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C.R.P.Nos.2566 & 2661 of 2015

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.02.2023

CORAM

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

C.R.P.Nos.2566 & 2661 of 2015
and M.P.Nos.1 & 1 of 2015

C.R.P.No.2556 of 2015 :-

1. I.Mohammed Salahuddin
2. I.Mohammed Rafi
3. I. Mohammed Ameenuddin

... Petitioners

Vs.

1. Alhaj R.Mohammed Ibrahim Sashib
Family (Waqf-ad-aulad) Trust,
Rep. by Managed Trustee,
Alhaj Captain I. Mohammed Hussain,
No.3/181A, 1st Main Road,
Krishna Nagar, Palavakkam,
Chennai - 600 041.

2. I.Mohammed Sheriff
 3. I.Mohammed Yacoob (Died)
 4. I.Mohammed Jalaluddin
 5. Shajunnish Begum
 6. Y.Mohammed Khaleel
 7. Y.Mohammed Umar
 8. Y.Mohammed Kamil
- (Respondents 5 to 8 brought on



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record as LR's of the deceased
R3 viz., I.Mohammed Yacoob
vide Court order dated 28.06.2022
made in C.M.P.No.3628 of 2021
in C.R.P.(PD)No.2566 of 2015)

... Respondents

Prayer :- Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the order and decretal order in I.A.No.315 of 2015 in Waqf.O.S.No.4 of 2015 on the file of the Waqf Tribunal cum Principal Subordinate Judge of Chengalpattu, dated 09.06.2015.

For Petitioners : Ms.V.Srimathi

For Respondents

For R1 : Mr.Zafarullah Khan

R3 : Died

For R5 to R8 : Mr.E.Sathyaraj

C.R.P.No.2661 of 2015 :-

I.Mohammed Jalaluddin

... Petitioner

Vs.

1. Alhaj R.Mohammed Ibrahim Sashib
Family (Waqf-ad-aulad) Trust,
Rep. by Managed Trustee,
Alhaj Captain I. Mohammed Hussain,
No.3/181A, 1st Main Road,
Krishna Nagar, Palavakkam,
Chennai - 600 041.

2. I.Mohammed Sheriff

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3. I.Mohammed Yacoob (Died)
 4. I.Mohammed Salahuddin
 5. I.Mohammed Rafi
 6. I. Mohammed Ameenuddin
 7. Shajunnish Begum
 8. Y.Mohammed Khaleel
 9. Y.Mohammed Umar
 10. Y.Mohammed Kamil
- (Respondents 7 to 10 brought on
record as LR's of the deceased
R3 viz., I.Mohammed Yacoob
vide Court order dated 23.03.2021
made in C.M.P.No.2796 of 2021
in C.R.P.(PD)No.2661 of 2015)

... Respondents

Prayer :- Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the judgment and decretal order in I.A.No.315 of 2015 in Waqf.O.S.No.4 of 2015 on the file of the Waqf Tribunal cum Principal Subordinate Judge of Chengalpattu, dated 09.06.2015.

For Petitioner : Mr.A.Jenasenan

For Respondents

For R1 : Mr.Zafarullah Khan

R3 : Died

For R4 to R6 : Ms.V.Srimathi

For R7 to R10 : Mr.E.Sathyaraj



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COMMON ORDER

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Both the Civil Revision Petitions have been filed as against the fair and decretal order dated 09.06.2015 passed by the learned Waqf Tribunal cum Principal Subordinate Judge, Chengalpattu, in I.A.No.315 of 2015 in Waqf.O.S.No.4 of 2015, thereby granting interim injunction as against the petitioners in both petitions.

2. The petitioners in both Civil Revision Petitions are the defendants 3 to 5 and the sixth defendant in the suit filed by the first respondent in Waqf.O.S.No.4 of 2015, for declaration and permanent injunction. While pending the suit, the first respondent filed an application in I.A.No.315 of 2015 for interim injunction and the same was allowed. Aggrieved by the same, the defendants 3 to 5 and 6 filed the present Civil Revision Petitions.

3. The learned counsel appearing for the petitioners in both revision petitions contended that the Waqf Tribunal has no jurisdiction to grant a decree of declaration. Whether the suit property Waqf or not lies



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entirely within the jurisdiction of Tamil Nadu Waqf Board. Further more, the Waqf Board is not made as a party in the suit and it is fatal to the entire proceedings. Under Sections 6 and 40 of the Waqf Act, the declaration power has been vested with the Waqf Board and not with the Tribunal. Further under Section 83 of the Waqf Act, the Tribunal has no jurisdiction to decide the inter-se dispute between the members of the Waqf-al-aulad.

