



A.S.No.767 of 1990

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 20.06.2023

CORAM:

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

A.S.No.767 of 1990

Hasina Begum (Died)

2.Mahaboob Jan (Died)

3.Safiha

4.Safa (Minor)

5,Bilal (Minor)

(Minor appellants A4 and A5 are represented
through their mother A3 Natural guardian)

(Cause title amended vide Court order dated
04.02.2021 made in A.S.No.767 of 1990)

... Appellants

Vs.

1.Shoukath Ali

2.Liakath Ali

3.Riyaz

4.Minor Jamal

Rep. by his brother and
guardian Shoukath Ali.

5.Ayyub



A.S.No.767 of 1990

6.Kudubudin

7.Ziabudin

8.Nazira

... Respondents

PRAYER: Appeal Suit filed under Section 96 of C.P.C., 1908, against the judgment and decree passed in O.S.No.448 of 1986 dated 24.04.1990, by the learned V Additional Subordinate Judge, Trichy.

For Appellants : Mr.V.Raghavachari,
Senior Counsel for
Mr.S.Ramesh

For Respondents : Mr.P.Jamal Mohamed for R1 to R4
R5 to R8 – Tabal returned
No such addressee

JUDGMENT

This Appeal Suit has been remanded by the Hon'ble Apex Court in Civil Appeal No.20036 of 2017, on the ground that the High Court reversed the decree passed by the trial Court only on the ground that no issue as to the vesting of the property in wakf has been framed by the trial Court. After remanding, this matter has been heard afresh.



A.S.No.767 of 1990

2. For the sake of convenience, the parties are referred to herein, as per their own ranking before the trial Court.

3. The brief facts leading to the filing of this Appeal Suit are as follows:

(i) The suit property is a house property originally belonged to one Hyder Masthan Saheb, the paternal grandfather of the plaintiffs, the first defendant and the father of the defendants 2 and 3. The said Hyder Masthan Saheb had three wives. The first wife was Khatoonbi, the second wife was Zaithoonbi and the third wife was Azeeza Bi. The 5th defendant is the son of Hyder Masthan Saheb born through the first wife. The fourth defendant is the daughter of the fifth defendant and granddaughter of Hyder Masthan Saheb. The said Hyder Masthan Saheb had a son and daughter viz., Shahul Hameed and Raheemunnisa, through the second wife, but Raheemunnisa died in an unmarried state. The plaintiffs and the first defendant are the sons of Shahul Hameed. The defendants 2 and 3 are the sons of Hyder Masthan Saheb through the third wife, Azeeza Bi.

(ii) The said Hyder Masthan Saheb, by a deed of settlement dated 11.10.1946, settled the suit properties and other properties in favour of his descendants. The suit properties were in possession and enjoyment of Hyder



A.S.No.767 of 1990

Masthan Saheb, during his life time and after his life time, in the occupation of his descendants. It is the further contention of the plaintiffs that as per the settlement deed, the father of the plaintiffs, first defendant and defendants 2 and 3 and their male heirs have to reside in the suit property and perform the obligations imposed on them in the settlement deed.

(iii) It is also stated in the settlement deed that suit property should not be either alienated or even given on lease on any condition. As per the settlement deed, possession was taken by the plaintiffs' father Shahul Hameed and his cousins viz., defendants 2 and 3. They were in possession and enjoyment of the property as a legal male descendants of Hyder Masthan Saheb. Further, as per the settlement deed, they have no right of alienation, but they can only live in the property and they cannot even lease it out. It is also stipulated in the settlement deed that after the life time of the plaintiffs' father and the defendants 2 and 3, their male descendants are also entitled to live in the property from generation to generation. The intention of the settlor was to keep the property intact without any dissipation.



