



C.R.P.(MD)No.521 of 2017

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.(MD)No.521 of 2017

and

C.M.P.(MD)No.2415 of 2017

Abdur Rehman ... Petitioner / 1st Plaintiff

M.Sheik Hussin (Died) (Exonerated) ... 2nd Plaintiff

Vs.

1.The Thee Vettiappa Pallivasal
Vadakarai, Shenkottai Taluk,
Tirunelveli District,
through its President.

2.Sheik Hussain

3.Syed Mohamed

4.Jannath Basiral

5.The Tamil Nadu Wakf Board,

Having office at Mannady,

Chennai,

Rep. through its

Chief Executive Officer

... Respondents / Respondents



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Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India, against the judgment and decree passed in O.S.No.417 of 2010, on the file of the Wakf Tribunal (Principal Sub Court, Tirunelveli), dated 28.11.2016.

For Petitioner : Mr.S.Meenakshi Sundaram, Senior Counsel
for Mr.N.Ga.Natraj

For Respondents : Mr.N.Syed Ali for R1 to R4
: Mr.D.S.Haroon Rasheed,
Standing Counsel for R5

ORDER

The revision petitioner is the first plaintiff, and the respondents herein are the defendants before the trial Court. The instant Revision Petition has been filed against the decree and judgment passed in O.S.No. 417 of 2010, on the file of the Wakf Tribunal (Principal Sub Court, Tirunelveli), dated 28.11.2016.

2.Shun of unnecessary details, the brief averments of the plaint is that:

2.1.The first defendant - Pallivasal was established nearly 100 years ago and many devotees, who were residing surrounding areas, offer daily prayers. The plaintiff would further submit that one Theethar Rowther executed a registered deed, dated 02.02.1932 and thereby, he bequeathed



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a large extend of property to perform Religious Ceremony to the first defendant - Pallivasal. The said Theethar Rowther has no issues. Hence, he adopted one Syed Mohamed, and arranged a marriage for him with Theethar Beevi. As per the recitals of the document, dated 02.02.1932, the said Syed Mohamed and his wife - Theethar Beevi were given power to administer the properties and perform Philanthropic activities as mentioned in the above deed.

2.2. According to the above deed, after the demise of Syed Mohamed and Theethar Beevi, their children alone are entitled to administer the properties and to perform ceremonies of the first defendant - Pallivasal. The plaintiff would further submit that, the deed, dated 02.02.1932, is nothing but a Wakf Nama and that the nomenclature of the deeds styled as “settlement deed” is wrong and not valid. The said Syed Mohamed and Theethar Beevi had three issues, by name, Theethar Shahib, Abubaker Shahib and Mohamootha Beevi.

2.3. While this being so, after the demise of Syed Mohamed, his wife- Theethar Beevi was again married one Hussain Ali. Out of this



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second wedlock, the said Theethar Beevi had three issues, namely, the defendants 2 and 3, and one girl child, by name, Mymoon Beevi.

2.4. It is the submission of the plaintiff that, after the demise of Theethar Beevi, the defendants 2 and 3 are in unlawful possession of the schedule mentioned property, and that they were not doing any Philanthropic activities as ordained in the settlement deed. The plaintiff would further submit that the defendants 2 and 3 had also created some documents in favour of the fourth defendant and inducted her in possession of some of the properties. The plaintiff would also submit that except the first defendant Pallivasal, no other could become the owner of the suit schedule property, since the schedule mentioned property is the Wakf, created by the Theethar Rowther. The plaintiff would also submit that after they came to know about the misdeeds of the defendants, they have sent various representation to the fifth defendant, but all were all fell on deaf ears.

2.5. The plaintiff would also submitted that the defendants 2 and 3 are attempting to put up construction in the first item of the scheduled



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property and they were trying to convert the schedule mentioned property into house plots. According to the plaintiff, the defendants are misappropriating a sum of Rs.35,000/- per year from the income of the schedule property. Therefore, the defendants 2 to 4 are bound to pay the means profit at the rate of Rs.35,000/- per year. Hence, the plaintiff filed a suit for declaration that the schedule mentioned properties are the Wakf properties attached to the first defendant Pallivasal and also for recovery of possession of the said Pallivasal.

