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C.R.P.No.1410 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 12.06.2024

DELIVERED ON : 29.07.2024

CORAM:

THE HON'BLE MR.JUSTICE M. NIRMAL KUMAR

C.R.P.No.1410 of 2024

and

C.M.P.No.7528 of 2024

N.Jeyalakshmi

... Petitioner

Vs.

1.Mohammed Alikhan

2.Faizel Mohammed

3.Rahman Khan

4.The Wakf Superintendent,
Wakf Superintendent's Office,
No.512, Ganthi Road,
Panruti.

5.The Chief Executive Officer,
Tamil Nadu Wakf Board,
No.1, Jaffer Syrang Street,
Vallal Seethakadi Nagar, George Town,
Chennai, Tamil Nadu.

... Respondents

PRAYER: Civil Revision Petition has been filed under Article 227 of Constitution of India, 1950, praying to call for the records in I.A.No.66 of



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2024 in I.A.No.699 of 2023 in O.S.No.234 of 2023 on the file of Principal District Munsif Court, Thirukoilure and set aside the order passed in I.A.No.66 of 2024 in I.A.No.699 of 2023 in O.S.No.234 of 2023 dated 15.03.2024.

For Petitioner : Mr.V.K.Bhuvaneshwar
for Mr.M.Vijaya Kumar
For Respondents 1 to 3 : Mr.T.Kowser Nissar
For Respondents 4 & 5 : Mr.Mohammed Fayaz Ali

ORDER

This Civil Revision Petition has been filed challenging the order passed in I.A.No.66 of 2024 in I.A.No.699 of 2023 in O.S.No.234 of 2023 on the file of Principal District Munsif Court, Thirukoilure.

2.The petitioner/plaintiff filed I.A.No.66 of 2024 in I.A.No.699 of 2023 in O.S.No.234 of 2023 under Order XIII Rule 3 r/w Section 151 of C.P.C. to reject Exs.P1 and P2 in I.A.No.699 of 2023, which was dismissed by the Lower Court by order dated 15.03.2024, against which, the present revision. The petitioner filed a suit in O.S.No.234 of 2023 against the defendants, who are the respondents herein.



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3.The contention of the learned counsel for petitioner/plaintiff is that the suit property originally owned by one Abdul Rahman Sahib. The suit property is classified as Inam Dry Land with Patta No.971, which was later changed into Patta No.395 and presently with Patta No.340. The said Abdul Rahman and one another, who are cultivating tenant, entered into registered lease deed in Document No.251 of 1938 dated 23.02.1938. After the life time of the said Abdul Rahman Sahib, his son Mohaboob Basha leased out the suit property in favour of the plaintiff's father-in-law, namely, Pavadai Pillai in the year 1945. Since then, the Pavadai Pillai and his family members are in enjoyment as cultivating tenant of the suit property and Mohaboob Basha was collecting annual rent regularly during his life time. The said Mohaboob Basha died without any issues and legal heirs. While so, the third defendant/Rahman Khan attempted to trespass into the property claiming that the property belongs to Ahala Sunnath Jamad by taking advantage of the demise of Mohaboob Basha. Hence, the plaintiff's father-in-law filed a suit in O.S.No.189 of 1990 before the Sub Court, Villupuram, in which, injunction



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was granted in I.A.No.851 of 1990 on 17.01.1991. Thereafter, the third defendant filed C.M.A.No.23 of 1991 before the District Court, Cuddalore and the District Court, Cuddalore dismissed the said C.M.A. on 18.02.1993. Thereafter, the suit transferred to the District Munsif Court, Thirukoilure and renumbered as O.S.No.55 of 1996. In the meantime, the plaintiff's father-in-law passed away and the suit in O.S.No.55 of 1996 dismissed on 04.03.1996 for non-appearance of the plaintiff therein.

