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C.R.P.(PD)Nos.3674, 3675 and 3677 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.11.2024

CORAM :

THE HONOURABLE MR.JUSTICE V. LAKSHMINARAYANAN

C.R.P.(PD)Nos.3674, 3675 and 3677 of 2024

Mrs.B.Vanishree

.... petitioner in all the revisions

VS

1.Khan Sahib Mahdi Hussain Sahib Wakf Estate,
Represented by its Court Receiver,
V.Pauldas
No.82/106, Perambur High Road Lane,
Jamalia,
Chennai-600 012.

2.B.Balaji
3.R.Arumugam
4.T.Pichiyan

5.The Sub Registrar,
Adyar,
Chennai-600 020.

6.The Joint Sub Registrar,
Nagapattinam.

7.The Chief Executive Officer,
Tamil Nadu Wakf Board,
No.1, Jaffer Syrang Street,
Valhalla Seetha Kathi Nagar,
Chennai-600 001.

.... Respondents



C.R.P.(PD)Nos.3674, 3675 and 3677 of 2024

PRAYER: Civil Revision Petitions are filed under Article 227 of the Constitution of India against the Docket Order dated 24.03.2024 made in I.A.Nos.205, 206 and 207 of 2023 in O.S.No.9 of 2023 on the file of learned Waqf Tribunal, Chennai.

For Petitioner : Mr.J.Kather Hussain
For Respondents : Mr.M.L.Ganesh
For 1st respondent
Mr.D.Gopal
Govt.Advocate
For RR.5 and 6
Mr.C.Shankar
For R.7

COMMON ORDER

These civil revision petitions arise against the order of Tamil Nadu Waqf Tribunal at Chennai in I.A.Nos. 205, 206 and 207 of 2023 in O.S.No.9 of 2023.

2. O.S.No.9 of 2023 is a suit presented for declaration and injunction with respect to the suit schedule mentioned properties. It is the case of the plaintiff Waqf that the property was purchased by the Waqif viz., one Khan Sahib Mahdi Hussain Sahib Bahadur in the year 1920 and that he had created



C.R.P.(PD)Nos.3674, 3675 and 3677 of 2024

a Waqf-alal-aulad on 20.05.1939. Subsequently, the Waqf was notified and was under the management of the family. Due to disputes that arose between the family members, a suit came to be presented in C.S.No.1306 of 1992 on the file of this Court. Pending the suit, a Receiver was appointed for managing the said property. Since the defendants attempted to interfere with the possession of the Waqf and also started creating documents with respect to the properties, the Receiver decided to present the suit for the aforesaid reliefs. Pending the suit, he took out three applications viz., I.A.Nos.205, 206 and 207 of 2023.

3. The learned Waqf Tribunal granted an *exparte* order of injunction in all the three applications and issued notice to the respondents. Summons were served. Yet, the respondents did not enter appearance. Thereafter, the learned Waqf Tribunal, after hearing the learned counsel appearing for the Waqf, made the interim injunction absolute. Aggrieved by the same, these three revisions have come before the Court.

4. I heard Mr.J.Kather Hussain for the civil revision petitioner, Mr.M.L.Ganesh for the first respondent and Mr.C.Shankar for the seventh respondent.



C.R.P.(PD)Nos.3674, 3675 and 3677 of 2024

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5. Insofar as the revisions challenging the order not to alienate or encumber the properties in favour of any third party and restraining the respondents 5 and 6 herein from registering any document at the instance of the defendants 1 and 2 or their representatives, Mr.J.Kather Hussain submitted that his client is not interested in alienating the properties or submitting any documents for registration. Since they are not going to alienate the properties or file any documents before the respondents 5 and 6, there is no grievance for them to challenge the orders. Suffice it to record the statement of Mr.J.Kather Hussain as stated above, CRP Nos.3674 and 3675 of 2024 are disposed of.

