



C.R.P.(MD).Nos.1692 to 1699 of 2008

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON: 11.09.2023

DELIVERED ON: 06.10.2023

CORAM

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

C.R.P.(MD).Nos.1692 to 1699 of 2008
and MP(MD).Nos.2,2,2,2,2,2,2 & 2 of 2008 and
CMP(MD).No. 10416 of 2023

CRP(MD).No.1692 of 2008

Veluchamy (died)

2.Chellakkani

3.Shivakumar

4.Koveni Pon Sornam

5.Kokiladevi

....Petitioners

(Petitioners 2 to 5 are brought on record
as legal heirs of the deceased sole petitioner)

Vs

1.Samsudeen

2.Naazar

3.Mohammed Shalisha
President of Kanmian Pallivasal
Kanmian Pallivasal Street
Tirunelveli Town

1/15



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4.The Secretary
Tamilnadu waqf Board
Santhome High Road
Mylapore, Chennai

5.Kanmian Pallivasal
Kandiaperi, Tirunelveli Town
Through its Muthavalli
S.Mohammed Jaffer Khan Pani

....Respondents

(3rd respondent is substituted the President
of Kanmian Pallivasal vide Court order
dated 24.09.2020)

(5th respondent is impleaded vide Court order
dated 09.12.2022)

PRAYER: in CRP(MD).No.1692 of 2008 : Civil Revision Petition filed
under Article 227 of Constitution of India, to allow the civil revision
petition by setting aside the judgment and decree passed in O.S.No.365 of
2002 on the file of the waqf Tribunal (Principal Sub Court), Tirunelveli
dated 30.03.2007.

For Petitioners	: Mr.N.GA.Natraj
For R1 & R2	: Mr.M.P.Senthil
For R3	:
For R4	: Mr.Chandrasekar Standing Counsel
For R5	: Mr.V.Meenakshi Sundaram



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All these revision petitions have been filed under Section 83(9) of the waqf Act 1995 by the plaintiffs in O.S.Nos.365 of 2002, 118 of 2005, 120 of 2005, 121 of 2005, 122 of 2005 , 123 of 2005, 124 of 2005 and 125 of 2005 on the file of the waqf Tribunal/Principal Subordinate Judge, Tirunelveli.

2.The plaintiffs had filed the suits for declaration of title and recovery of possession. The suit property in all the suits are located in T.S.No.1701 or 1695/1 in Gandiyaperi Village, Tirunelveli Taluk, Tirunelveli.

3.According to the plaintiffs, the suit schedule properties having an extent of 1.17 acres in Old Survey No.102 originally belonged to one Gandhimathinatha Pillai and Ramalakshmi Ammal. The said Gandhimathinatha Pillai had sold the western half of the property to Pandiperumal Pillai. The said Pandiperumal Pillai had sold the said property on 23.12.1943 in favour of one Velayutha Mudaliar under Exhibit A10. The original co-sharer namely Ramalakshmi Ammal had sold the eastern portion of the property on 15.10.1943 in favour of Velayutha Mudaliar under Exhibit A9. Thus Velayutha Mudaliar become the owner of



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the entire extent of 1.17 acres.

4.The plaintiffs had further contended that the said Velayutha Mudaliar had sold this property to Aazhvar Pillai on 31.01.1945 under Exhibit A1 who in turn had sold it to Arunachala Mudaliar on 27.04.1946 under Exhibit A19. The said Arunachala Mudaliar had bequathed this property in favour of his wife Muthammal. The said Muthammal had sold the property in favour of one Lakshmana Pandaram on 14.03.1980 under Exhibit A16. The said Lakshmana Pandaram had bequeathed his property in favour of his legal heirs on 01.04.1981 under Exhibit A3 Will. The legal heirs of Lakshmana Pandaram had entered into a partition deed on 27.10.1986 under Exhibit A17. In the said partition deed, the suit schedule properties were allotted to the share of Ramalakshmi Ammal and Deivakumar. Both of them are said to have executed a power of attorney in favour of a third party who in turn had sold it to 13 persons. These purchasers have filed the above suits seeking declaration of title and recovery of possession.

5.The plaintiffs had further contended that third defendant mosque does not have any title to the suit schedule properties. In view of disturbance made by the defendants, they have issued a legal notice on



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03.05.1994 under Exhibit A43 for which a reply was issued by the defendants under Exhibit A44 on 14.05.1994. Thereafter, the plaintiffs had issued a statutory notice as contemplated under Section 89 of the waqf Act to the defendants under Exhibit A45 on 10.01.1995.