4.The further contention of the learned counsel for petitioner is that the suit property does not belong to Wakf Board. No order was passed by the Wakf Board in respect of the suit property under Wakf Act. The Wakf Superintendent and Chief Executive Officer, Tamil Nadu Wakf Board, who are defendants 4 and 5, are taking steps to take the property from the plaintiff. In the meanwhile, the third defendant, on 08.03.2004, attempted to trespass into the property of the Pavadai Pillai. The sons of Pavadai Pillai, namely, Ramamoorthy, Selvaraj and Ramachandran approached the Collector,



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Villupuram. Thereafter, proceedings under Section 145 of Cr.P.C. initiated and the Executive Magistrate/Revenue Tahsildar restrained both parties not to enter into the property till the final order is passed, since there was a law and order issue. Thereafter, the petitioner/plaintiff filed the present suit against the defendants. In the said suit, I.A.No.699 of 2023 was filed by the second defendant/first respondent herein, under Order VII Rule 11 of C.P.C. seeking to reject the plaint, since it is barred under law. In I.A.No.699 of 2023, the petitioner filed I.A.No.66 of 2024 seeking to reject Exs.P1 and P2 marked in I.A.No.699 of 2023, since it was irrelevant. Further, in I.A.No.66 of 2024, his contention is that the Court has to examine only the averments made in the plaint and no other extraneous factors to be considered. The petitioner relied upon the Hon'ble Apex Court judgment in ***H.S.Deekshit and another vs. M/s.Metropoli Overseas Limited and others*** in ***S.L.P.No.2177 of 2022*** in support of his submissions. Further, the petitioner filed a memo on 03.02.2024 to give up the Wakf Superintendent and Chief Executive Officer, Tamil Nadu Wakf Boar/defendants 4 & 5. This memo not entertained by the



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Court for the reason that orders already reserved in I.A.No.699 of 2023, which is not sustainable and proper.

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5.The further contention of the petitioner is that the validity and veracity of the submissions stated in the plaint needs to be verified only during the course of trial and not at the threshold stage. Since the provision of rejection of plaint is an extraordinary provision having far and wider implications to be exercised sparingly, consistently and cautiously only in the rarest of the rare cases. The rejection of plaint can never be equated with adjudication of the rights of the parties. Therefore, a duty is cast upon the Court to strict interpretation of Order VII Rule 11(d) of C.P.C. The reasoning given by the Principal District Munsif Court, Thirukoilure that Exs.P1 to P14 were accepted only to determine the relevant question of fact is not in consonance with the context enumerated under Order VII Rule 11(d) of C.P.C. Hence, prays to set aside the impugned order.



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6.The contention of the learned counsel for respondents is that it is admitted by the petitioner/plaintiff that only Xerox copy of documents filed along with the plaint. The petitioner wantonly did not file any documents with the plaint, wasting the time of the Court. The petitioner filed I.A.No.47 of 2024 to reopen the petition, the respondents endorsed no counter and it was allowed. Thereafter too, the plaintiff failed to file or mark any documents and prolonging the case. The suit in O.S.No.189 of 1990 renumbered as O.S.No.55 of 1996 filed by the petitioner's father-in-law, wherein he admits that he was lessee of the suit property, but not stated how the lessor have title over the suit property and no revenue records filed to prove the title of the lessor. In O.S.No.55 of 1996, it was admitted that Mohaboob Basha managed the suit property and that the suit property was Inam property of Thirukoilure Mosque. In I.A.No.699 of 2023, Exs.P1 to P14 marked to prove that the suit properties belongs to Tamil Nadu Wakf Board. The certified copies of proforma issued by Executive Officer of Tamil Nadu Wakf Board and Madras Government Gazette dated 06.05.1959 confirms Section 4 of Wakf



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Board Act followed, the suit property was surveyed, which was processed under Section 5 of the Wakf Board Act, the suit property declared as property of the Mosque, Thirukoilure, published in the Madras Government Gazette. Hence, the suit property belongs to Tamil Nadu Wakf Board and the petitioner's prayer to reject Exs.P1 and P2 is not maintainable. These documents are public documents, necessary and relevant documents, which cannot be rejected. Hence, the petition was rightly dismissed.