3. Brief averments of the written statement, filed by the defendants 2 to 4, is as follows:-

3.1. According to these defendants, the plaintiffs have no *locus standi* to file the suit against these defendants. They would further submit that there is no cause of action for the plaintiffs to file a suit against the defendants. According to this defendants, Theether Rowther has only created a charge over some of the properties, so as pursue his Philanthropic activities.



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3.2. It is the submission of this defendants that, as per the settlement deed, dated 02.02.1932, executed by Theether Rowther, the suit schedule properties were the absolute properties of one Syed Mohamed and Theether Beevi. They would also submit that the said deed, dated 02.02.1932, is not at all a Wakf Nama. They also referred about the legal heirs of the Theethar Beevi, through her first husband - Syed Mohamed and through her second husband - Hussain Ali. They also referred about the gift deed, dated 04.12.1972 executed by the Theethar Beevi along with her son born through her first husband, namely, Mohammed Abubaker, in favour of the second and third defendants, by way of two separate documents and the Syed Mohammed, also executed another gift deed, on 02.02.1981 in favour of Mymoon Beevi and Mohmootha Beevi. Therefore, they would submit that by virtue of above documents, the above persons are in possession and enjoyment of the schedule mentioned property, according to the above documents.

3.3. It is the submission of the defendants that, Syed Mohamed and his wife-Theethar Beevi filed a suit against the Wakf in O.S.No.6 of 1965, on the file of the District Munsif, Tenkasi. Wherein the District



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Munsif, Tenkasi, has held that the document, dated 02.02.1932 is not a Wakf deed, but, only a settlement deed. The defendants would further submit that the first appeal in A.S.161 of 1966 and S.A.No.80 of 1968, arising out of the decree in O.S.No.6 of 1965, confirmed the decree of the trial Court, as such, the very decree will become a *res judicata* to the present suit. The defendants further submit that though there were so many transactions the plaintiff did not add all those aliene. Therefore, this defendants would pray that the very suit is liable to be dismissed.

4. Before the Court below, on the side of the plaintiff, one witness was examined as P.W.1 and 10 documents were marked as Ex.A1 to Ex.A10 . On behalf of the defendants, 2 witnesses were examined as D.W.1 and D.W.2 and 24 documents were marked as Ex.B1 to Ex.B24.

5. The learned trial Judge, has framed as many as five issues and has held that, the suit property is not a Wakf property, and therefore held that the plaintiff is not entitled for the relief of possession and has ultimately dismissed the suit.



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6. Aggrieved with the order of the learned trial Judge, the plaintiff has filed the instant Civil Revision Petition.

7. For the sake of convenience, the parties are referred according to their litigative status before the trial Court.

8. The learned Senior Counsel appearing on behalf of the plaintiff / revision petitioner would submit that the very finding of the learned trial Judge, that the suit is hit by *res judicata* is contrary to the factual position. He would also submit that when the High Court has held that there is a Wakf Alal-Aulad, then the Subordinate Judge cannot decide the nature of Wakf property and hold it as a private property. He would further submit that, when the line of succession is changed, then as per the settlement deed, the property will vest with the first defendant. It is also the submission of the learned Senior Counsel that when the extent of dedication in the property could not be ascertained to its precision, then the entire property should be construed as a Wakf property. In this regard, the learned Senior Counsel would rely upon the judgments of this Court reported in **1981- 2- MLJ-176 (Tamil Nadu Wakf Board V. Sannasi**



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***Munayathiriyar*) and 1979- 1- MLJ-189 (The Tamil Nadu Wakf Board V. M.Ibrahim Musuee Muthavalli, Bayan Bai's Wakf).**

9. Per contra, the learned counsel for the respondents would earnestly submit before this Court that, the finding of the learned trial Judge is perfectly in order and that the suit filed by the plaintiff / revision petitioner is hit by the Principle of res judicata, which contention was appreciated by the learned trial Judge in its right perspective. Therefore, he would submit that instant suit is liable to be dismissed by dismissing the Civil Revision Petition. The learned counsel for the respondents would rely upon the unreported judgment of the Court held in C.RP.No.256 of 2019 and W.P.No.17718 of 2019 (V.Krishnan B.Akbar), dated 24.06.2020.