3.1. He further submitted that under Section 5(2) of the Waqf Act, after a property is notified to be Waqf property, a determination is made by a civil Court whenever any dispute arises after the notification is published by the Waqf Board as to whether a particular property specified as Waqf property in a list published in a Waqf property or not. Section 6 further provides that the civil Court shall not entertain any such suit after expiry of one year after the date of publication of the list by the Board. Therefore, the jurisdiction of the Tribunal under Section 6(1) of the Waqf Act, arises only after the declaration is made in the list of Waqfs and not before.



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3.2. He further submitted that the claim of the first respondent is that the document termed as a Will was an irrevocable trust. Even according to the first respondent, the testator had cancelled the same on 14.02.2013. Therefore, before declaring the same as null and void, the first respondent is not entitled to maintain the entire suit. In fact, the first respondent asked for interim injunction in the nature of mandatory injunction and it cannot be granted, since there is no prima facie case made out in favour of the first respondent.

3.3. In support of his contention, he relied upon the judgment reported in **2015 (4) CTC 34** in the case of **Nagoor Kaniammal & ors Vs. Tenkasi Vangaru Muthu Meeran Sahib Thailka Pallivasal & ors.**, in which this Court after extracting the provision under Sections 5 & 37 of the Waqf Act, cited the judgment of the Hon'ble Supreme Court of India reported in **2001 (1) CTC 561** in the case **Tamil Nadu Waqf Board Vs. Hathija Ammal died by LRs.**, as follows :-

“6. In the event, any property has been omitted by inadvertence or otherwise, then it is for Waqf Board to take



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action as provided under Section 27 of the Act. If the Waqf Board has reason to believe that a particular property is a Waqf property then it can itself collect information and if any question arises whether a particular property is a Waqf property or not it may, after making such enquiry as it may deem fit decide the question and such decision of the Waqf Board shall be final unless revoked or modified by a Civil Court. Such action has not been taken by the Waqf Board in this case.

7. The High Court is justified in holding that the Waqf Board had no right to institute suit for declaration that any property is a Waqf property as the scheme of the Act clearly indicates. The High Court further found that as far as the appellant is concerned with regard to title of any property, it must comply with the requirements of Sections 4,5 and 6 or 27 of the Act, which means that if any property is not published as Waqf property as required under Section 5(2) of the Act or the Board has not invoked the special power under Section 27, the Waqf Board cannot file a suit for declaration and possession and on that basis upheld the order made by the Trial Court as affirmed by the First Appellate Court.”

Therefore, the Waqf Board has got no right to institute a suit for declaration



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that any property is a Waqf property unless the requirements under Sections 4, 5, 6 & 21 of the Waqf Act are complied with.

3.4. In the case on hand, there is no publication of list of Waqf property as contemplated under Section 5 of the Waqf Act, nor the Register of Waqf. Therefore, the Waqf Tribunal has no jurisdiction to try the suit, since the suit property never declared as Waqf property. Therefore, the interim order of injunction ought not to have been granted in favour of the first respondent and it is liable to be set aside. Hence, he prayed to allow the present civil revision petitions.

4. Per contra, the learned counsel appearing for the first respondent submitted that Waqf is defined under Section 3(r) of the Waqf Act. Waqf means the permanent dedication by any person, of any movable or immovable property for any purpose recognised by the Muslim law as pious, religious or charitable and includes. A Waqf-alal-aulad to the extent to which the property is dedicated for any purpose recognized by Muslim law as pious, religious or charitable.



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4.1. He further submitted that the entire suit properties belonged to the father of the first respondent. The first respondent's father also constructed a Mosque in the land comprised in Survey No.119/1-A, situated at Pudupatinam Village, Chengalpattu Taluk and handed over the management to local jamathdars. In respect of the suit property, the first respondent's father had executed a Private Family Trust Deed (Wakf Al Aulad) in the form of Will and the same was registered vide Document No.12 of 1998 dated 04.03.1998. The nomenclature of the said document is only Trust Deed, though it was named as Will. In the said Will so many directions were given by the first respondent's father. Therefore, for the purpose of carrying out the object of the Will, he had executed the sale deed in favour of Alhaj Ibrahim Teacher Training Institute, in respect of 5.17 acres of land comprised in Survey No.250/4, 252/1 Pulaimbakkam Village, Walajabad Taluk, Kancheepuram District.

4.2. He further submitted that in order to destroy the name of the Trust, the petitioners and the respondents 4 to 6 herein created fabricated settlement deed as if executed by the first respondent's father, in respect of



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the property which are referred in the Trust Deed. Therefore, the first respondent filed petition before the Tribunal and the Tribunal rightly granted interim injunction. It doesn't warrant any interference from this Court. Hence, he prayed for dismissal of both the petitions.

5. Heard Ms.V.Srimathi, learned counsel appearing for the petitioners in C.R.P.No.2566 of 2015, Mr.A.Jenasenan, learned counsel appearing for the petitioner in C.R.P.No.2661 of 2015, Mr.Zaffarullah Khan, learned counsel appearing for the first respondent in both petitions and Mr.E.Sathyaraj, learned counsel appearing for the respondents 5 to 8 in C.R.P.No.2566 of 2015.