A.S.No.767 of 1990

(iv) The plaintiffs' father died in the year 1975. The plaintiffs and defendants 2 and 3 were living in the same property. In the year 1975, the plaintiffs and first defendant were minors. It appears that on 20.05.1975, the plaintiffs' father Shahul Hameed, his wife Mahrunnisa and the mother of the defendants 2 and 3 viz., Azeeza Bi said to have executed a sale deed in respect of the property in favour of the fourth defendant. The fourth defendant, who is the granddaughter of Hyder Masthan Saheb through the first wife, has also aware of the execution of the settlement deed. Besides, she has also aware of the defect in title. Just to purchase litigation, she seems to have purchased the suit property for a consideration of Rs.30,000/-.

(v) According to the plaintiffs, the sale deed is not a genuine transaction. At any event, it will not affect the rights of the plaintiffs and the first defendant. The plaintiffs came to know about the said settlement deed only recently. In the said settlement deed, the mother of the plaintiffs and the first defendant signed as their guardian. Hence, the alienation is illegal and invalid and will not bind on the rights of the plaintiffs and the defendants 1 to 3. In other words, it will not take away the rights of the plaintiffs, which are granted to them under the settlement deed dated 11.10.1946. Hence, the suit has been filed for declaration to declare



A.S.No.767 of 1990

the sale deed dated 20.05.1975, executed in favour of the fourth defendant is null and void and for recovery of possession of the suit properties to the plaintiffs for themselves and defendants 1 to 3.

4. Defendants 1 to 3, 5 and 7 remained ex-parte. Defendant No.4 has filed a written statement, which was adopted by the sixth defendant. It is the contention of the fourth defendant that the plaintiffs' father, mother and defendants 2 and 3 and their mother executed a registered sale deed dated 20.05.1975, for valuable consideration. The same is made to clear the debts due by the father of the plaintiffs, for which the suit house property was brought for sale. Ever since from the date of purchase, she has been in open, continuous and uninterrupted possession and enjoyment of the suit property in her own right and title after paying the house tax and the electric charges.

4.1. It is the further case of the fourth defendant that though Hyder Masthan Saheb has executed the alleged settlement deed dated 11.10.1946, in respect of the suit properties and other properties, the same was not given effect to and he was alone in possession and enjoyment of the suit properties in his own right and title. He duly cancelled the said settlement deed dated 11.10.1946 and thereafter, he has



A.S.No.767 of 1990

executed the settlement deed dated 27.05.1954, in respect of the suit properties and other properties in favour of the father of the plaintiffs, late Shahul Hameed, defendants 2 and 3, the mother of the defendants 2 and 3 and his first wife with absolute right. The possession of the suit property and other properties were given to the settlees by the settlor in pursuance of the settlement deed dated 27.05.1954. They continued to be in possession, till they sold the suit property to the fourth defendant on 20.05.1975.

4.2. The plaintiffs and the first defendant were not in existence at all either on 11.10.1946 or on 27.05.1954. Further, the plaintiffs and first defendant were the unborn children of late Shahul Hameed. Therefore, the plaintiffs cannot claim any right under the alleged settlement deed dated 11.10.1946, since they were unborn sons of late Shahul Hameed and the said document is void under Mohammedan Law. Further, it is the contention of the fourth defendant that the plaintiffs also estopped from questioning the validity of the sale deed dated 20.05.1975, executed by the father of the plaintiffs and similarly, the suit is barred by limitation.



A.S.No.767 of 1990

5. Based on the above pleadings, the trial Court has framed the following issues:

“1. Whether the deed of settlement dated 11.10.1946 is true and valid?

2. It is true that the said settlement deed dated 11.10.1946 is cancelled?

3. Whether the settlement deed executed by Hyder Masthan Saheb on 27.05.1954 is true and valid?

4. Whether the sale deed dated 20.05.1975 is invalid and void?

5. Whether the fourth defendant has perfected the title by adverse possession?

6. Whether the suit is framed as not maintainable?

7. Whether the suit is barred by limitation?

8. Whether the plaintiffs are entitled to declaration and recovery of possession as prayed for”

9. To what other relief, the plaintiff is entitled?”

6. Before the Tribunal, on the side of the plaintiffs, the first plaintiff examined himself as P.W.1 and six documents were marked as Ex.A1 to Ex.A6. On the side of the defendants, the fourth defendant herself was examined as D.W.1 and 31 documents were marked as Ex.B1 to Ex.B.31.



