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A.S.No.343 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 25.06.2024

CORAM

THE HONOURABLE MRS. JUSTICE T.V. THAMILSELVI

A.S.No.343 of 2017
and
CMP.No.12935 of 2017

S.Y.Syed Dawood, Muthavalli
Representing Ahle Sunneth UI Jamath,
(Formerly known as Bus Stand Mosque Jamath)
No.11, Punganur Amman Kovil Street,
Near Bus stand, Chunnambupet,
Gudiyattam town,
Vellore District.

... Appellant

Versus

1.Venkatesan
2.Loganathan
3.L.Banumathi
4.Ayisha Shabir @ Ayisha Begum
5.K.S.Abdul Kadhir
6.Nazeer Ahmed
7.K.S.Abdul Munna

... Respondent

PRAYER: Appeal Suit filed Under Section 96 of the Code of Civil Procedure, praying to set aside the Judgment and decree dated 13.06.2017 passed in O.S.No.325 of 1998 on the file of the Sub-ordinate Judge, Vellore District and allow the suit in O.S.No.325 of 1998.

For Appellants	:	Mr.VMG. Ramakkannan
For R2 & R3	:	Mr.N.Manokaran
For R1, R4 to R7	:	Ex-parte. Notice not ready



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ORDER

The appellant has filed this appeal to set aside the Judgment and decree dated 13.06.2017 passed in O.S.No.325 of 1998 on the file of the Subordinate Judge, Vellore District and allow the suit in O.S.No.325 of 1998.

2. Heard Mr. VMG. Ramakkannan, learned counsel for the appellant and Mr. N.Manokaran, learned counsel appearing for the respondents 2 and 3 and perused the materials available on record.

3. For the purpose of convenience, the parties herein are referred to as they are ranked in the suit.

4. The appellant is the plaintiff in the suit O.S. No. 325 of 1998 on the file of the Subordinate Judge, Vellore District. The suit directed the defendant/respondent to pay the arrears of rent and to demolish the superstructure situated on the B-schedule property, delivering the vacant possession of the same to the plaintiff with consequential reliefs. The defendants contested the suit, denying the plaintiff's claim by filing a written statement before the trial court. Both parties adduced oral and documentary



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evidence. Based on this, the learned trial judge held that the plaintiff did not establish that the present plaintiff, Ahle Sunneth UI Jamath, was originally known as Bus Stand Mosque Jamath. Consequently, Ahle Sunneth UI Jamath was not recognized by the Gasattee officials or by investigation, leading to the conclusion that the plaintiff has no locus standi to contest the case. Accordingly, the suit was dismissed. Challenging these findings, the plaintiff has preferred an appeal on the following grounds:

i). The learned Subordinate Judge erred in not considering the compromise decree of the City Civil Court, Chennai, dated 27.11.1961, which declared the suit “A” Schedule House site property as belonging to the Appellant Waqf and the suit “B” Schedule superstructure constructed on the A Schedule property as belonging to the 1st respondent's predecessor in occupation, namely, Kosha Abdul Munaf, with liability to pay rent for the site to the appellant.

ii). The learned Subordinate Judge failed to appreciate that the sale of A Schedule property by the legal heirs of the 1st respondent's predecessor in permissive occupation in favor of the 1st respondent was contrary to law and in violation of the compromise decree dated 27.11.1961, which provided for alienating only the superstructure with liability to pay rent to the appellant.



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(iii).The learned Subordinate Judge failed to appreciate that the settlement deed executed by the said Kosha Abdul Munaf in favor of his legal heirs did not provide for the sale of A Schedule property, much less the B Schedule property.

(iv). The learned Subordinate Judge failed to consider the pleadings and evidence of respondents 2 and 3 admitting that the compromise decree dated 27.11.1961 had declared the suit A Schedule House site property as belonging to the Appellant Waqf and the suit B Schedule superstructure constructed on the A Schedule property as belonging to the said Kosha Abdul Munaf, and only questioned the validity and binding nature of the said decree on the respondents in terms of territorial jurisdiction.

(v). The learned Subordinate Judge erred in considering adversely the oral evidence of PW2 and in passing the impugned order contrary to the provisions of Order VI, Rule 2 of CPC.