10. I have given my anxious consideration to the either side submissions.

11. Before embark in to the disputed facts for easy reference it is imperative upon the Court to record the admitted facts. It is admitted by either party that the said Theethar Rowther was the original owner of the



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suit schedule property. It is further admitted that by virtue of Ex.A1, deed he executed the settlement deed, in favour of one Syed Mohamed and his wife -Theethar Beevi. It is also admitted that Theether Beevi has two husbands, viz., Syed Mohamed and Hussain Ali. It is also not in dispute that the said Theethar Beevi has two sons through her first husband, namely, Theether Shahib, Abubakkar Shahib. Through her second husband the said Theethar Beevi has two sons, namely, Sheik Hussain and Syed Mohamed. According to the plaintiff, Ex.A1- settlement deed dedicates certain portion of the income from the schedule of property to do some philanthropical activities.

12. The learned Senior Counsel for the plaintiff / revision petitioner would submit that, when the dedication of some portion of income to the Wakf and when the remaining portion of the income was provided to some other person, then when such arrangement could not be followed in precision, then, the entire property would become Wakf property.



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13. The learned Senior Counsel would invite the attention of this Court in respect of judgment reported in **1981- 2- MLJ-176 (Tamil Nadu Wakf Board V. Sannasi Munayathiriyar)**. The relevant portion of the judgment is as follows-

*“6. The learned counsel for the respondent submitted that this is a case of dedication for pious or religious purposes only to the extent of one share out of eight and a half and, therefore, it would not be a case of public wakf at all. I am unable to agree with this submission. Where there is no separate disposition of property for public charitable purposes and private purposes, as known to Mohammadan Law, the wakf will be taken as a dedication in favour of the Almighty, and the entire property will have to be treated as wakf property. In **V. Mohammed Mahin v. Madras State Wakf Board**. K. S. Venkataraman J. has held in similar circumstances that there would be a wakf and that the enjoyment by the manager for the time being could only be subject to the conditions of the wakf. The prohibition against alienation was also construed to mean that the document could only be treated as a wakf-alal-aulad. Even where there is a concurrent and immediate gift for charitable objects in a wakf created in favour of one's own family children or descendants, the learned Judge pointed out that it would*



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warrant the implication of an ultimate trust for those objects on the failure of the family or descendants. This decision does not, in any way, support the contention of the learned counsel for the respondent that this is not the case of a wakf-alal-aulad at all. The definition provision, in so far as it is material, of the [Wakfs Act](#), 1954, runs as follows: -

" 'Wakf means the permanent dedication by a person professing Islam of any movable or immovable property for any purpose recognised by the Muslim law as pious, religious or charitable, and includes. ...(iii) A wakf-alal-aulad to the extent to which the property is dedicated for any purpose recognized by Muslim Law as pious, religious or charitable"

7. In the present case, there is no separate dedication for pious religious and charitable purposes and for purposes of the maintenance of the members of the family. Therefore the entire document has to be taken as creating a wakf and the properties would come within the purview of the [Wakfs Act](#) 1954, As pointed out by Venkataraman J. in a case like this, it would be necessary for the Wakf Board to frame a scheme providing for ,the allocation among the different objects in the manner contemplated by the wakf.