A.S.No.767 of 1990

7. Based on the evidence and materials, the trial Court held that pursuant to the settlement deed-Ex.A2, dated 11.10.1946, the suit property is a Wakf property, and also held that the sale deed is null and void and decreed the suit for declaration and for recovery of possession. Aggrieved over the same, an appeal has been filed before this Court by the fourth defendant. During the appeal stage, an application was filed in M.P.(MD)No.1 of 2007 for reception of additional documents as Ex.B32 to Ex.B34. The same was allowed by this Court and the documents have been marked as Ex.B32 to Ex.B34. This Court, by order dated 10.12.2007, allowed the appeal by setting aside the judgment of the trial Court. When the same was challenged before the Hon'ble Supreme Court in Civil Appeal No.20036 of 2017, the Hon'ble Supreme Court, by order dated 01.12.2017, set aside the judgment of this Court and remanded the matter to this Court for deciding the matter on merits. Therefore, this appeal has been once again heard afresh.

8. The learned Senior Counsel appearing for the fourth defendant / appellants would submit that the very suit itself was framed for declaration and for recovery of suit property, on the ground that the sale is not valid, since the male descendants of one Hyder Masthan Saheb were given right of residence. It is his



A.S.No.767 of 1990

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further contention that, in the entire pleadings, the plaintiffs have never whispered anything about the Wakf created on the basis of Ex.A2, settlement deed executed by the said Hyder Masthan Saheb. It is the further contention of the learned counsel appearing for the fourth defendant / appellants that though the settlement deed was originally executed creating Wakf in the year 1946 by the said Hyder Masthan Saheb, the property was not permanently dedicated for continuing the charities as mentioned in the said settlement deed. Therefore, it is his contention that in the absence of permanent dedication and mere recitals in the document, the lower Court assumed that Wakf was created.

9. It is the further contention of the learned counsel appearing for the fourth defendant / appellants that the said document of the year 1946, which was marked as Ex.A2. Even after the document Ex.A2, the settlor was enjoying the property as absolute property. Thereafter, he himself has cancelled the said settlement deed under Ex.B4, wherein he has clearly stated that he has executed a settlement deed under Ex.A2 and the performance mentioned in the settlement has not been acted upon and no activities have been carried away. Therefore, he has cancelled the said settlement. Thereafter, he has executed the settlement, settling the properties in favour of the legal heirs under Ex.B3, 27.05.1954. The said properties were



A.S.No.767 of 1990

settled in favour of Sahul Hameed and defendants 2 and 3. The plaintiffs and the first defendant were not born at the time executing Ex.A2, dated 11.10.1946 and also Ex.B3, dated 27.05.1954. The plaintiffs' father, first defendant and defendants 2 and 3 become absolute owner of the property and they executed a sale deed in favour of the fourth defendant, who is also the granddaughter of the original settlor.

10. It is the further contention of the learned counsel appearing for the fourth defendant / appellants that the plaintiffs' father has sold the other properties settled under Ex.B3, which is also the subject matter of the property in Ex.A2, dated 11.10.1946. Whereas, though the properties of agricultural purpose have also already been sold, suppressing the said fact, the plaintiffs have now chosen to file the suit only in respect of the house property alone and no other relief whatsoever sought against the purchaser. This aspect itself clearly proved the fact that the suit has been filed for unlawful enrichment. When permanent dedication has not been made in respect of immovable property and the deed of settlement was also cancelled by the settlor, there is no Wakf created legally. Such being the position, the plaintiffs' father, who become an owner on the basis of Ex.B3, dated 27.05.1954, had dealt other properties and the plaintiffs have now chosen to file a



A.S.No.767 of 1990

suit only in respect of house property, which itself clearly shows that the plaintiffs are estopped from questioning the sale deed in favour of the fourth defendant.