6. The first respondent Trust filed suit in Waqf.O.S.No.4 of 2015, for declaration and permanent injunction as against the petitioners and other respondents. While pending the suit, they also filed an application in I.A.No.315 of 2015 for interim injunction and the Waqf Tribunal granted interim injunction, as against which the present Civil Revision Petitions. The only ground raised by the petitioners is that the Tribunal has got no



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jurisdiction to try the suit, since the subject property is not waqf property.

Therefore, the Tribunal has no jurisdiction to try the main suit itself.

7. On a perusal of Will dated 04.03.1998, registered vide document No.12 of 1998 in the name of Private Family Trust Deed (Waqf Al Aulad), it revealed that there are certain directions issued by the father of the first respondent. The terms are as follows:-

“(i) The first respondent's father had divided the properties in two schedules viz., schedule 'A' and Schedule 'B' and created a Family Trust (Wakf Al Aulad) and for the said Family Trust (Wakf Al Aulad) and he has appointed the first respondent as the first Trustee and the defendants 1 to as the further trustees and among the seven person, whoever is pious and following the principles of Islam without any flaw, shall be appointed as the President.

(ii) The first respondent's father had appointed his son-in-law Dr.Jamaluddin, son of Vadanagoor Meeran Sahib, shall be the Secretary of the Trust and one Basheer Ahmed, son of Gaffar



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Sahib, shall be the Assistant Secretary of the Trust. His father further averred that he was maintaining the Pallivasal and Madrasa in Puliambakkam Village as President and the same shall be devolved upon the Trustees after his death and Trustees should be appointed on from his male descendants in the hereditary line of succession.

(iii) The first respondent's father further given a direction that after his lifetime, his corpse should be interned in Puliambakkam Village and Fatiha should be recited on his death anniversary and free meal should be distributed to 100 persons. His father further directed that Fatiha should be recited on the birth date of Prophet Mohammed (PBUH) and Kauthul Aalam Mohideen Abdul Kahder Jeelai and Fatiha should be recited on the Nagoor Shahul Hameed Khader Owlia Badsha on the date of Sandal and Urs Festival and on all these occasions poor feeding should made by the Trustees.

(iv) Further directed that in Puliambakkam Village, a Madrasa should be formed and religious instructions to be imparted to the various Musilm children as well as technical education to them and for performing all the above, the income derived



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from the schedule A properties should be utilized.

(v) So far as the schedule “b” properties are concerned, 10 cents of land should be given to S.A.Mohideen Sahib and remaining properties should be shared as per Muslim Personal Law among the sons and daughters of his father and his father reserved his right to change the text of the document.”

In fact, for the purpose of carrying out the objects of the said terms, the first respondent's father also executed sale deed dated 21.04.1992, in favour of Alhaj Ibrahim Teacher Training Institute, in respect of the land ad measuring 5.17 acres comprised in Survey Nos.250/4, 252/1, situated at Pulaimbakkam Village, Walajabad Taluk, Kancheepuram District.

8. However, the petitioners and the respondents 4 to 6 were claiming the suit property by way of settlement deed. They were born through the second wife of the first respondent's father. They also filed suit for partition and separate possession in O.S.Nos.47 & 48 of 2014 and the first respondent also filed the present suit and all are pending. As per Will, the first respondent's father had created Trust Deed. In respect of the



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property, the petitioners and the respondents 4 to 6 sought for partition as against the first respondent. Therefore, the first respondent was constrained to file suit before the Tribunal.

9. According to the first respondent, it is a Deed of Family Trust as per the terms of the Will. Therefore, the Tribunal granted interim injunction as against the petitioners and the respondents 4 to 6 herein. The grounds raised by the petitioners questioning the nature of the property and jurisdiction of the Tribunal. Where as these Civil Revision Petitions are filed as against the order of interim injunction thereby restraining the petitioners and the respondents 4 to 6 herein from interfering the administration of the trust properties and collecting the rents from the said properties. Therefore, the judgment relied upon the learned counsel appearing for the petitioners are not helpful to the case on hand. This Court finds no infirmity or illegality in the order passed by the Court below and it doesn't warrant any interference from this Court.



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10. Accordingly, both the Civil Revision Petitions stand dismissed.

However, the petitioners are at liberty to raise all these ground before the Tribunal in the manner known to law. Consequently, connected miscellaneous petitions are closed. There shall be no order as to costs.

21.02.2023

Internet : Yes

Index : Yes/No

Speaking order/Non-speaking order

rts

To

1. The Principal Subordinate
Judge cum Waqf Tribunal,
Chengalpattu,



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G.K.ILANTHIRAIYAN, J.

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