



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON	12.04.2022
DELIVERED ON	28.04.2022

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CORAM :

THE HONOURABLE MRS.JUSTICE S.ANANTHI

CR.P. (MD)No.1062 of 2015

1.V.S.T.Nazeer
2.V.S.T.Samsul Alam
3.V.S.T.E.Mohaideen Sheik Mansur
4.S.H.Mohamed Raseeth ...Petitioners/Plaintiffs
[Petitioners 1 to 3 are substituted vide Court order dated
21.12.2021]

Vs.

1.N.Abdul Maideen @ Abdulla
2.K.S.Sahul Hameed
3.K.Abitha Beevi ...Respondents/Defendants

PRAYER: Civil Revision Petition under Article 227 of the Constitution of India, to set aside the Judgment and Decree, dated 27.01.2015 made in O.S.No.211 of 2006 on the file of Wakf Tribunal (Principal Sub Court), Tirunelveli by allowing this Civil Revision Petition.

For Petitioners :Mr.V.Meenakshi Sundaram
For R-1 & R-3 :Mr.T.Selvam
For R-2 :Mr.H.Arumugam

ORDER

These Civil Revision Petition has been filed to set aside the Judgment and Decree, dated 27.01.2015 in O.S.No.211 of 2006 on the file of Wakf Tribunal (Principal Sub Court), Tirunelveli.

2.The parties are referred to as per the rank mentioned before the Court below.

3.The plaintiffs have filed a suit in O.S.No.211 of 2016 on the file of the learned Wakf Tribunal (Principal Subordinate Judge), Tirunelveli, for recovery of possession and mandatory injunction and also seeking permanent injunction for not alienate the suit 2nd schedule property against the defendants. The said suit was dismissed on 27.01.2015. Against the said dismissal order, the revision petitioners are before this Court.



4. Heard on either side. Perused the material documents.

5. This Civil Revision Petition is filed on the ground that the Court below ought to have held that the Judgment in O.S.No.158 of 1992 and in O.S.No.149 of 1997 are binding upon the defendants and the Court below has failed to consider that the Judgment in O.S.No.158 of 1992. The Court below has failed to note that the cause of action for the relief of recovery of possession has been asked for in the suit is the rejection of the prayer for injunction in the previous suit in O.S.No.158 of 1992. The findings of the Court below that Section 107 of the Wakf Act, 1995 is not applicable to the suit since there is no pleading that the building has been erected after the said Section came into force is not correct in law. The Judgment and Decree of the Court below is liable to be set aside.

6. The case of the plaintiffs is as follows:

The 2nd schedule property is part of 1st schedule property one Tamus Tasim Tharaganar had purchased the properties on 09.01.1908. He has executed Wakf nama on 26.12.1931 to settle some properties including the 1st schedule properties. It was recognized by Wakf Board also. Tamus Tasim became Muthavalli. After his death his three sons were acted as Akdars in turn are VST Mohamed Abubucker, 2 & 3rd plaintiffs have also filed declaration suit against one Asami Beevi in O.S.No.158 of 1992.

6(ii). The said Asami Beevi has also claimed rights in east half of 1st schedule property is 3 acre and 2 cents and filed suit in O.S.No.458 of 1992 for recovery of possession. Both the parties have filed interim application for injunction. The plaintiffs have filed a petition in I.A.No.502 of 1992 for interim injunction not to disturb their possession and the same was allowed.

7. Without disclosing the order, Asima Beevi (Asan Meeral Beevi) has filed a suit in O.S.No.318 of 1995 for partition. In that suit, they have filed a petition in I.A.Nos.442 & 443 of 1995 for interim injunction which was already dismissed in I.A.No.777 of 1992 in O.S.No.458 of 1992 and got interim injunction.

8. Then Akdars of the Wakf have filed C.R.P.Nos.3511 & 3512 of 1995 before this Court and order passed in I.A.Nos.442 & 443 of 1995 were cancelled. Subsequently, O.S.No.318 of 1995 was dismissed for default. Asan Meera beevi has executed a sale deed regarding part of 1st schedule properties to one Jeenath Beevi. The said Jeenath Beevi has filed a suit in O.S.No.149 of 1997 against the Wakf tenant and the same was also dismissed.

9. One Kadija Ameena and four others have sold the properties to R-1 to R-3/D-1 to D-3 on 18.05.2000 in two sale deeds regarding the 2nd schedule property.



10.Asan Meera Beevi has obtained Joint Patta by fraudulently without any notice to Wakf.