11. Further, the conduct of the plaintiffs in not pleading anything about the Wakf in the entire plaint itself, clearly shows that they are very much aware that there was no Wakf created and existence and their father also dealt the other properties, which is also the subject matter of Ex.A2, settlement deed dated 11.10.1946. Hence, it is the contention of the learned counsel appearing for the fourth defendant / appellants that when the plaintiffs are not even born at the time of execution of the settlement in favour of their father, now they cannot be contend that in the suit property, only the male decendants have given a right of residence. When the very document, under which the right of residence was given, was not acted upon and cancelled by the settlor, the properties are dealt in different transaction and sold to various third parties, the finding of the trial Court that the property is a Wakf property, is without any evidence and pleadings. The plaintiffs also suppressed the earlier document under which their father derived the title under Ex.B3 settlement deed. This fact itself clearly shows that the plaintiffs have not come to the Court with clean hands and the suit has been filed beyond the period of three years after attaining the majority, which is also clearly barred by



A.S.No.767 of 1990

limitation. In support of his submissions, he placed reliance on the following judgments:

1. In ***Chhedi Lal Misra (Dead) through LRs Vs. Civil Judge Lucknow and others*** reported in ***(2007) 4 SCC 632***;
2. In ***Mariymma Vs. Andunhi*** reported in ***1978 SCC OnLine Ker 211***;
3. In ***Muhammad Aziz-UD-Din Ahmad Khan Vs. The Legal Remembrances to Government*** reported in ***15All 321-13 A.W.N.***;
4. In ***Mohammed Vs. Mohammed Beke*** reported in ***(1996) 10 SCC 705***;
5. In ***Mohd. Khasim Vs. Mohd. Dastagir and others*** reported in ***(2006) 13 SCC 497***;
6. In ***Garib Das and Ros. Vs. Munshi Abdul Hamid and Ors.*** reported in ***AIR 1970 SC 1035***;
7. In ***Zafar Hussain Vs. Mian Mohammad Ghias-ud-Din and other*** reported in ***1936 SCC OnLine Lah 516***;
8. In ***T.N.Wakf Board Vs. Hathija Ammal (Dead) By Lrs. and others*** reported in ***(2001) 8 SCC 528***;
9. In ***Prem Singh and others Vs. Birbal and others*** reported in ***(2006) 5 SCC 353***;
10. In ***Wakf Board A.P., represented by its Secretary Vs. Biradavolu***



A.S.No.767 of 1990

Ramana Reddy reported in (1999) 6 SCC 582;

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11. In **L.C.Hanumanthappa (since Dead), represented by his legal representatives Vs. H.B.Shivakumar** reported in (2016) 1 SCC 332; and

12. In **Joseph Carls, Xavier Louis Vs. Stanislaus Costa and Ors.** reported in **AIR 1968 Mad 161**.

12. The learned counsel appearing for the plaintiffs / respondents submitted that the Plaintiffs ancestors have created Wakf and the property has been dedicated for the purpose of doing certain charity. Once the Wakf has been created, any subsequent alienation cannot be valid in the eye of law. According to him, the trial Court had clearly considered the entire aspects in this regard and held that the documents executed in favour of the fourth defendants is not valid in the eye of law. Therefore, it is the contention of the learned counsel appearing for the plaintiffs / respondents that the plaintiffs are entitled for recovery of possession as prayed for.

13. In the light of the above submissions, now the points arise for considering in this Appeal Suit are as follows:

1. Whether the suit property was permanently dedicated by its



A.S.No.767 of 1990

settlor to construe the same as a Wakf property for any purpose of religious in nature?

