



S.A.No.7 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 31.01.2024

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

S.A.No. 7 of 2024

&

C.M.P. No.223 of 2024

Ulaganathan (died)

1.Prema

2.Santhakumar

3.Muralitharan

4.Prabakaran

...Appellants

Vs.

1.The Chairman,
Tamil Nadu Wakf Board, Chennai – 01.

2.The Chief Executive Office,
Tamil Nadu Wakf Board, Chennai – 01.

3.The Superintendent of Wakfs
Villupuram and Cuddalore District,
Gandhi Street, Panruti.

...Respondents



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Prayer: Second Appeal is filed under Section 100 of the Code of Civil Procedure against the Judgment and Decree dated 03.04.2019 made in A.S.No.4 of 2016 on the file of the Additional District Judge, (Fast Track Court), Villupuram confirming the Judgement and Decree dated 14.10.2015 made in O.S.No.78 of 2010 on the file of the I Additional Subordinate Judge, Villupuram.

For Appellants : Mr. D.Baskar.

J U D G M E N T

The plaintiff who has lost before the Courts below is the appellant before this Court. The plaintiff has filed the suit O.S.No.78 of 2010 on the file of the I Additional Sub Court, Villupuram for declaring his title to the suit property and restraining the defendants, their men, agents from in any way disturbing the plaintiff's peaceful possession of the suit property.

2. It is the case of the plaintiff that the suit property were originally owned by Hazrath Sha Ali Kanj Dargah, Vazhudhavor.



The plaintiff had entered into the possession of this property in the year 1959 and the plaintiff has been cultivating the lands since then. The patta also stands in the name of the plaintiff and the patta numbers are 4 and 5.

3. The plaintiff would submit that he has sunk four bore wells and obtained electricity service connection in his name after installing electric motor pump sets. The plaintiff is not only enjoying the suit property but also performing the annual ceremonies two days in a year by inviting Hazarath and the Muslim bretheren, who are living in and around the village. The Dargah is also in the possession of the plaintiff and none of the defendants have questioned the possession of the plaintiff and his enjoyment of the property.

4. The plaintiff would submit that he has availed Housing loans from the Vazhudhavur Primary Agricultural Cooperative Bank for raising crops in the suit lands and has been discharging the loans regularly. The plaintiff would submit that neither the defendants nor



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any of the so called Wakifs have claimed any right or title to the suit property and to date only the plaintiff is enjoying the suit property and Dhargh for over the perspective period and he has perfected title by adverse possession.

5. The plaintiff would submit that since he is growing old, he wanted to make arrangements in respect of the property by amicably partitioning the suit properties amongst his children. In this regard, he had approached the Sub Registrar's Office, Kandamangalam for registering the partition deed. However, the Sub Registrar refused to register the same stating that the property in question is a Wakf property and no documents can be registered in respect of the Wakf property. The plaintiff was shocked to receive such a letter particularly when he has been enjoying the property absolutely for over 50 years.

6. The plaintiff would submit that the II Item in S.No.21 originally measured 11.52 acre and the Dargah is also situate in this survey number. Out of this 11.52 acres, the Government has acquired



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5 acres for the construction of houses for Adi Dravidar and the remaining extent of 6.52 acres and Dargah are in possession of the plaintiff. Therefore, the plaintiff has come forward with the suit.

7. The plaintiff had only impleaded the Wakf board and its authorities and the Inamdars of Hazrath Sha Ali Kanj Dargah, Vazhudhavor were not made parties.

8. The 2nd defendant has filed a written statement inter alia admitting that the suit properties belonged to the Hazrath Sha Ali Kanj Dargah. They would contend that the suit properties are Wakf properties which are endowed for religious and charitable purpose and it is a notified Wakf. The Wakf is in control, management and administration of the Tamilnadu Wakf Board since the year 1955.

