



C.R.P.(MD).No.2661 of 2018

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 23.08.2023

CORAM:

THE HONOURABLE MR.JUSTICE C.KUMARAPPAN

C.R.P.(PD)(MD)No.2661 of 2018

and

C.M.P(MD)No.11674 of 2018

- 1.Rahmadhunnisha Begam
- 2.Tmt.Sahitha Begam
- Sahul Ameethu (Died)
- 3.Abdulkadhar Jeylani
- 4.Jarina Begam
- 5.Mohammed Husain
- 6.Kathijabeevi

... Petitioners/Respondents 1 to 6/
Plaintiffs

-vs-

- 1.The Tahsildar,
Dindigul West Taluk,
Dindigul District.
- 2.The Assistant Director,
Survey and Land Reforms Department,
District Collector Office,
Dindigul District.
- 3.The Special Tahsildar,
Town Survey Scheme (Dindigul),
Dindigul Town,
Dindigul District.

...1 to 3 Respondents/7 to 9 Respondents/
1 to 3 defendants



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4.The Chief Executive Officer,
Wakf Board,
Chennai.

5.The Executive Officer / Administrative Officer,
Begampoor Mosque,
Dindigul Town,
Dindigul District.

...4 & 5 Respondents/ Petitioners/
4 & 5 Respondents

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the fair order and decreetal order passed in I.A.No.1688 of 2017 in O.S.No.304 of 2017, on the file of the Additional District Munsif, Dindigul dated 27.07.2018 by allowing this revision petition and issue appropriate orders.

For Petitioners : Mr.M.Saravanakumar

For R1 to R3 : Mr.M.Senthil Ayyanar
Government Advocate

For R4 & R5 : Mr.G.Chandrasekar

ORDER

The present Civil Revision Petition has been filed by the petitioner under Article 227 of the Constitution of India, against the fair and decreetal order dated 27.07.2018 in I.A.No.1688 of 2017 in O.S.No.304 of 2017, on the file of the Additional District Munsif, Dindigul.



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2. The petitioners herein are the plaintiffs and the respondents are the defendants 1 to 3 before the court below.

3. It appears that the petitioners have filed a suit for the relief of declaration in respect of the scheduled mentioned property. After filing of the suit, the defendants 4 & 5 have moved an application seeking to return the plaint before the Wakf Tribunal as the scheduled mentioned property is the Wakf property. In pursuance there of, the court below has allowed the application and has directed the petitioners to present the plaint before the Wakf Tribunal. Aggrieved with the said order, the petitioners/plaintiffs are before this Court.

4. The learned counsel appearing for the petitioners would vehemently submit that only the portion of the property in S.F.No.389/D is a wakf property, therefore, the very institution of the suit before the civil Court is maintainable.

5. The learned counsel for the respondents would submit that even for argument sake if the petitioner herein is not accepting the nature of the suit



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property as Wakf property, since the 6th defendant raised an issue that the suit property is a Wakf property, then it is incumbent up on the Court to decide the nature of the suit property whether it is a wWkf property or not. If that being the case, the Wakf Tribunal is an appropriate forum.

6. This Court has given anxious consideration to the submissions of the learned counsel on either side.

7. According the plaintiffs, it is an admitted case that the portion of the property S.F.No.389/D of Dindigul Village is the Wakf property. However, the respondents, namely, the Wakf Board as well as the Jamath contents that the entire property is a Wakf property. Therefore, the real issue is whether the suit property is Wakf property or not. The respondents would invite the attention of this court in respect of Section 85 of the Wakf Act, 1995. The relevant section is extracted hereunder:-

“85. Bar of jurisdiction of Civil Courts:- No suit or other legal proceeding shall lie in any Civil Court in respect of any dispute, question or other matter relating to any wakf, wakf property or other matter which is required by or under this Act



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to be determined by a Tribunal.

8. As per Section 85 of the Wakf Act, the Civil Court jurisdiction has been barred in respect of any dispute or question or other matter relating to any Wakf.

9. The learned counsel for the respondents has relied upon the judgment of ***Rashid Wali Beg vs. Farid Pindari and others*** reported in **2022(4) SCC 414**, wherein, the Hon'ble Supreme Court has held that to decide whether the suit property is a Wakf property, or not, the proper forum would be Wakf Tribunal and not Civil Court.

10. Here, admittedly, the real issue exist in the present suit is whether the suit property is Wakf property or not. Hence in view of the settled legal proposition, the appropriate forum is the Wakf Tribunal. Thus, the court below has rightly concluded and allowed the application filed by the defendants so as to return the plaint to Wakf Tribunal. Hence, this Court could not find any reason to interfere with the order of the court below. However, considering the peculiar circumstances of the case, if in any case petitioner is



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herein filing an application before the Wakf tribunal within a period of six weeks from the date of receipt of this order, the limitation during which the Civil Revision Petition is pending may be excluded as per section 14 of the Limitation Act.

11. In the result, the Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

23.08.2023

NCC : Yes/No
Index : Yes / No
Internet : Yes / No
am

To
The Additional District Munsif,
Dindigul.



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C.KUMARAPPAN,J.

am

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