6.The plaintiffs had further contended that two, third parties have filed O.S.No.161 of 1996 before the District Munsif Court, Tirunelveli with regard to the suit schedule properties as against the defendants herein and the suit was decreed as prayed for and the said decree has attained finality. The plaintiffs had further contended that the defendants by laying the survey stones started disturbing the possession of the plaintiffs on 15.03.2002. Therefore, the plaintiffs are constrained to file the present suits.

7.The third defendant in his written statement had contended that the suit schedule properties belonged to Pallivasal and the revenue records also stand in the name of Pallivasal. Though O.S.No.161 of 1996 ended in favour of the third parties, the appeal filed by Pallivasal in A.S.No.57 of 2003 was allowed by the District Court, Tirunelveli in which the title of the mosque has been confirmed.



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8.The defendants had further contended that at no point of time, the plaintiffs are in possession of the property and in fact, the defendants have put up compound wall encompassing the entire suit schedule properties. The Commissioner report and the sketch filed in O.S.No.161 of 1996 would clearly establish the fact that there is a compound wall. Hence, the defendants have prayed for dismissal of the suit.

9.Findings of the waqf Tribunal:

(i)The sale deed in favour of the plaintiffs do not reflect the boundaries. It could be seen from the pleadings that the plaintiffs had purchased the house sites. Therefore, the boundaries are necessary to locate and identify the suit schedule properties from and out of the total extent of 1.17 acres.

(ii)The plaintiffs have not produced any revenue records either in their names or in the name of their predecessors in title to establish their possession.

(iii)The plaintiffs have simply mentioned Survey Nos.1701 and 1695/1 and there is no proof of subdivision of the said survey numbers. The plaintiffs have not identified or located the suit schedule properties.



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(iv) Though the plaintiffs had relied upon the Will said to have been executed by Arunachala Mudaliar in favour of Muthammal, they have not produced the said document. The plaintiffs have not produced the power of attorney said to have been executed by Ramalakshmi Ammal and Deivakumar.

(v) Exhibits B3 to B5 tax receipts stand in the name of the third defendant mosque which indicate that they are in possession of the property.

(vi) Exhibits B1 and B2 sale deeds and Exhibits B8 to B10 Commissioner's report and sketch would indicate that the suit schedule properties have been compounded by the mosque. Therefore, the third defendant has established his possession.

10. Based upon the above said findings, the trial Court was pleased to dismiss the suits. As against the same, the present civil revision petitions have been filed.

11. Submissions on the side of the learned counsel appearing for the revisions petitioners:

(i) Though the defendants had claimed that it is a property of the mosque which is notified as a waqf, no document has been produced.



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(ii)The defendants have not explained how the mosque become the owner of the property.

(iii)The trial Court was not right in relying upon the two sale deeds namely Exhibits B1 and B2 to arrive at a finding that the suit property has been compounded by mosque.

(iv)He had further contended that Exhibits B8 to B10 are Commissioner's report and sketch filed in O.S.No.161 of 1996 and the said document cannot be marked in the present suit without examining the Advocate Commissioner. The plaintiffs had filed all the title deeds relating to their vendor and they have proved their title. On the other hand, the defendants have not established their title over the suit schedule properties.

(v)He had further contended that the trial Court was not right in dismissing the suits when specific boundaries have been pointed out in the plaint schedule.

(vi)When the defendants have not raised any issue with regard to the location or identity of the properties, the trial Court was not right in dismissing the suits on the said ground. In fact, the plaintiffs have also produced the patta and other revenue records relating to the suit schedule properties which have been ignored by the waqf Tribunal.



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(vii) Since the plaintiffs have established their title over the property, they are entitled to seek a decree for declaration of title and recovery of possession.

12.Submissions by the learned counsel appearing for the respondents/defendants:

(i) The third defendant had filed CMP(MD).No.10416 of 2023 to receive two documents as additional evidence in the revision petitions. The first document is a town survey register issued by the Tirunelveli Municipal Corporation relating to T.S.Nos.1674 to 1709. The second document is a waqf proforma report dated 15.09.1956

(ii) According to the learned counsel for the respondents, the town survey register will clearly indicate that the suit survey numbers stand in the name of Pallivasal. He had further contended that the waqf revenue report prepared in the year 1956 would also indicate that the suit survey number belonged to the third defendant Pallivasal.

(iii) Due to inadvertence, these two documents could not be placed before the Tribunal. Hence, the waqf prayed for allowing the said applications and to mark those documents as Exhibits B11 and B12.



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13.Though the revision petitioners were granted time, they have not chosen to file their counter in the additional evidence application.