2. Whether the settlement deed dated 11.10.1946 was acted upon?
3. Was there a permanent dedication of the suit property as to create Wakf?
4. Whether the plaintiffs / respondents are estopped from questioning the document executed by their father, mother and defendants 2 and 3?
5. When Plaintiffs/Respondents have not challenged the sale in respect of the other properties stated to have been permanently dedicated as Wakf property are entitled to file a suit only in respect of portion of property which is the subject matter of Settlement Deed dated 11.10.1946.
6. Whether the trial Court is right in framing the issue as to the validity of the Wakf when the plaintiffs themselves have not pleaded in the plaint that Wakf has been created for charitable



A.S.No.767 of 1990

purpose?

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7. To what other relief, the parties are entitled to?

Points:

14. The suit has been filed for declaration to set aside the sale deed executed by the father of the plaintiffs and defendants 2 and 3 in favour of the 4th defendant. Relationship of the parties are not in dispute. One Hyder Masthan Saheb, who is the grandfather of the plaintiffs, first defendant and also the fourth defendant herein, had three wives. Fifth defendant is the son of said Hyder Masthan Saheb, born through the first wife. Fourth defendant is the daughter of fifth defendant. The plaintiffs are the grandchildren of Hyder Masthan Saheb. Plaintiffs' father one Sahul Hameed was the son of Hyder Masthan Saheb born through the second wife. Defendants 2 and 3 also the sons of Hyder Masthan Saheb, born through the third wife. Seventh defendant is the legal heir of third defendant, who died. The relationship is not disputed.

15. The plaint has been filed on the strength of the document Ex.A2, dated 11.10.1946 executed by Hyder Masthan Saheb, contending that the suit properties were settled, wherein the father of the plaintiffs, first defendant, defendants 2 and



A.S.No.767 of 1990

3 and their male heirs have to reside in the suit property and perform the obligation imposed on them in the document. In the entire plaint, it is not pleaded that the Wakf has been created on the basis of Ex.A2. There was no pleading as to permanent dedication of the immovable property to do the charity by feeding the poor people. Whereas, in the evidence, first time the first plaintiff has stated that the suit property was dedicated permanently and his grandfather has created a Wakf. Whereas, it is the specific contention of the defendants that there was no permanent dedication of the immovable property and no Wakf has been created. Having executed a settlement deed-Ex.A2, the settlor continued to be in possession and enjoyment of the suit property and he has cancelled the settlement deed dated 11.10.1946, under Ex.B4. Thereafter, he has settled the properties in favour of plaintiffs' father and others, not only the suit property but also other agricultural properties. Based on the said settlement deed, the agricultural properties have been sold to various third parties by the plaintiffs' father and defendants 1 to 3, which has not been included in the suit property. Hence, it is the specific defence of the learned counsel appearing for the fourth defendant / appellants that there is no Wakf has been created.

16. On a perusal of the entire plaint, it is seen that except stating that the suit property was settled in favour of the male descendants, in which they have given



A.S.No.767 of 1990

the right of residence with certain obligations, it is nowhere pleaded in the plaint that the suit properties were permanently dedicated and charity mentioned in Ex.A2 was continued by the settlor or any other person. It is also clearly established on record that while executing the settlement deed dated 11.10.1946-Ex.A2, subsequent cancellation and also the settlement in favour of the plaintiffs' father and defendants 1 to 3, the plaintiffs and the first defendant were not born.

17. Ex.B32 to Ex.B34 have been filed before this Court. Through Ex.B32-sale deed dated 04.06.1958, the father of the plaintiffs viz., Shahul Hameed has sold the property, which was settled in his favour under Ex.B3-settlement deed dated 27.05.1954. Similarly, through Ex.B33-sale deed dated 10.04.1964, the other legal heirs of Hyder Masthan Saheb, have sold the property, wherein also they clearly traced the title only on the basis of Ex.B3. The sale has been effected to clear the debts of the family. Through Ex.B34-mortgage deed, dated 28.12.1970, the defendants 2 and 3 have executed the mortgage deed and dealt the property individually. Ex.B4, the cancellation deed executed by the original settlor in Ex.A2 makes it clear that the settlor himself has stated that though he has executed the settlement deed for the purpose of certain charity in the year 1946, he continued to enjoy the property and patta also stands in his name and further, since



