



CRP(NPD)(MD)No.1237 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 23.06.2022

CORAM:

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

CRP(PD)(MD)No.1237 of 2022 and
CMP(MD) No.5070 of 2022

1.S.M.A.Farook
2.S.M.A.Haseena Jan
3.S.M.A.Nazeera Banu

... Petitioners

Vs

Hasrath Syed Shah Mian Sakkaf Kahsdiri Thaikal Wakf,
Rep by Junior Trustee Shed Vajhan Naqi Sakkaf,
S/o Hasrath Syed Ismath Batcha,
No.657, East Raja Veethi,
Kondirajapalayam,
Thanjavur Town,
Thanjavur District.

... Respondent

Prayer: Petition filed under Article 227 of the Constitution of India, to call for records pertaining to the order and decreetal order dated 30.03.2022 passed in E.A.No.46 of 2021, on the file of the Principal Sub Court, Thanjavur in E.P.No.29/2012 on the file of the Principal Sub Court, Thanjavur in W.O.P.No.11 of 1999, on the file of the Principal Sub Court cum Wakf Tribunal, Thanjavur and set aside the same.



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For Petitioners : Mr.R.Rajaraman
For Respondent : Mr.A.Senthil Kumar

ORDER

This Civil Revision Petition is filed challenging the fair and decreetal order passed in E.A.No.46 of 2021, dated 30.03.2022.

2.The petitioners are the tenants of the Wakf had suffered a decree in W.O.P.No. 11 of 1999. The respondent Wakf filed a petition for execution in E.P.29 of 2012, before the Subordinate Court, Thanjavur and the same was ordered by the Execution Court on 22.12.2014. Thereafter, the petitioners filed an appeal before the Principal Subordinate Judge in E.A.No.46 of 2021, which was dismissed on 30.03.2022. Aggrieved over the same, the present Civil Revision Petition is filed.

3.The learned counsel appearing for the petitioner submits that the petitioner has filed the application under Section 47 of Civil Procedure Code to declare that the decree in OS No.11 of 1999 dated 25.10.2006 is not



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executable. However, the Executing Court has failed to consider the same and erroneously allowed the EP and also dismissed the EA filed by the petitioner. According to the learned counsel appearing for the petitioner, the suit in O.S.No.11 of 1999 ought to have been filed before the Wakf Tribunal alone. He further submits that after the date of decree, a compromise was arrived between the parties and the petitioner enjoyed the property in the capacity of a new tenant and therefore, the Execution Petition based on the decree dated 25.10.2006 is not maintainable in view of the subsequent tenancy. EP was filed for execution of O.S.No.11 of 1999 and without the amendment, the Court has proceeded further as if the decree was passed in O.S.No.11 of 1999 and passed the order.

4.The learned counsel appearing for the respondent submits that the respondent Wakf filed the suit for eviction in O.S.No.74 of 1996, subsequently, it was transferred and renumbered as W.O.P No.11 of 1999. At the time of passing the decree, there was a typographical error that instead of mentioning W.O.P 11 of 1999, they have stated as O.S before the Principal Subordinate Court, Thanjavur. Taking advantage of the same, the



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petitioner is making this plea. However, the case was tried only by the Wakf Tribunal by assigning W.O.P.No.11 of 1999. With regard to other grounds that there was compromise between the parties subsequent to the decree, there is no material to that effect. He further submits that the petitioner was also subjected to cross examination before the EP Court with regard to the subsequent agreement, where, the petitioner has precipitated that there is no such agreement and hence there is no need to interfere with the order of the trial Court.

5.This Court considered the rival submissions made by either side and perused the materials placed on record.

6. Though the respondent Wakf filed the suit for eviction as original suit in O.S.No.74 of 1996, subsequently, it was transferred as W.O.P No.11 of 1999 and the same was tried by the Wakf Tribunal alone. It is stated that instead of mentioning W.O.P 11 of 1999, it has been mistakenly mentioned as Original Suit before the Principal Subordinate Court, Thanjavur. Insofar as the another contention raised by the petitioner



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that there was subsequent compromise between the parties and in the absence of any material to prove the same, that cannot be considered.

7.In view of the above, this Court finds no reasons to interfere with the order of the trial Court. Accordingly, this Civil Revision Petition is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

23.06.2022

Index : Yes / No.

Internet : Yes / No.

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Note:

Registry is directed to return the original plaint after getting necessary acknowledgment.

To

1.The Principal Sub Court cum Wakf Tribunal, Thanjavur



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B.PUGALENDHI, J.

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Order made in
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23.06.2022