



C.R.P.No.10 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Orders reserved on 21.02.2024

Orders delivered on 03.06.2024

CORAM :

THE HON'BLE Mrs.Justice **J.NISHA BANU**

C.R.P.No.10 of 2022

and

C.M.P.No.82 of 2022

Mohammed Shahid
S/o Mohammed Isaaq

.. Petitioner

Vs

1. Lenin,
S/o Dhatchanmoorthy
2. S.R.Shabir,
S/o Sheik Bijullulla
3. Mohammed Jaggiriya
S/o Mohammed Thirudin
4. Abdul Kadhar
S/o Shake Ibrahim
5. Kadhar Sherief,
S/o Usman Sherif

..Respondents



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PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India to strike out the plaint in O.S.No.54 of 2021 dated 04.09.2021 on the file of the District Munsif cum Judicial Magistrate, Kattumannarkoil and further direct the lower court to delete the above suit from the suit register.

For Petitioner	: Mr.S.Kumaradevan
For Respondents	: Mr.S.Rajamakesh for R1 No appearance for R2 to R5

ORDER

This Civil Revision Petition has been filed to strike out the plaint in O.S.No.54 of 2021 dated 04.09.2021 on the file of the District Munsif cum Judicial Magistrate, Kattumannarkoil and further, direct the lower court to delete the above suit from the suit register.

2. The brief case of the petitioner is as follows:

(i) The petitioner is the muthavalli of Ramzan Thaikka Wakf and the Wakf is a notified one as per the Wakf Act on 06.05.1959 and the main



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object of the Wakf is pious, religious and charitable. The property in Survey No.103/, 2, 3 admeasuring about total extent of 9.60 acre/cents situated at Udayargudi Village, Kattumannarkoil Taluk, Cuddalore District, has been granted to one Ramzanasha in order to maintain the Thaikka and chavadi and the said grant was confirmed under R.O.No.1107 of Udayarkudi village by the Inam Commissioner on 08.10.1861. The Thaikka came to be known as Ramzansha Thaikka. Ramazansha and his descendants were in possession and enjoyment of the above said property only in the capacity as muthavallies and for maintaining the said Thaikkas and chavadi.

(ii) Originally, some third persons including the 5th respondent were applying for patta in respect of the above survey number before Inam Abolition Tribunal, Cuddalore in I.A.T.No.6 of 1983 and Ramzan Thaikka Waqf filed a implead petition before Inam Abolition Tribunal, Cuddalore but the Settlement Officer dismissed the implead petition. Hence, Ramzan Thaikka Wakf preferred an appeal against the said order passed by the Tribunal in I.A.T.No.6 of 1983 and sought for recovery of possession in STA No.10 of 1989 before this Court and the other encroacher/third party



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filed appeal before this Court in S.A.Nos.1466 to 1468 of 1992 against the judgment passed in O.S.Nos.710, 711, 712 of 1986 which was filed by Ramzan Thaikka Wakf against the third parties for recovery of possession including the 5th respondent and this Court, passed a detailed judgment giving findings that Ramzan Thaikka Wakf is the owner of the above said property and entitled to recovery of possession and dismissed all the second appeals filed by the encroachers by order dated 30.01.1997. Thereafter, the petitioner therein filed three execution petitions in E.P.No.8 &9 of 2000 and 16 of 2001 before the District Munsif cum Judicial Magistrate, Kattumannarkoil for taking possession from the 5th respondent herein. On 17.11.2003, the suit property was handed over to muthawalli of Ramzan Thaikka Wakf. Till date, the above said property is a vacant land and there is lot of bushes and wastage in that property.

(iii) One Wadhooth Khan had filed O.S.No.55 of 2009 on the file of Wakf Tribunal, Principal Sub Court) at Cuddalore against the Ramzan Thaikka Mosque, to declare the above said property in favour of Periyapallivasal @ Udayargudi Mosque restraining the respondents from



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dealing with or interfering with the right, title, interest possession and enjoyment of the said property. The said suit was dismissed by judgment and decree dated 04.04.2012. Challenging the same, the plaintiffs therein filed C.R.P.No.2839 of 2012 before this Court and the same was dismissed by this Court by order dated 29.09.2021 confirming that the above property belongs to Ramzan Thaikka Mosque.

(iv) On 26.10.2021, one Wadhooth Khan (petitioner in the above CRP.No.2839/2012) and his men tried to enter into the property and threatened the petitioner herein to vacate the place. Hence, the petitioner gave complaint dated 02.11.2021 to the Superintendent of Police, Cuddalore through registered post to take action against Wadhooth Khan and his men and provide necessary protection to the petitioner to enter into Wakf land with peaceful possession but the enquiry is still pending.