A.S.No.767 of 1990

the performance mentioned in the settlement has not been acted upon, he decided to cancel the settlement deed under Ex.B4. The very recitals in Ex.B4- the cancellation deed makes it clear that the settlor himself continued in possession and enjoyment of the property and all the revenue records also stood in his name and since the performance mentioned in the settlement has not been acted upon, he has cancelled the settlement deed. Thereafter, under Ex.B3, settlement deed, dated 27.05.1954, he has executed the settlement in favour of his sons not only the suit property but also other properties.

18. The plaintiffs' father is one Shahul Hameed, who is the son of the original settlor and the defendants 2 and 3 also dealt the property separately as per Ex.B32 to Ex.B34 and sold all other properties. These facts have been totally suppressed in the plaint. The plaint is proceeded, as if Wakf has been created in respect of the suit property and therefore, any sale made by the father of the plaintiffs and others are not valid and therefore, they sought to declare the sale as null and void and also sought for recovery of possession.

19. It is relevant to note that even in the prayer column, it is not the case of the plaintiffs that the suit property is required for the purpose of continuing the



A.S.No.767 of 1990

charity as originally envisaged by the settlor under Ex.A2, whereas, they have sought the personal relief of recovery of possession for their own benefit. No where in the evidence, it is established that the so called Wakf is continuing and all the charities earmarked in the Wakf has been performed by any of the legal heirs. Whereas the plaintiffs' father himself has sold certain properties, which is also subject matter under Ex.A2 and also sold the house property, which is the subject matter of the present suit, wherein the plaintiffs were also made as nominee parties and the suit has been filed after a period of three years after the plaintiffs attaining the majority. When the plaintiffs themselves have made as nominee parties in the sale and sale is made for clearing family debts. Plaintiffs ought to have challenged such sale within three years from their majority. The father of the plaintiffs and mother were also stood as guardians and executed the sale. The plaintiffs suppressing all the above facts, taking advantage of the recitals in the Ex.A2, settlement deed, have filed the suit.

20. It is relevant to note that though Ex.A2 shows as if the Wakf has been created in respect of the suit property and other properties, the very settlor himself has cancelled that settlement deed under Ex.B4-the cancellation deed, wherein he has specifically stated that the Wakf has never come into force and he continued in



A.S.No.767 of 1990

possession of the property. Therefore, he cancelled the same and again resettled the property to all the legal heirs. Only based on the said settlement deed, the properties have been dealt as individual property by other legal heirs, including the father of the plaintiffs. The fourth defendant has purchased the property on 20.05.1975. Thereafter, she continued to enjoy the property as absolute owner and all the mutations have also been taken place, which are also evident from Ex.B6 to Ex.B9, which shows that the fourth defendant, as absolute owner, has paid all the tax and revenue to the Government. Whereas in the plaint, it was stated that the property has been gifted to only male descendants and the right of residence in the house property were also given to them. In the absence of any evidence to show that there is a permanent dedication of the immovable property for any charitable purpose, it cannot be said that the Wakf is created automatically.

21. Though in Ex.A2 certain charges have been earmarked to feed the poor people, the very settlor himself, in a subsequent deed of cancellation under Ex.B4, clearly referred that the said settlement deed was not acted upon and no charity has been done, the revenue records also stood in his name and therefore, he cancelled it. In the absence of any evidence to show that the Wakf created under Ex.A2 has been acted upon, this Court is unable to accept the contention of the



A.S.No.767 of 1990

plaintiffs that there is a valid Wakf. It is the contention of the learned counsel appearing for the plaintiffs / respondents that once the Wakf has been created, the same cannot be cancelled by subsequent deed by the settlor. It is relevant to note that when the settlement deed has never been acted upon and settlor himself has retained possession and transferred the property to the other legal heirs, it could be held that no valid Wakf of the property as mentioned in the said deed was created.