9. The 2nd defendant had denied the allegations in the plaint that the plaintiff is in possession of the suit property and cultivating the same and that he has dug four bore wells and obtained service



connections. They had categorically denied the statement that the plaintiff was also enjoying and performing annual ceremonies for two days in a year. The 2nd defendant would submit that the property measuring an extent of 32.89 acres are Inam lands granted to support the Dargah.

10. The defendants would submit that there are two Inamdars running the Dargah and managing the Wakf as well as Wakf properties. These Inamdars were non residents. Since the Inamdars were non residents of the area, they had leased out the suit property. They have been collecting the rents and spending amounts towards maintenance of the Dhargah. The plaintiff is one such lessee in occupation of the suit property. Therefore, the defendant would submit that the plaintiff has no right to partition the suit property amongst his sons. The defendants would contend that there is no cause of action for the suit and the same has to necessarily be dismissed.



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11. An additional written statement had been filed, wherein, in addition to averments contained in the earlier written statement, the defendant had submitted that since the dispute relates to Wakf properties, it has to be decided only by the Wakf Tribunal constituted under Section 83 of the Wakf Act, 1995 and the Civil Court does not have jurisdiction to entertain such a request.

12. The Trial Court had framed the following issues:

“(i)Whether the defendant is not liable to pay any cost of the suit?

(ii)Whether the plaintiff is entitled for Judgement and Decree as prayed for?

(iii)To what relief?”

13. The Trial Court had taken note of the admission and cross examination of P.W.1 and held that the plaintiff has no right to the property and that the same belongs to Wakf and Wakf is being administered by the Inamdars. Therefore, the suit was dismissed with



reference to the prayer of relief of declaration and decreed with reference to the relief of permanent injunction.

14. Against the disallowed portion, the plaintiff had filed A.S.No.4 of 2016 on the file of the Additional District Judge, Villupuram. The Lower Appellate Court on considering the evidence held in favour of the plaintiff, with reference to the plea of limitation and non joinder of necessary parties raised by the defendants. However, the Lower Appellate Court had also taken note of the fact that the plaintiff was enjoying the property and his possession has to be protected. Further, from the evidence of the parties, the Lower Appellate Court held that the property in question was the Wakf property and the Inamdhars are the owners of the same. Therefore, the Lower Appellate Court held that the plaintiff was not entitled to a decree for declaration and consequently dismissed the appeal.

15. Challenging the same, the plaintiff is before this Court.



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16. Heard the learned counsel for the appellant.

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17. The plaintiff has come to the Court with a case that he has occupied the property and is in possession of the same. He would further admitted that the property belongs to Hazrath Sha Ali Kanj Dargah, Vazhudhavor. He has not elaborated as to how he had come into possession of the property. A reading of the plaint would indicate that the plaintiff has encroached into this property. The plaintiff would submit that he has also taking care of Hazrath Sha Ali Kanj Dargah, Vazhudhavor, which has been refuted by the defendants who have stated that the Inamdars of the Wakf has been taking care of the activities as directed by Wakifs. The suit Wakf is a registered Wakf. Ex.B1 and Ex.B2 have been filed to show that the said Wakf is a notified Wakf. Therefore, the Wakf board is the owner of the suit property.

18. The plaintiff has pleaded adverse possession. In his cross examination, the plaintiff has admitted that he has been permitted to



occupy the property by the Inamdars. However, he has not deemed it fit to implead them as parties to the proceedings. Therefore, the plaint has to fail on the ground of non joinder of necessary parties. Even the documents, namely, patta which has been produced on the side of the plaintiff describes the owner as Hazrath Sha Ali Kanj Dargah, Vazhudhavor jointly with the plaintiff.

19. The Lower Appellate Court has rightly held that the plaintiff cannot claim prescriptive title.

20. Accordingly, the Second Appeal stands dismissed. Consequently, the connected Civil Miscellaneous Petition is closed. No costs.

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Index : Yes/No
Internet : Yes/No
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To
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1.The Additional District Judge,
(Fast Track Court),
Villupuram.

2.The I Additional Subordinate Judge,
Villupuram.



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P.T. ASHA, J,

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