(v) On 14.06.2021, the petitioner received a legal notice through 1st respondent's counsel stating that the 5th respondent is the original owner of the property and his father and his family cultivated the suit schedule



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property from the year 1989 as lease holder and that the petitioner and respondents 1 to 4 have given complaint before the Superintendent of Police Cuddalore that the suit property belongs to wakf of Ramzan Thaikka and the 1st respondent is attempting to encroach the property. Further, he had cultivated black babul tree and other punjai plants and the petitioner and the respondents 2 to 4 are disturbing his peaceful possession and enjoyment of the suit properties. The 1st respondent/ plaintiff also made averments that the respondents 2 to 4 are disturbing his peaceful possession of the property by stating that the defendants are members of Ramzan Thaikka Wakf. Therefore, the 1st respondent had knowledge that the suit schedule mentioned property belongs to Wakf, however, he had filed a suit before the District Munsif cum Judicial Magistrate Court, Kattumannarkoil. For the dispute raised against the wakf property, the remedy will be decided only by the Wakf Tribunal not by the Civil Court. Hence, the present civil revision petition for the aforesaid relief.

3. (i) Learned counsel for the petitioner would submit that the learned District Munsif ought not to have registered the plaint in suit register for the



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reason that the suit schedule property is the Wakf property and as per section 85 of the Wakf Act, 1954, the issue must be tried before the Wakf Tribunal alone. He would further submit that the 1st respondent/plaintiff had stated in para 7 of the plaint that the petitioner herein/2nd defendant represented as committee member of Ramzan Thaika wakf claimed that the suit schedule property belongs to wakf property. Therefore, from the said statement itself it is clear that the issue relating to suit schedule property is wakf property and the remedy is only before Wakf Tribunal.

(ii) Learned counsel would further submit that the 5th defendant already filed second appeal before this Court in S.A.No.1466/1992 and the same was dismissed by this Court and confirmed that Ramzan Thaikka Wakf is the original owner of the suit schedule property and the petitioner Wakf already filed execution petition before the learned trial Court in E.P.No.16 of 2001 and the possession was handed over to the Wakf on 17.11.2003 and the same was recorded and the E.P. was also closed.

(iii) Learned counsel would also submit that the Hon'ble Supreme



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Court in the decision reported in 2021 Supreme (SC) 649 (*Rashid Wali Beg v. Farid Pindari*) has held that any dispute arising out of Wakf property, the jurisdiction will be before the Wakf Tribunal alone and not before the Civil Court. Therefore, the respondents cannot proceed with the above suit for permanent injunction against the petitioner when the suit property relates to wakf property. Hence, the plaint in O.S.No.54 of 2021 is liable to strike out.

4. Per contra, the learned counsel appearing for the 1st respondent/plaintiff would submit that originally, the suit property belongs to Mumtaj, wife of Ibrahim. The father of the 1st respondent/plaintiff viz., Thakchinamoorthy had taken the property on lease and was doing cultivation vide lease agreement dated 10.06.1989. After the death of the plaintiff's father Thakchinamoorthy, the plaintiff was cultivating the subject property on lease from 2007. After the death of Mumtaz Begum, her son Usman Shahib became the owner of the property. Therefore, the 1st respondent/plaintiff was paying the lease amount on cultivation to Usman Shahib regularly. The 1st respondent had entered into lease agreement dated 05.05.1993 with the 5th respondent and claimed that the 5th



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respondent is the real owner of the property and the petitioner and respondents 2 to 4 are disturbing his peaceful possession of the property.

The dispute is a private dispute between the 1st respondent, the petitioner and the respondents 2 to 4 and hence, the remedy can be decided by the civil court.

5. Heard the learned counsel appearing for the petitioner, the learned counsel appearing for the 1st respondent and perused the materials available on record. Though notice had been served on respondents 2 to 5, no one entered appearance on behalf of them.

6. First of all, it would be apt and appropriate to extract section 85 of the Wakf Act, 1995, which reads as follows:

85. Bar of jurisdiction of civil courts.—

No suit or other legal proceeding shall lie in any civil court, revenue court and any other authority in respect of any dispute, question or other matter relating to any waqf, waqf property or other matter which is required by or under this



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Act to be determined by a Tribunal.

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7. After the Amendment Act 27 of 2013, even the eviction of a tenant or determination of the rights and obligation of the lessor and lessee of waqf property, come within the purview of the Waqf Tribunal. It is not that the 1st respondent/plaintiff had no knowledge that the property relates to the Waqf Property. It is seen from para No.6 of the plaint averment that the 1st respondent/plaintiff had stated that the defendants 1 to 4 representing the committee member of Ramzan Thaika Wakf, claiming that the suit schedule property belongs to Udayargudi Ramzan Thaikkal Wakf, gave a complaint before the Superintendent of Police, Cuddalore, alleging that the plaintiff was trying to encroach upon the waqf property. Thus, it is clear that the 1st respondent/ plaintiff had knowledge that the issue relating to the suit schedule property is a wakf property.