22. In this regard, the High Court of Allahabad in a judgment in ***Muhammad Aziz-UD-Din Ahmad Khan Vs. The Legal Remembrances to Government*** reported in ***15All 321-13 A.W.N.***, has held as follows:

“According to the law of Sunni Muhammadana it is essential to the validity of a waqf that the waqf should actually divest himself of possession of the waqf property.

Hence, where a Sunni Muhammadan executed and registered what purported to be a deed of waqf, but never acted upon it and retained possession until his death of the property dealt with by the deed, which property subsequently passed to his two sons by inheritance.

Held that no valid waqf of the property mentioned in the said deed was constituted.”

23. Similarly, in ***Mariyumma Vs. Andunhi*** reported in ***1978 SCC OnLine Ker 211***, the Kerala High Court has held as follows:



A.S.No.767 of 1990

“It is expressly stipulated that the property shall remain as the joint property of executants Nos.4, 5 and 6 and they are to hold the property from generation to generation subject only to the restricts that the property should not be alienated in favour of any strangers nor burdened with debts, attachments or injunctions and that from out of the income the recitation of Quran and reading of Moulood in the family house should be got performed. Since the basic requisite that there should be a permanent dedication of the property for religious or charitable purposes is not satisfied in the present case, it must be held that no valid wakf has been created in respect of the plaint schedule property under Ex.A2.”

24. In *Chhedi Lal Misra (Dead) through LRs Vs. Civil Judge Lucknow and others* reported in (2007) 4 SCC 632, the Hon'ble Supreme Court has held that once a Wakf is created it continues to retain such character which cannot be extinguished by any act of the Mutwalli or anyone claiming through him. However, creation of the Wakf may be questioned if it is shown that the Wakif had no intention to create a Wakf, but had done so to avoid a liability.

25. Considering the above judgments and also evidence and pleadings, particularly Ex.B3 and Ex.B4 and also considering the subsequent sales made under Ex.B32 to Ex.B34, this Court is of the definite view that the Wakf was never



A.S.No.767 of 1990

existence. Though certain were charitable have earmarked in the year 1946, the settlor continued to enjoy the property, there was no permanent dedication of the property to the almighty; in fact he has cancelled the settlement deed also in the year 1954 under Ex.B4; thereafter, he settled the property and based on that, the properties have been dealt by the settlees under Ex.B32 to Ex.B.34; the sale of those properties have not been challenged and only as against the suit house property, which was purchased by the fourth defendant, in which the plaintiffs were made as eo-nominee party, the plaintiffs have filed the suit. The suit was also filed beyond the period of three years by the plaintiffs. The very conduct of the plaintiffs, suppressing the sale made by them or their father in respect of the properties, which were also the subject matter under Ex.A2 and claiming relief only in respect of the property which was purchased by the granddaughter through the first wife of the original settlor itself shows that they are not come to the Court with clean hands. From the nature of the pleadings and evidence, this Court is of the definite opinion that there was no permanent dedication of the suit property for the purpose of religious charity and the settlor continued to enjoy the property. Such view of the matter, this Court is of the view that the finding of the trial Court that the Wakf once created cannot be cancelled cannot be sustained in the eye of law. Accordingly, all the points are answered.



A.S.No.767 of 1990

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26. In the result, this Appeal Suit is allowed, setting aside the judgment and decree in O.S.No.448 of 1986, dated 24.04.1990, passed by the learned V Additional Subordinate Judge, Trichy. No costs.

20.06.2023

NCC : Yes /No
Index : Yes/No
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To

- 1.The V Additional Subordinate Judge, Trichy.
- 2.The Section Officer,
Vernacular Records,
Madurai Bench of Madras High Court,
Madurai.

N.SATHISH KUMAR, J.

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A.S.No.767 of 1990

Judgment in
A.S.No.767 of 1990

20.06.2023