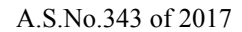
(vi).The learned Subordinate Judge failed to consider the documentary evidence (Ex.A1) notifying the Bus Stand Mosque as Waqf Property and the evidence (Ex.A13), i.e., the proceedings of the Chairman of the Tamil Nadu Waqf Board, clearly indicating that the Bus Stand Mosque was the appellant Ahle Sunneth UI Jamath Masjid.



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5. By submitting all these grounds, the learned counsel for the appellant argued that before the trial court, they submitted, through ample evidence, that the Bus Stand Mosque Jamath and Ahle Sunneth UI Jamath are one and the same, and that this was also recognized by the Waqf board in the earlier compromise decree filed by the defendant's vendor in 1961. They also produced the Gazette notification as well as the Waqf board's order appointing committee members to the plaintiff's masjid. Instead of allowing the suit, the trial court, without appreciating the evidential value of these documents, erroneously dismissed the suit. Hence, he prayed to set aside the findings of the learned trial judge by allowing this appeal.

6. By way of reply, the learned counsel for the respondent/defendant submitted that, as per Section 5(2) of the Muslim Waqf Board Act, 1954, the Bus Stand Mosque Jamath alone was notified as a Waqf. Therefore, the present plaintiff's Masjid, namely Ahle Sunneth UI Jamath, has not been notified as contemplated under Section 5(2) of the Muslim Waqf Board Act. Thus, the learned trial judge rightly held that the plaintiff has no locus standi to file the suit. Besides, other issues were also not proved by the plaintiff, which was rightly observed by the learned trial judge. Therefore, there is no merit in this appeal, and it should be dismissed.





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that they purchased the suit property on 04.12.2002 from the 1st defendant.

The plaintiff contended that neither the 1st defendant nor the 2nd and 3rd defendants have title over the land. So, they filed a suit for the recovery of the vacant portion by demolishing the superstructure. The suit was contested by the 2nd and 3rd defendants, who stated that the Waqf is not recognized by the Tamil Nadu Waqf Board. They claimed that the Bus Stand Mosque Jamath alone was notified and not the present Jamath, namely Ahle Sunneth UI Jamath. Furthermore, they contended that they are bona fide purchasers from the 1st defendant and also claimed that the B-schedule property is not Waqf property. Considering both sides' submissions, the learned trial judge framed the following issue:

"i. Whether the plaintiff is entitled to claim arrears as well as the recovery of possession?"

8. Before the trial court, both parties adduced oral and documentary evidence. On the side of the plaintiff, the plaintiff's Masjid was examined as P.W.1 and another witness as P.W.2. Ex.A1 to Ex.A19 were marked. On the side of the defendants, Ex.B1 to Ex.B8 documents were marked.

9. The plaintiff's claim is that the land belongs to the plaintiff's Masjid,



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and they prayed for a vacant site by removing the superstructure.

Furthermore, they contended that the superstructure belongs to the said Munaf. To that effect, a compromise decree was arrived at. Admittedly, in the compromise decree, the contested defendants were not parties because they were subsequent purchasers from the legal heirs of the said Munaf.

10. Now, the points for consideration is as follows:

“ Whether the plaintiff's Masjid is entitled to file the present suit for recovery and delivery of vacant possession?”

Under Section 5(2) of the Tamil Nadu Muslim Waqf Act, 1954, mandates that the list of Waqf properties must be notified in the Gazette. Accordingly, on 11.02.1959, the Gazette notification was issued pertaining to the list of Waqf properties in Lata Street, in which the Waqf board published a list of Waqfs in North Arcot. Upon verification of the said list, the Bus Stand Mosque Jamath, Ward III, Door No.1, Punganuraman Street, Chunnambupet, Gudiyatham, was notified as a Waqf. The said Gazette publication was also marked on the side of the plaintiff as Ex.A1. From Ex.A1, it is clear that the Bus Stand Mosque Jamath is notified in the North Arcot District. However, in the present case, the suit was filed by the current Masjid under the name and style of Ahle Sunneth UI Jamath. The foremost



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objection on the side of the contested defendant is that the Ahle Sunneth UI Jamath is not recognized as a Waqf by issuing a notification and also contended that the Bus Stand Mosque Jamath and the present plaintiff's Jamath are not one and the same.

