are similar and the suit schedule properties have been shown as schedule in O.S.No.403 of 2017 and the property which is said to be wakf property by the respondents 1 & 2 herein, being disputed which has to be decided only by the Wakf Tribunal, Vellore. Therefore, the Court below allowed the transfer petitions thereby transferred both the suits in O.S.Nos. 14 & 18 of 2016 from the file of the learned District Munsif cum Judicial Magistrate, Arcot, to the file of the Wakf Tribunal, Principal Subordinate Court, Vellore.

5. The learned counsel appearing for the petitioners submitted that the suit properties in O.S.Nos.14 & 18 of 2016 on the file of the learned District Munsif cum Judicial Magistrate, Arcot, are one and the same. The parties are also one and the same. Whereas the suit in O.S.No.403 of 2017 is completely different property from other two suits properties. Both the suit



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in O.S.Nos.14 & 18 of 2016, the Wakf Board is not a party to the suits.

Whereas the respondents 1 & 2 filed suit in O.S.No.403 of 2017, the Tamil Nadu Wakf Board is a party to the suit and the suit properties comprised in R.S.No.64/3, Burial Ground an extent of 0.50 acres out of 4 acres and the properties comprised R.S.No.64/1, Idagh and Burial Ground to an extent of 1.55 acres out of 20.51 acres. The said suit is filed for declaration declaring that the suit properties are Wakf properties belonging to the Muthavalli, Eidgah and Burial Ground Committed, who arrayed as 10th defendant in O.S.No.403 of 2017.

5.1. He further submitted that the suit in O.S.No.403 of 2017 itself is not maintainable, since the respondents 1 & 2 are not competent or authorized persons to file suit in respect of the Wakf Properties. They have no right and no locus-standi, to file any suit and to maintain the present suit, in view of the bar under Section 83(2) of the Wakf Act. It enables only two kind of persons to maintain the suit. The respondents 1 & 2 are being the strangers have no right to file the above suit. He further submitted that even according to them the suit properties belonging to the Wakf properties as



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such they failed to mark any document and they have no jurisdiction to file suit on behalf of the Wakf. Hence, he prayed to allow the present Civil Revision Petitions.

6. Heard Mr.N.Manoharan, learned counsel appearing for the petitioners in all C.R.Ps. Though notice served on the second respondent and the legal heirs of the deceased first respondent and their name also printed in the cause list, no one is appeared on behalf of the respondents either in person or through pleader.

7. The petitioners are the plaintiffs in O.S.No.18 of 2016 on the file of the learned District Munsif cum Judicial Magistrate, Arcot. The defendants in that suit are the plaintiffs in O.S.No.14 of 2016 on the same Court. The suit schedule properties are one and the same in both suits except some items of the properties. The respondents 1 & 2 filed the suit in O.S.No.403 of 2017 on the file of the Wakf Tribunal, Principal Subordinate Court, Vellore, for declaration declaring that the suit properties are Wakf properties and also prayed for recovery of vacant possession along with



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permanent injunction. Further, the suit properties in both the suits viz., O.S.Nos.14 & 18 of 2016 are different from the suit schedule properties mentioned in O.S.No.403 of 2017.

8. On a perusal of the suit schedule properties in O.S.Nos.14 & 18 of 2016, they stated that except the burial ground and gabarsthan to an extent of 1.55 acres comprised in R.S.No.64/1 to 5 out of 25 acres. The case of the respondents 1 & 2 is that the suit properties in O.S.No.403 of 2017 are subject matter of notified Wakf for the purpose of eidgah and burial ground. The Wakf is governed by hereditary succession and customs and usages. They are the members of the committee taking care of eidgah and burial ground.

9. Admittedly, the respondents 1 & 2 are not Wakf or Muthavalli. In fact, they added Muthavalli and Wakf Board as parties in their suit. Therefore, they are third parties in the Wakf. They have not filed their suit on representative capacity of any Wakf. In this regard, it is relevant to extract the provision under Section 83(1&2) of the Wakf Act as follows:-



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“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 wakf or wakf property under this Act and define the local limits and jurisdiction under this Act of each of such Tribunals.

(2) Any mutawalli person interested in a wakf or any other person aggrieved by an order made under this Act, or rules made thereunder, may make an application within the time specified in this Act or where no such time has been specified, within such time as may be prescribed, to the Tribunal for the determination of any dispute, question or other matter relating to the wakf.”

In Wakf Act, for maintaining the suit in respect of the wakf properties, any Muthavalli, person interest in a wask or any other person aggrieved over the order passed under the Wakf Act, can maintain the suit.

10. Whereas, the respondents 1 & 2 are no way connected to any Wakf or Muthavalli and they are not also authorized to file any suit in respect of the Wakf properties. Therefore, they have no right over the properties and there is no cause of action to file suit in O.S.No.403 of 2017. Hence the said suit is nothing but clear abuse of law and it cannot be



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sustained as against the petitioners. Therefore, the orders passed by the Court below cannot be sustained and it is liable to be set aside.

11. In view of the above discussion, the fair and decreetal orders dated 07.09.2018 passed by the learned Principal District Judge, Vellore, in Tr.O.P.Nos. 61 & 62 of 2017 respectively, are hereby set aside and the suits in O.S.Nos.18 & 14 of 2016 respectively, are restored on the file of the learned District Munsif cum Judicial Magistrate, Arcot. The plaint in O.S.No.403 of 2017 on the file of the Wakf Tribunal/Subordinate Court, Vellore, is hereby struck off.

12. Accordingly, all the Civil Revision Petitions are allowed. Consequently, connected miscellaneous petition is closed. There shall be no order as to costs.

12.12.2022

Internet : Yes
Index : Yes/No
Speaking order/Non-speaking order
rts

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G.K.ILANTHIRAIYAN, J.

rts

To

1. The Principal District Judge,
Vellore.
2. The District Munsif cum
Judicial Magistrate,
Arcot.
3. The Principal Subordinate Judge,
Wakf Tribunal,
Vellore.
4. The Chief Executive Officer,
Tamilnadu Wakf Board,
Chennai.

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