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S.A.No.962 of 2015

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : .01.2023

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THE HONOURABLE MRS.JUSTICE T.V.THAMILSELVI

S.A.No.962 of 2015

A.Shoukath Ali

... Appellant

Vs.

Saithani Bi Darga
Tindivanam Taluk
Vandavasi,
Rep.by

1.S.Kamal
Treasurer

2.S.Ameer John
Secretary

3.K.Mohammad Ali

... Respondents

Prayer :- Second Appeal filed under Section 100 of CPC against the Judgment and Decree dated 04.06.2014 in A.S.No.44 of 2013 on the file of the Sub Court, Cheyyar, Tiruvannamalai District, confirming the Judgment and Decree dated 21.01.2013 in O.S.No.167 of 1997 on the file of the Principal District Munsif, Vandavasi, Tiruvannamalai District.



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For Appellant : Mr.K.M.Ramesh
For R1 : No appearance
For R2 & R3 : Mr.T.R.Rajaraman
for Mr.A.Thameem Mohideen

JUDGMENT

This Second Appeal has been preferred by the appellant as against the Judgment and Decree dated 04.06.2014 in A.S.No.44 of 2013 on the file of the Sub Court, Cheyyar, Tiruvannamalai District, whereby, the Judgment and Decree dated 21.01.2013 in O.S.No.167 of 1997 on the file of the Principal District Munsif, Vandavasi, Tiruvannamalai District, has been confirmed and the plaintiff was granted with the relief of permanent injunction.

2.The appellant herein is the defendant in O.S.No.167 of 1997, on the file of the Principal District Munsif, Vandavasi, and the said suit was filed by the respondents herein/plaintiffs for the relief of permanent injunction against the appellant/defendant, not to cause any interference in the acts, affairs and functions of the plaintiffs Darga, situated at Survey No.167/2 in Government Poramboke Land, Vandavasi Taluk, named as Saithani Bi Darga & Shajathi Bi Darga.

3.The contention of the plaintiffs is that, they are the office bearers and founders of the alleged Darga and the defendant used to visit the Darga and cause



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unnecessary interference in the amicable functions of the said Darga. Hence, the suit.

4.The defendant denied the status of the 2nd and 3rd plaintiffs as founders and representatives of the Darga and also contended that the representatives of the Nawab Jimmah Masjid alone can look after the entire affairs of the said Darga. As the administration was not properly conducted, one Driver – Ibrahim Sayub was appointed as President and both the plaintiffs and defendant were permitted to look after the affairs of the Darga and thus, the defendant is working as a Driver in the Transport Corporation and the 1st plaintiff is the Conductor and the 2nd plaintiff is running a Soda shop at the Vandavasi Bus stand. After the demise of Driver – Ibrahim Sayub, the affairs of the Darga was not properly maintained and when it was questioned by the defendant, the plaintiffs filed the present suit.

5.The Trial Court framed four issues and analysed the evidences and witnesses, adduced on both sides. On the side of the plaintiffs, nearly 79 documents were marked as Exs.P.1 to 79 and 2 witnesses were examined as P.W's.1 and 2. On the side of the defendant, 26 documents were marked as Exs.R.1 to 26 and the defendant was examined as D.W.1.



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6.Considering all those documents and the submissions made by the learned counsel on either side, the Trial Court has held that the Darga was under the management of the plaintiffs and if it is under the control and management of Nawab Jimmah Masjid as alleged by the defendant, the defendant ought to have taken steps to implead them, but the defendant failed to do so. Further, the documents filed and the evidence adduced on the side of the defendant also perused by the Trial Judge and held that the documents show that the defendant along with the plaintiffs participated in the management of the Darga, before filing of the suit. But the defendant caused interference in the affairs of the management and the same was proved through the evidence of the defendant who admits that he took away the Hundials of the Darga, without getting permission from the other members and also often caused interference in the management and its affairs. Therefore, the suit is decreed by granting permanent injunction against the defendant.

7.Challenging the said finding, the defendant preferred an appeal in A.S.No.44 of 2013 before the Sub Court, Cheyyar, wherein, the Lower Appellate Judge individually analysed the facts and evidence. Before the Lower Appellate Judge, the defendant raised his objections, stating that the Darga is under the



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control of Wakf Board and as such, the suit is not maintainable before the Civil Court, as per Section 85 of the Wakf Act.

8.Considering the said submission as well as analysing the evidence on record, the Lower Appellate Judge concluded that the Darga was not registered as per the provisions of the Wakf Act and therefore, the Civil Court has jurisdiction to decide the issue and also held that the defendant has caused interference in the plaintiffs affairs, thereby the suit, as such is maintainable. In fine, the learned First Appellate Judge has dismissed the appeal thereby confirming the decree and judgment passed by the trial Court. Even if the prayer for permanent injunction was rightly allowed by the Trial Court, in the appeal, it was confirmed by the Lower Appellate Court. Challenging the concurrent findings of the Courts below, the present Second Appeal has been filed by the defendant in the suit and the same was admitted by this Court on the following substantial question of law:-

“Whether the suit filed by the plaintiffs is barred under Section 85 of the Wakf Act, 1995 and consequently, whether the concurrent findings rendered by the courts below in favour of the plaintiffs are sustainable in law, in the absence of any specific finding rendered based on Section 85 of the Wakf Act ?”