8. In the present case, I am only concerned with the question as to whether the Wakf Board is entitled to recover possession of the property. The alienation has been



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made by a person who was not entitled to alienate the property. It is not clear how the vendor, a lady could even be a Manager, as contemplated by the wakif under Ex. A. 2. If the vendor was a person who could be a Manager, then he is bound the ban on alienation stipulated in the document. If he or she was a stranger then also he or she could not have alienated the property, The result is that the alienation is not binding on any one. The alienation would be invalid and illegal and would not pass any title. “

(Emphasis supplied by this Court)

14. From the above judgment, the learned Senior Counsel emphasis before this Court that when there is no separate dispossession of property for public charitable purpose and for a private purpose, then the entire property would be treated as the Wakf property. Therefore, by inviting the recitals of Ex.A1- settlement deed, the learned Senior Counsel would submit that the suit property is a Wakf property.

15. However, the learned counsel for the respondents 1 to 4 would earnestly submit before this Court that the issue whether the suit property is the Wakf property or not has already been decided in the previous suit in O.S.No.6 of 1965. The learned counsel would further



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submit that Ex.P17 was filed by Theether Beevi and her son Abubakar Shahib against the fifth defendant - Wakf Board. The said factum is not disputed by the revision petitioner herein.

16. The learned Senior Counsel for the revision petitioner would invite the attention of this Court in respect of the findings that, in the entire suit property, only an extent of Rs.30/- is the Wakf, and not in respect of the entire property. Even while this Court perused the judgment, there is an issue framed in that suit as to whether the whole suit properties are Wakf or a sum of Rs.30/- alone from the income of the properties of Wakf.

17. It appears from the records, that the decree and judgment of O.S.No.6 of 1965, has reached finality in S.A.No.80 of 1968. Therefore, this Court is of the view that when there was a suit by Theethar Beevi during 1965, that too against the Wakf Board, who is the fifth defendant / fifth respondent herein, and has got a finding in their favour that the suit property is not a Wakf and only an extent of Rs.30/- is Wakf and when such finding has reached its finality up to the Second Appeal level, the very institution of the present suit for the very same relief that the plaint schedule



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property is to be declared as a Wakf property is indubitably and irrefutably hit by the Principles of *res judicata*.

18. At this juncture, this Court would like to rely upon the judgment relied by the respondent, held in an unreported judgment in C.R.P.No.256 of 2019 and W.P.No.17718 of 2019 (V.Krishnan and another V. B.Akbar). In the above judgment, the Court, after referring the oft quoted judgment of ***K.K. Modi Vs. K.N. Modi and others*** reported in ***1998 (3) SCC 573***, has explained about the evil of relitigation and stated the relitigation is an abuse of process of Court.

19. An yet another argument was advanced by the learned Senior Counsel that, as per Ex.A1 – settlement deed, only the legal heirs of Syed Mohamed and Theethar Beevi are entitled to succeed and not the other legal heirs qua the children of Theethar Beevi through her second husband. Therefore, he would submit that the defendants 2 and 3 have no right over the property. In this regard, the learned counsel for the respondents 1 to 4 would submit that, the very condition stipulated in the settlement deed – Ex.A1 was found to be illegal in O.S.No.455 of 1985 and that the said



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finding reached finality. Therefore, though the said deed – Ex.A1 stipulates certain condition, in view of the subsequent decree passed in O.S.No.455 of 1985, regarding the validity of the settlement deed, this Court is of the view that the gift deed executed by Theethar Beevi and her son Abubakar Shahib born through her second husband are valid document.

20. Therefore, once the gift deed become valid and that the property covered under the gift deed is not fully Wakf property and the Wakf is only to an extent of Rs.30/- and when such issue was raised in the previous suit in O.S.No.6 of 1965 and decided finally and reached its finality, this Court is of the view that there are no material available, in favour of the petitioner to interfere with the well considered order of the Court below.

21. Therefore, the instant Revision Petition is liable to be dismissed and accordingly, **dismissed**. There shall be no order as to costs. Consequently, connected Miscellaneous Petition is closed.

23.08.2023

NCC : Yes/No
Index : Yes/No
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To

- 1.The Wakf Tribunal
(Principal Sub Court, Tirunelveli),
- 2.The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai.



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C.KUMARAPPAN.,J.

Ls

Order made in
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