8. From the judgment produced by the learned counsel for the petitioners in STA.No.10/1989 passed by this Court, it is seen that the other encroachers/ third party filed appeal before this Court in S.A.Nos.1466 to



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1468 of 1992 against the judgment passed in O.S.Nos.710, 711, 712 of 1986 which was filed by Ramzan Thaikka Wakf against the third parties for recovery of possession including the 5th respondent herein and this Court heard all the matters and passed a detailed judgment giving a finding that the Ramzan Thaikka Wakf is the owner of the subject property and entitled to recovery of possession and dismissed all the second appeals filed by the encroachers vide order dated 30.01.1997. Thereafter, three execution petitions were filed in E.P.Nos.8 & 9 of 2000 and 16 of 2001 before the District Munsif cum Judicial Magistrate, Kattumannerkoil, for taking possession from the 5th respondent and on 17.11.2003, possession was taken and the suit property was handed over to muthawalli of Ramzan Thaikka Wakf.

9. Further, one Wadhooth Khan had filed a suit in O.S.No.55 of 2009 on the file of Wakf Tribunal, (Principal Sub Court) at Cuddalore against the Ramzan Thaikka Mosque, to declare that the subject property in favour of Periya Pallivasal @ Udayargudi Mosque and also to restrain the Ramzan Thaikka Mosque from in any manner dealing or interfering with Periya



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Pallivasal @ Udayargdi Mosque right, title, interest, possession and enjoyment of the subject property. The said suit was dismissed by judgment and decree dated 04.04.2012. Challenging the same, the plaintiffs therein filed C.R.P.No.2839 of 2012 against the said judgment before this Court and the same was dismissed by order dated 29.09.2021 and confirmed that the subject property belongs to Ramzan Thaikka Mosque.

10. From the above, it is seen that even in the earlier round of litigations, this Court had passed a detailed orders holding that the property is the Walf property. Even in the appeal filed by the third parties, it has been held that the subject property is the Wakf property and possession was also taken from the 5th respondent herein and the property was handed over to Muthawalli of Ramzan Thaikka Wakf.

11. Further, on 26.10.2021, when the petitioner herein tried to clear the bushes and wastage, Mr.Wadhooth Khan (Petitioner in CRP.No.2839/2012) and his men threatened the petitioner to vacate the place. Hence, the petitioner herein gave a complaint dated 02.11.2021



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before the Superintendent of Police, Cuddalore, to provide necessary protection to the petitioner to enter into wakf land and the enquiry is still pending. Subsequently, O.S.No.54 of 2021 was filed by the 1st respondent herein/ plaintiff seeking the relief of permanent injunction against the petitioner herein and respondents 2 to 4 herein not to disturb the peaceful possession and enjoyment of the suit schedule property. i.e., vacant land in Survey No.103/1,2,3 admeasuring about total extent of Acre 9.60 Acres.cents situated at Udayargudi Village, Kattumannerkoil Taluk, Cuddalore District. The property mentioned in O.S.Nos.710, 711, 712 of 1986 are all related to the same R.S.No.103, Udayargudi Village, Kattumnnarkoil T.K., South Arcot District and they are part of 9.60 acres which was declared as belonging to Ramzan Thaikka Mosque as per the order made in the above C.R.P.No.2839/2012. Therefore, as per section 85 of the Wakf Act, 1954, the issue should be tried before the Wakf Tribunal alone.

12. Further, Section 83(5) of the Wakf Act makes it clear that the Tribunal shall be deemed to be a Civil Court and shall have the same



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powers as may be exercised by a Civil Court under the CPC, while trying a suit or executing a decree or order. After Amendment Act 27 of 2013, even the eviction of a tenant or determination of the rights and obligation of the lessor and lessee of such property, come within the purview of the Tribunal.

13. Further, in the judgment of the Hon'ble Supreme Court reported in **2022 (4) SCC 414 (Rashid Wali Beg vs. Farid Pindari and others)** it has been held that whether the subject property is disputed to be Wakf property or admitted to be wakf property, the proper forum is the Wakf Tribunal and not the civil court. As in the present case, the above cited case was also filed by an individual and not by the Wakf.

14. In the light of the aforesaid judgment, this Court is of the view that to allow the 1st respondent/plaintiff to ignore the Waqf Tribunal and to seek a decree of permanent injunction from a civil court, would be ignoring the mandate of sections 83 and 85 of the Wakf Act.



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15. For all the above reasons, the plaint in O.S.No.54 of 2021 is hereby struck off from the file of District Munsif cum Judicial Magistrate, Kattuannarkoil. Accordingly, the Civil Revision Petition stands allowed. No costs. Consequently, connected miscellaneous petition is closed.

03.06.2024

Index :Yes/No
Speaking/Non-speaking order
vsi

To

The District Munsif cum Judicial Magistrate,
Kattumannarkoil



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J.NISHA BANU, J.

vsi

Pre-delivery order in
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