11.The Joint Patta was also cancelled in appeal A3/Ma/Mu.2/01 on 22.04.2003. R-1 to R-3 have also filed revision against the order and the same was also dismissed. D-1 to D-3 have also got sub-division as 584/1A to C on the basis of their sale deed.

12.On 02.09.2000, D-1 to D-3 have also obtained property tax receipts in their name. So, the suit was filed.

13.D-1 & D2 have filed written statement and stated that on 26.04.1916 VST.Samsudeen Tharanganar have partitioned their property. This suit schedule property which was shown as 37th item in the deed and total extent is 7027. Half of the property was allotted to Tamustasin Tharanganar. Eastern half was allotted to Meeran Mohaideen and Sheik Mansoor. They have sold the properties to 40 persons. They are necessary parties to the suit.

14.Appeal is pending against the Judgment and Decree in O.S.No.158 of 1992. In O.S.No.318 of 1995, these defendants or vendors of the defendants are not parties. Wakf never enjoyed the properties.

15.The following issues are to be decided in the Civil Revision Petition.

1.Whether the plaintiffs are entitled for decree as prayed for?

2.Whether the 2nd schedule properties belonged to D-1 to D-3 on the basis of valid sale deed?

16.The plaintiffs have claimed their rights through a sale deed of the year 1908. The defendants have claimed their rights through a partition deed of the year 1916.

17.The sale deed, dated 09.01.1908 was marked as Ex.A.1 in which the Thamus Tasim has purchased the 1st schedule property in S.No.584/1, 6 cents. A Patta stands in the name of Madarsha was marked as Ex.A.2(2008).

18.Thamus Tasim Tharaganar has settled the properties on 26.12.1931 to Madarsha. The entire properties in S.No.584/1 was settled in favour of the said Madarsha.

19.On behalf of Madarsha the suit in O.S.NO.158 of 1992 was filed by the Akdars for declaration and injunction and the said suit was decreed on 23.07.2005.

20.R-1 to R-3/D-1 to D-3 have purchased the 2nd schedule properties on 18.05.2000. Based on the sale deed they have also obtained Joint Patta which was cancelled subsequently.



21.All the litigation between the plaintiffs and vendor of the defendants have ended in favour of the plaintiffs. An appeal was also filed against the Judgment and Decree in O.S.No.158 of 1992.

22.Pending the suit in O.S.No.158 of 1992, R-1 to R-3/D-1 to D-3 have purchased the properties. Their rights can be decided only on the basis of Judgment and Decree in O.S.No.158/92.

23.Since declaration decree in favour of the Madarsha the decree will bind the defendants also.

24.The suit in O.S.No.211 of 2006 was filed in the year 2006 and the trial Court has dismissed the said suit on the ground that even at the time of deciding the suit in O.S.No.158 of 1992 the possession of the defendants was admitted. But, D-1 to D-3 have purchased the properties in the year 2000.

25.As per Section 107 of Wakf Act, nothing contained in the Limitation Act, 1963 shall apply to any suit for possession of immovable properties comprised in any Wakf or for possession of any interest in such property.

26.The suit in O.S.No.158 of 1992 was filed for declaration decree granted and dismissed regarding the relief of permanent injunction in the year 2005. After that only, the suit in O.S.No.211 of 2006 was filed for recovery of possession and mandatory injunction.

27.So, based on the declaration decree which is still in force the plaintiffs are entitled for recovery of possession and mandatory injunction.

28.On the basis of above discussion, the 1st issue is decided in favour of the plaintiff and the 2nd issue is decided against the defendants.

29.Finally, this Civil Revision Petition is allowed by setting aside the the Judgment and Decree, dated 27.01.2015 in O.S.No.211 of 2006 on the file of Wakf Tribunal (Principal Sub Court), Tirunelveli.. No Costs.

Sd/-

Assistant Registrar (RTI)

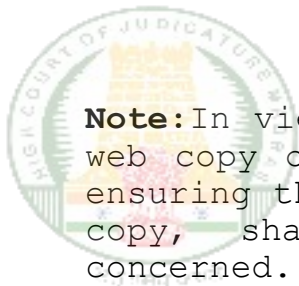
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Sub Assistant Registrar(CS)

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To:

The Wakf Tribunal (Principal Sub Court),
Tirunelveli.

+1 CC to M/s.T.SELVAN, Advocate (SR-22244[F] dated 28/04/2022)

+1 CC to M/s.D.NALLATHAMBI, Advocate (SR-22258[F] dated 28/04/2022)

C.R.P. (MD) No.1062 of 2015
28.04.2022

RD(07.06.2022) 5P 4C