6. Now turning to the revision, challenging I.A.No.205 of 2023, Mr.J.Kather Hussain submits that the property belonged to one V.Ramachandra Naidu, supposedly a very wealthy landlord of the yester years. He claims that the said V.Ramachandra Naidu had executed a Will in the year 1922 and that the said “WILL” saw the light of the day only in the year 2005. He adds V.Ramachandra Naidu is the ancestor of the defendants and by virtue of the “WILL”, they had succeeded to the estate. He draws my attention to a partition deed executed *inter se* between V.Ramachandra Naidu and his two sons and



C.R.P.(PD)Nos.3674, 3675 and 3677 of 2024

pleads that the suit schedule mentioned property was not allotted in favour of

R.Govindaraja Naidu, the vendor of Khan Sahib Mahdi Hussain Sahib.

Therefore, the plea is that since R.Govindaraja Naidu did not have the right to alienate, the purchase made by Khan Sahib Mahdi Hussain Sahib does not confer any title on him. Therefore, he argues that the order of injunction against the legal heirs of Ramachandra Naidu deserves interference.

7. Per contra, Mr.M.L.Ganesh invites the attention of the Court to a “WILL” executed by the said Ramachandra Naidu on 17.07.1928, where under, all the previous testamentary documents executed by him had been cancelled. Therefore, Mr.M.L.Ganesh argues the “WILL” on the basis of which the defendants are claiming the property was not in force atleast from 17.7.1928.

8. Mr.C.Shankar representing Tamil Nadu Waqf Board adopts the arguments of Mr.M.L.Ganesh.

9. At the time of dealing with an application for order of ad-interim injunction, all that the Court is concerned is, whether the plaintiff is in lawful



C.R.P.(PD)Nos.3674, 3675 and 3677 of 2024

possession of the property and if there are any interference in the said possession. The Court or a Tribunal as in this case need not travel into the details as to the title because that is a matter which the parties would have to prove after tendering their oral and documentary evidence at the time of trial. Atleast from the time of presentation of the suit in C.S.No.1306 of 1992, the plaintiff has shown that it is in possession of the suit property. This is only a prima facie proof. It is up to the plaintiff to prove that it has right, title and interest over the property at the time of trial.

10. Mr.J.Kather Hussain states that his client has not been given sufficient opportunity to contest the applications.

11. Perusal of the impugned order shows that notice had been issued to the respondents and yet, they had chosen to keep away from the Tribunal. When an opportunity has been offered and that had not been availed by the civil revision petitioner, she cannot point fingers at the Court. It is not the duty of the Judicial Officer of the Court or Tribunal to run behind the respondents and seek for a counter. In the adversarial form of litigation, it is for the parties to appear before the Court and file their counter and contest the applications. In



C.R.P.(PD)Nos.3674, 3675 and 3677 of 2024

case, they do not do so, it means they are willing to suffer the consequences of their absence to the proceedings.

12. Whether the plaintiff has title to the suit property by virtue of purchase by the Waqif from R.Govindaraja Nadu or whether the defendants have title to the property by virtue of succeeding to the estate of Ramachandra Naidu are matters which the Waqf Tribunal has to necessarily answer at the time of trial. All that it has done in the present case is granting an interim order protecting the possession of the plaintiff.

13. I should recollect here that the plaintiff has been under the control of a Receiver appointed by this Court atleast from 1992. An action of the Receiver cannot be interfered without due permission from the Court, which appointed him to that office.

14. In the light of the above discussions, leaving it open to the parties to agitate their title at the time of final disposal in O.S.No.9 of 2023, C.R.P.Nos.3677 of 2024 is dismissed.



C.R.P.(PD)Nos.3674, 3675 and 3677 of 2024

15. CRP Nos.3674 and 3675 of 2024 are disposed of recording the undertaking of Mr.J.Kather Hussain that his client is not interested in alienating the properties or submitting any documents for registration.

16. Finally, the usual Manthra. The Waqf Tribunal is not bound by any of the finding that might have been given in the order. I have only dealt with the interlocutory application in I.As.205,206 and 207 of 2023. The Waqf Tribunal will come to a conclusion on the basis of oral and documentary evidence let in before it.

No costs.

13.11.2024

Index:Yes/No
Speaking order/Non-speaking order
Neutral Citation:Yes/No
sr

To

The Waqf Tribunal, Chennai.



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C.R.P.(PD)Nos.3674, 3675 and 3677 of 2024

V. LAKSHMINARAYANAN,J.

SR

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