14.The learned counsel for the respondents had contended that the suit properties have been notified as a waqf property and they have been published in the gazette. The plaintiffs herein have not chosen to file a suit for declaration of title within one year from the date of publication of gazette. Therefore, the present suit for declaration of title is barred by limitation. He had further contended that the plaintiffs have not established the title by examining the parties connected with the document. He had further contended that Pallivasal is in possession of the property for more than 60 years and the entire suit property has been surrounded by a compound wall. On the other hand, the plaintiffs have not established their title or possession over the suit schedule properties.

15.In fact, the revenue records also stand only in the name of the third defendant mosque and not in the name of the individual plaintiff. The plaintiffs have not properly identified and located the suit schedule properties and therefore, they are not entitled to a decree for declaration of recovery of possession. Hence, they prayed for confirming the order passed by the waqf Tribunal.



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16.I have considered the submissions made on either side and perused the material records.

17.The plaintiffs have pleaded about a Will said to have been executed by Arunachala Mudaliar in favour of his wife Muthammal. This document has not been placed before the Court for reasons best known to them. The plaintiffs have also not produced the power of attorney said to have been executed by one Ramalakshmi Ammal and Deivakumar on the basis of which several sale deeds came to be executed in favour of the plaintiffs.

18.The plaintiffs have relied upon the Judgment in O.S.No.161 of 1996 on the file of the Principal District Munsif Court, Tirunelveli. However, it is pointed out by the defendants that the said judgment and decree have been reversed the First Appellate Court in A.S.No.67 of 2003 on 13.10.2003 confirming the title in favour of Pallivasal which is marked as Exhibits B1 and B2.

19.The defendants have also relied upon Exhibit B7 dated 17.08.1999 which is a communication addressed by Tahsildar, Tirunelveli to the effect the patta for the suit schedule properties stand in the name of the defendants. As per the said letter, the patta has not been mutated in



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favour of any other persons. Therefore, on the date of filing of the suit, the revenue records were standing only in the name of the third defendant Pallivasal.

20.The trial Court has categorically found that Exhibits B1 and B2, the judgment and decree in A.S.No.57 of 2003 reflect that the Pallivasal is in enjoyment of the property and have put up a compound wall encompassing the suit schedule properties. In Paragraph No.6 of the plaint, the plaintiffs have contended that on 15.03.2002, the defendants have forcibly erected the survey stones in the properties. Though the plaintiffs have prayed for recovery of possession from the defendants Pallivasal, they have not specifically pointed out the date on which they lost possession to the third defendant. The defendants have claimed that they are in possession of the property for more than 60 years in Paragraph No.4 of their written statement. In view of this written statement, the plaintiffs are duty bound to explain when they lost possession to the third defendant. However, no such explanation has been offered by the plaintiffs. The cause of action paragraph in the plaint only discloses the date on which the survey stones were erected. Entering into the property for the purpose of laying survey stones and thereafter leaving the property



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would not amount to possession of the property. However, Exhibits B1 and B2 point out that the suit property has been compounded by the third defendant. Therefore, it is clear that the plaintiffs have lost their possession even before filing of O.S.No.161 of 1996.

21.Even as per case of the plaintiffs, the suit schedule properties are having an extent of 4 ¼ cents out of 1.17 acres. Though the boundaries are mentioned in the schedule of properties, the trial Court has categorically found that there is no reference about the boundaries in the sale deeds of the respective plaintiffs. Therefore, the trial Court was right in arriving at a finding that the plaintiffs having purchased the house sites and have not established the lie and location of the suit schedule properties.

22.The respondents in the appeal have filed additional evidence of two documents which are sought to be marked. This Court is of the view that the waqf proforma report prepared by the statutory authority dated 15.09.1956 could be marked as Exhibit B11. The revision petitioners have not filed any counter to the application. A perusal of the proforma report indicates that T.S.No.1695/1 and T.S.No.1701 are part and parcel of the proforma report indicating the fact that these two survey numbers



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belonged to the third defendant Pallivasal. Though some third parties have been named to be in possession of the property in the report, neither plaintiffs nor their vendors' name are reflected in those documents.

23.CMP(MD).No.10416 of 2023 is allowed to the extent of marking photo copy of waqf proforma report 15.09.1996 as Exhibit B11.

24.In view of the above said deliberations, this Court does not find any error in these revision petitions warranting interference of this Court. Accordingly, all the revision petitions lack merits and the same stand dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

06.10.2023

Index : Yes/No
Internet : Yes/No
NCC : Yes/No
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To

1.The waqf Tribunal (Principal Sub Court),
Tirunelveli

2.The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.

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R.VIJAYAKUMAR, J

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Pre-delivery common order made in
C.R.P.(MD).Nos.1692 to 1699 of 2008
and MP(MD).Nos.2,2,2,2,2,2 & 2 of 2008 and
CMP(MD).No. 10416 of 2023

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