



C.R.P.No.275 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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DATED: 08.02.2023

CORAM:

**THE HON'BLE MR.JUSTICE SATHI KUMAR SUKUMARA
KURUP**

C.R.P.No.275 of 2023

and

CMP.No.2286 of 2023

Coimbatore Athupalam Shafia Ahalui Sunnath Jamath,
Rep. by its President,
Mr.Farook,
Palghat Road, Athupalam,
Coimbatore.

...Petitioner

Vs.

Noyyal River Sulthan Awalia Dargha Wakf
Muthavalli, Syed Mohideen (Died)
Rep. by its Present Muthavalli,
S.M.Mehaboob Basha,
Door No.83/99, V.G.Rao Nagar,
Ganapathy, Coimbatore – 641 006.

...Respondent

PRAYER: Civil Revision Petition filed under Section 115 of the Civil Procedure Code to set aside the order dated 02.09.2022 passed by the Learned Principal District Munsiff, Coimbatore in E.P.No.48 of 2008



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in O.S.No.607 of 1980.

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For Petitioner : Mr.L.Mouli

For Respondent : Mr.N.Damodaran, Counsel for
Caveator

ORDER

The present petition has been filed by the Coimbatore Athupalam Shafia Ahalui Sunnath Jamath, by its President, namely Farook to set aside the order dated 02.09.2022 passed by the Learned Principal District Munsiff, Coimbatore in E.P.No.48 of 2008 in O.S.No.607 of 1980.

2. It is the contention of the Learned Counsel for the Petitioner that the Suit in O.S.No.607 of 2008 was filed by the Noyyal River Sulthan Awalia Dargha Wakf Muthuvalli, Syed Mohideen before the Learned Principal District Munsif, Coimbatore seeking permanent injunction as well as mandatory injunction and the Suit in O.S.No.853 of 1979 filed by the Coimbatore Athupalam Shafia Ahalui Sunnath Jamath, by its President, Mr.Farook, was for bare injunction. After due



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Trial, both the Suits were dismissed by the Learned Principal District Munsiff, Coimbatore.

3. Aggrieved by the same, both the parties filed appeal. The Appeal filed by the Noyyal River Sulthan Awalia Dargha Wakf in A.S.No.33 of 1988 was allowed by the Learned I Additional District Judge, Coimbatore, as per judgment and decree dated 07.10.1989. Aggrieved by the above said judgment and decree, two Second Appeals in S.A.Nos.1850 and 1851 of 1989 were filed, and the same were disposed of as per order dated 17.06.2006. Subsequent to which, the Noyyal River Sulthan Awalia Dargha Wakf Muthuvalli, being the decree holder as per the judgment and decree dated 07.10.1989 made in A.S.No.33 of 1988 filed an Execution Petition in E.P.No.48 of 2008, seeking removal of construction put up by the Petitioner herein.

4. Further, the Petitioner herein had filed a memo stating that they had removed the construction put up by them. The Decree Holder / Execution Petitioner objected the same stating that, the Petitioner had to hand over the possession also. Therefore, the execution Court had



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directed the Judgment Debtor/Respondent therein to hand over the possession. Hence, aggrieved by the same, the Petitioner / Judgment Debtor, had filed this Civil Revision Petition.

5. Learned Counsel for the Petitioner furthermore submitted that, if the Execution Petition had been filed based on the Second Appeal, the judgment made in the above said Second Appeal did not mention anything about handing over of the possession and it only stated with regard to the removal of the construction put up by the Jamath.

6. Per contra, Learned Counsel for the Respondent/Decree Holder vehemently objected the same stating that, in the Second Appeal it had been clearly discussed. For better appreciation, the relevant portion is extracted hereunder:

“17. It is also submitted by the Learned Counsel appearing for the Wakf Board that the Wakf Board has taken possession of the suit property in Execution of the Decree in O.S.No.12 of 1969 and the possession is for and on behalf of the Dharga.



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This fact is also admitted by the appellant in its written notes. Further, the constructions made by the Jamath were in violation of an order of injunction made in I.A.No.2781/79 and therefore the finding of the Court below that the Dharga is entitled to a mandatory injunction cannot at all be effected. The Respondent submits that once the offending constructions are removed as per order of Court, the Dharga which is in possession of the suit property pursuant to a valid title in their favour there is no need or necessity for seeking the relief of possession. But however, out of abundant caution, the Dharga has filed CMP.No.3575 of 1991 in S.A.No.1850 of 1989 for amendment of the Plaint to include the prayer for amendment. There is no change of cause of action or any new material or facts are disclosed so as to deny the relief of possession. In such circumstances, in order to mould the relief and to render justice, the amendment has to be allowed and in any event no prejudice will be caused to the Jamath by ordering as admittedly they are not having any title to the property. Accordingly, the CMP.No.3575 of 1991 is allowed. It is also admitted



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that the Jamath has lost its possession even as contended by the Learned Counsel for the appellant and therefore there is no need to seek recovery of possession and that therefore the Jamath is not entitled to take advantage by its own way of request for limited injunction in their favour.

18. It is also to be mentioned that pending the Second Appeals, the Jamath in violation of the orders of the Court below as well as orders passed by this Court in CMP.No.2731/93, put up some further constructions in the suit property for which the Dharga filed Contempt Petition No.70 of 1998 which is said to be pending.

19. For the reasons stated above, both the questions of law are answered against the appellant and in the respective Second Appeal and consequently, both the Second Appeals are dismissed confirming the judgment and decree of the First Appellate Court. No costs.”

Therefore, it is nothing but a violation of the order of this Court and an attempt to take illegal possession of the property and the petitioner has come up with this Petition with an ulterior motive to



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prolong the Execution proceedings. Hence, this petition deserves to be dismissed.

7. Heard Learned Counsel on either side and perused the materials available on record.

8. Considering the rival submissions made and in the light of the observations made by the Learned Judge of this Court in judgment dated 17.06.2006 passed in S.A.Nos.1850 and 1851 of 1989, the objection raised by the Petitioner herein before the Execution Court is found unacceptable. Hence, this Court is of the view that, this Civil Revision Petition has no merits.

9. Accordingly this Civil Revision Petition stands dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

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Index : Yes / No

Internet : Yes / No

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To

The Learned Principal District Munsif,
Coimbatore.

SATHI KUMAR SUKUMARA KURUP., J.
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