9.Now, the point for consideration is, ‘Whether the suit, as such is



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maintainable before the Civil Court or as per Section 85 of the Wakf Act, jurisdiction of the Civil Court is barred ?'

10.The learned counsel for the respondents 2 and 3/plaintiffs 2 and 3 would submit that Saithani Bi Darga was commenced 23 years back and the representatives of the said Darga is the plaintiffs herein. Now, the plaintiffs are managing the affairs of the Darga. At the time of filing of the suit, the said Darga is a private Darga. Further, he contended that in the suit schedule Darga, it contains two cremated Samadhis and the building to store the things of the devotees and Namaz will be done under the Asbestos roof shed. The plaintiffs are the office bearers and founders of the Darga and the defendant used to visit the Darga and always demand money, in order to visit Wakf Board, situated at Madras, in respect of the affairs of the Darga. However, the said defendant interfered in the affairs of the Darga, in an high handed manner, therefore, the plaintiffs rushed to the Court and filed the present suit.

11.There is no representation for the appellant/defendant. But the contention of the defendant before the trial Court is that under the management of these plaintiffs, Darga is not functioning properly. Further, he also contended that the plaintiffs, who took money from the Hundials, once in a week, not maintained



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proper accounts for the same. When he raised objections, they filed a false suit.

This defendant also participated in the Darga affairs, for some time and not accepting the same, the plaintiffs have filed the present suit for permanent injunction.

12.The further contention made by the defendant before the Courts below is that the Civil Court has no jurisdiction to try the suit and for the plaintiffs Darga, Wakf Board alone having jurisdiction to adjudicate the issue.

13.By way of reply, the learned counsel for the respondents 2 & 3 / the plaintiffs 2 & 3 would submit that so far, the Darga was not registered as required under Section 85 of the Wakf Act and thereby, the Civil Court alone is having jurisdiction.

14.On perusal of records, it reveals that as per Ex.B.11 – Proforma filed before the Wakf Board, but the said Darga was not registered with the Wakf Board, as required under Section 85 of the Wakf Act. Though the defendant contended that the Wakf Board alone having jurisdiction, he has not produced any document to show that the plaintiffs Darga is registered under the Wakf Act. Ex.B.11 – Proforma, is not a document of registration and it is not supporting the



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contention of the defendant, and the same was rightly objected by the Court below, which needs no interference by this Court. Therefore, the plaintiffs are able to establish the case that it is a private Darga and it is not registered under the Wakf Act. Moreover, Section 85 of the Wakf Act clearly speaks that if it is a Wakf property, Civil Court has no jurisdiction. But as discussed above, so far, the Darga is not registered under the Wakf Act and it still remains as a private Darga. Hence, the Civil Court has jurisdiction to grant the permanent relief of injunction. However, the registration of Waqfs under the Waqf Act 1954 and under the subsequent amending Acts is mandatory, there could be certain circumstances due to which the Waqfs could not have been registered under the present Act. Hence, the Waqf Act 1995, (Act 27 of 2013) provides the following provisions to cause registration of the Waqfs registered before the commencement of this Act deemed to be registered, which are as follows:-

“Section 41. Power to cause registration of Waqf and to amend register :-

The Board may direct a mutawalli to apply for the registration of a Waqf or to supply any information regarding a Waqf or may itself cause the Waqf to be registered or may at any time amend the register of Auqaf.

Section 43. Auqaf registered before the commencement of this act deemed to be registered.

Notwithstanding anything contained in this chapter, where



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any Waqf has been registered before the commencement of this Act, under any law for the time being in force, it shall not be necessary to register the Waqf under the provisions of this Act and any such registration made before such commencement shall be deemed to be a registration under this Act.”

15.Thus, from the bare reading of the above provisions under the Waqf Act, 1995, it is clear that all the Waqfs, whether registered under the Act or registered under any other Law before the commencement of this Act, shall come within the ambit and scope of the Waqf Act 1995 and shall be deemed to be a registration made under the Waqf Act 1995. However, considering the fact that the plaintiff submitted proforma to Wakf Board, the relief of injunction is restricted until register the Wakf as per Act.

16.In the result, this Second Appeal is dismissed. However, relief of injunction is restricted until register the Wakf, as per Act. No costs.

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Index : Yes / No
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T.V.THAMILSELVI, J.

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To

- 1.The Sub Court, Cheyyar, Tiruvannamalai District.
- 2.The Principal District Munsif, Vandavasi, Tiruvannamalai District.
- 3.The Section Officer, V.R.Section, High Court, Madras.

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