7.He further submitted that petitioner's contention to give up defendants 4 and 5 in the suit, not maintainable, since it was pleaded in I.A.No.699 of 2023 that the suit property is a Wakf Board property and marked documents in support of it, after it was reserved for orders, apprehending adverse orders, the petitioner filed a memo to give up defendants 4 and 5 in the suit without giving any proper reason, just to drag on the proceedings, and that too, by way of memo. The suit property belongs to Tamil Nadu Wakf Board, hence, removal of defendants 4 and 5 is not



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maintainable. They are necessary adjudicating parties in the original suit. The first respondent is the Muthavalli/Thirukoilure Masjid Wakf Board President and second respondent is the President of Masjid. In such capacity only respondents 1 and 2 arrayed as defendants 1 and 2 in the suit. During the proceedings produced certified Proforma, official gazette, computerized patta, kist receipts, order of Thirukoilure RDO dated 10.05.2023, guideline value etc. Hence, the Lower Court finding that defendants 4 and 5 are necessary parties to the suit and they cannot be removed is proper, likewise prayer of rejection for Exs.P1 and P2 was also disallowed.

8.Considering the submissions made and on perusal of the impugned order it is seen that the first respondent/petitioner in I.A.No.699 of 2023 is entitled to file a rejection of plaint petition under Order VII Rule 11(d) of C.P.C. on the ground that the suit is barred by Law. The contention of the petitioner that Exs.P1 and P2 are irrelevant, inadmissible and need to be rejected is not sustainable. Ex.P1 is the on-line copy generated in which the suit property in Survey Nos.124/1, 124/2 are classified as Government



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Wakf Board and Ex.P2 is the official gazette published dated 06.05.1959.

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Both documents are public documents, relevant and admissible in evidence.

Exs.P1 and P2 were the documents marked in support of petitioner's side in I.A.No.699 of 2023 in O.S.No.234 of 2023 and Exs.R1 and R2 marked in support of the respondent in I.A.No.699 of 2023, who is the petitioner herein.

The documents in the plaint are only Xerox copies, hence it could not be marked. In this case, the petitioner himself marked two documents on the other hand objects for marking of the documents by the respondent. In this case the petitioner filed reopen petition in I.A.No.47 of 2024 to mark certified copies of earlier proceedings in O.S.No.189 of 1990, renumbered as O.S.No.55 of 1996 and C.M.A.No.23 of 1991. Though reopen petition was allowed, the petitioner failed to provide documents and participate in the enquiry, but filed the above petition. The trial Court observed that there is no bonafide found in the petition and it was filed only to drag on the proceedings and further observed that the relevancy of Exs.P1 and P2 can be decided later, cannot be termed improper and perverse.



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9.In this case it is observed that the petitioner had been taking contra view, filed reopen petition to mark certified and original documents. But without marking any further documents making objection is not sustainable. Further, Exs.P1 and P2 are not documents of extraneous nature but public documents show whether suit property belongs to Wakf Board, directly connected to decide the facts in issue, whether the suit is barred by law. This Court finds no reason to interfere with the impugned order passed by the learned Principal District Munsif, Thirukoilure.

10.Accordingly, this Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

29.07.2024

Index : Yes/No
Internet : Yes/No
Speaking order/Non speaking order
Neutral Citation : Yes/No
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M.NIRMAL KUMAR, J.

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To

- 1.The Wakf Superintendent,
Wakf Superintendent's Office,
No.512, Ganthi Road,
Panruti.
- 2.The Chief Executive Officer,
Tamil Nadu Wakf Board,
No.1, Jaffer Syrang Street,
Vallal Seethakadi Nagar, George Town,
Chennai, Tamil Nadu.
- 3.The Principal District Munsif,
Thirukoilure.

**Pre-delivery order in
C.R.P.No.1410 of 2024
and C.M.P.No.7528 of 2024**

29.07.2024