11. By way of counter, the learned counsel for the appellant submitted that the Bus Stand Mosque Jamath is now called Ahle Sunneth UI Jamath, and to that effect, the Waqf Board has already recognized the same and issued communication to the Muthavalli. Considering that, the said proceedings marked as Ex.A3 dated 14.02.1997 are perused, and the content of the said letter is extracted as follows:

“ The Muthawalli of Ahle Sunnath-UI-Jamath Masjid, Chunnambupet, Gudiyatham is informed that he is permitted to file suits, against the present occupants of the property.

I am enclosing herewith a copy of the Tamil Nadu Government Gazettee enclosing the amendments to Madras City Tenents Protection Act, 1921 dated 11.06.1996, for information and necessary action.”

12. As rightly pointed out by the respondent/defendant, there is no

<https://www.mhc.tn.gov.in> mention in that letter that the Bus Stand Mosque Jamath and the present Ahle



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Sunneth UI Jamath are one and the same, so the documents did not support the contention of the plaintiff. As rightly observed by the learned trial Judge, the plaintiff also relied on the certified copy of the earlier suit proceedings in O.S.No.60 of 1960.

13. On a perusal of the compromise decree dated 27.11.1961, it is seen that the suit was filed by Kosha Abdul Munaf, the defendant's vendor's vendor. Originally, the tenant filed a suit against the Waqf Board wherein he claimed absolute rights, in which the tenant was given only the superstructure and not the ground to act. Therefore, there is no mention that both Bus Stand Mosque Jamath and the present plaintiff's Masjid are one and the same. Further, the plaintiff also relied on the proceedings from the Waqf Board marked as Ex.A3. In those proceedings, there is a mention that Chunnambupet / Ahle Sunnath Jamath Masjid / Bus Stand Masjid election of committee approval was issued on 06.05.2001. In those proceedings, the Bus Stand Mosque is mentioned. But at the same time, there is another proceeding issued by the Waqf Board on 07.11.2012, which was marked as Ex.A14, wherein it is mentioned as Gudiyatham, Chunnambupet Bus Stand, Pallivasal.



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14. However, there is no mention of the present plaintiff's Masjid in those proceedings. Therefore, both documents Ex.A14 and Ex.A3 are contrary to each other; in one document the Waqf Board mentioned both the Bus Stand Mosque as well as the present plaintiff's Masjid, and in another proceeding, the Waqf Board mentioned only the old Bus Stand Mosque Jamath. All these facts were rightly observed by the trial Court.

15. As per Section 5(2) of the Muslim Waqf Board Act 1954, the mandate is that the list of Waqf in each district should be published. Accordingly, in the district of North Arcot, the list of Waqf existing in the district was published in the Gazette on 11.02.1959, wherein Bus Stand Mosque, Ward No.III, Door No.1 is mentioned. But subsequently, the name of the Masjid, namely Ahale Sunnath V1 Jamath, is not mentioned in the list of Waqf published.

16. Though the plaintiff contended that Ahale Sunnath V1 Jamath was merged with the old Bus Stand Sunnath Jamath and the same was recognized by the Waqf, this is not acceptable because the law requires that the said Jamath is to be published through a Gazette notification. But as discussed above, there is no proof on the side of the plaintiff, and the plaintiff's Waqf



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Board was already recognized in the list of Gazette. Mere passing of a letter by the Waqf Board mentioning the plaintiff's Masjid as such is not sufficient, and the same was rightly observed by the learned trial Judge, which needs no interference.

17. Therefore, the findings rendered by the learned trial Judge that the plaintiff has not established that both the plaintiff's Jamath and the Bus Stand Jamath are one and the same are valid and need no interference. Hence, the plaintiff failed to establish that the Bus Stand Mosque Jamath and the Plaintiff's Mosque are one and the same. Therefore, the findings of the learned trial Judge are valid and sustainable, and the plaintiff has no right to file a suit. Hence, the findings of the learned trial Judge are confirmed.

18. Hence, this appeal is dismissed as devoid of merit, and thus the suit is also dismissed for lack of merit. Consequently, the connected miscellaneous petition is closed. There shall be no order as to costs.

25.06.2024

Index : Yes/No
Speaking/Non Speaking order
Neutral Citation: Yes/No

<https://www.mhc.tn.gov.in/judis>



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To
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1. The Sub-ordinate Judge,
Vellore District.
2. The Section Officer,
VR-Section, High Court of Madras.

T.V.THAMILSELVI, J.

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