



C.R.P.No.1371 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.11.2024

CORAM :

THE HON'BLE MR.JUSTICE V.LAKSHMINARAYANAN

C.R.P.No.1371 of 2019
and C.M.P.No.8871 of 2019

Isbanthiar Baig Jumma Masjid,
Represented by its
1.President Nagoor Meeran
2.Secretary S.Parvez .. Petitioners

Versus

1.M.Ashok Kumar
2.A.Kavitha .. Respondents

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India to set aside the fair and decreetal order dated 02.03.2019 and made in I.A.No.437 of 2018 in O.S.No.8 of 2018 on the file of the Additional District Munsif at Kancheepuram.

For Petitioners : Mr.N.A.Nissar Ahmed

ORDER



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This civil revision petition challenges the order of the learned Additional District Munsif, Kancheepuram in I.A.No.437 of 2018 in O.S.No.8 of 2018 dated 02.03.2019.

2. O.S.No.8 of 2018 is a suit for permanent injunction seeking to restrain the civil revision petitioner/defendants from interfering with the peaceful possession and enjoyment of the property by the plaintiffs. According to the plaintiffs, they secured settlement patta in the year 1968 and thereafter, the property was sold by Mangalammal vagayara in favour of one Sureshchand. In turn, Sureshchand had alienated the property in favour of one B.M.K.Ganesh Sah. The said B.M.K.Ganesh Sah alienated the property in favour of the plaintiffs.

3. Pleading that the defendants are attempting to interfere with their peaceful possession of the property and claiming that it is their own property, the plaintiffs came forward with the suit. It is a clear and categorical case of the plaintiffs that the property is not a waqf property.



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4. Pending the litigation, the defendants took out an application for rejection of plaint on the ground that the jurisdiction of the civil court is barred by virtue of Section 85 of the Waqf Act, 1995. The said application came to be dismissed. Hence, the revision.

5. When the matter came up before his Court earlier, the Hon'ble Mr.Justice Battu Devanand had passed an order on 19.06.2024 directing the trial court not to stall the proceedings on the basis of this fact that this revision is pending. Pursuant thereto, the learned Additional District Munsif has taken up the matter for trial and it is listed on 18.12.2024.

6. Since the Hon'ble Mr.Justice Battu Devanand has taken a view that the suit should proceed for trial, I am of the view that, if a direction is given to the learned Additional District Munsif, at Kancheepuram to frame a preliminary issue in terms of Order XIV Rules 1 and 2 of the Code of Civil Procedure as to whether the civil court has the jurisdiction or whether the Waqf Tribunal has jurisdiction, it will serve the ends of justice.



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7. Accordingly, the learned Additional District Munsif at Kancheepuram shall frame the following issue:

“Whether the civil court has jurisdiction to grant a decree of permanent injunction restraining the waqf from interfering with the peaceful possession of the property when there is a dispute as to whether the property is a waqf property or not.”

The learned Additional District Munsif at Kancheepuram shall answer this issue and thereafter, take the suit for trial.

8. With the above observation, this civil revision petition is disposed of. No costs. Consequently, the connected miscellaneous petition is closed.

13.11.2024

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Index : yes/no
Speaking order/Non-speaking order
Neutral Citation : yes/no



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To

The Additional District Munsif at Kancheepuram.



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V.LAKSHMINARAYANAN, J.

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