



C.R.P.No.1770 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.07.2024

CORAM

THE HON'BLE MR.JUSTICE V. LAKSHMINARAYANAN

C.R.P.No.1770 of 2023
and C.M.P.No.11493 of 2023

Vijayaraghavan (Deceased)

V.Manoj Kumar, S/o Vijayaraghavan, No.18
Syed Abdullah Street, Mount Road,
Chennai 600 002.

... Petitioner

-Vs-

Ameerunnisa Begum Sahibas Endowments
Rep.by its President, No.76, Pycrofts Road
(Bharathi Salai), Triplicane, Chennai 600 005.

... Respondent

Prayer : Civil Revision Petition under Article 227 of the Constitution of India to set aside the decree and judgment dated 18.07.2022 passed in O.S.No.36 of 2021 on the file of Tamil Nadu Waqf Tribunal at Chennai.

For Petitioner	:	Thiru.R.Thiagarajan and Thiru.Raj Prince
For Respondent	:	Thiru.N.A.Nissar Hussain

ORDER

This Civil Revision Petition arises against the judgment and decree in O.S.No.36 of 2021 on the file of the Tamil Nadu Waqf Tribunal at Chennai. As the Waqf Act has barred the right of a regular appeal under Section 83(9), invoking the proviso to that Section, the decree is being attacked by way of this civil revision petition.



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For the sake of convenience, the parties will be referred to as per their ranking in the suit.

2. Originally, O.S.No.36 of 2021 was presented before the Waqf Tribunal-cum-I Assistant City Civil Court at Chennai. The suit was taken on file as O.S.No.392 of 2006. It is represented by the learned counsel for the respondent that the suit was decreed exparte and thereafter, on an application filed by the civil revision petitioner, the exparte decree was set aside. Subsequently, on the formation of the Waqf Tribunal, the suit stood transferred to that forum.

3. The claim of the plaintiff was that the original defendant viz., Vijayaraghavan was a tenant of the property. He was paying a sum of Rs.104/- per month for occupying the suit schedule mentioned property. Vijayaraghvan defaulted in payments of rent from December 2001 onwards. Therefore, a notice was issued on 07.02.2005 terminating the tenancy with the month of February 2005. As the demand of the landlord remained unsatisfied, the suit came to be filed. Pending the suit, Vijayaraghavan passed away and Manoj Kumar, his son was impleaded as his legal representative and arrayed as second defendant in the suit.

4. The original defendant, as pointed out above, remained exparte and he did not file any written statement. Thereafter, his legal representatives viz.,



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Subbulakshmi, his wife and Manoj Kumar, his son preferred I.A.No.5529 of 2016 to condone the delay of 3580 days in setting aside the exparte decree. The said application was dismissed by the Waqf Tribunal on 06.01.2017. Against the said order, a Civil Revision Petition was preferred to the High Court. This Court, by an order dated 21.09.2021 allowed the revision. In the meantime, Subbulakshmi passed away. As the legal representative of Subbulakshmi was already on record, he was arrayed as the second defendant.

5. After the order was passed by the High Court, a written statement was filed by the second defendant. The stand of the second defendant is that the suit schedule mentioned property was purchased by his paternal grandmother Ethiraju Ammal in the year 194 through a registered sale deed in Document No.192 of 1941. After her demise, the property devolved on Vijayaraghavan and since Vijayaraghavan was no more, the property devolved on the second defendant. He would further plead that the property belongs to the Government and not to the plaintiff Waqf. On these averments, the second defendant sought for dismissal of the suit.

6. On the basis of these pleadings, the Waqf Tribunal cast the following issues:

1. Whether the plaintiff is entitled to the relief of delivery of vacant possession of the suit property from the 2nd defendant as prayed for?



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2. Whether the plaintiff is entitled to recover the sum of Rs.3744/- being the arrears of land rent from February 2002 to January 2005 from the 2nd defendant as prayed for?
3. Whether the plaintiff is entitled to the damages for use and occupation at Rs.250/- per month from March 2005 till delivery of vacant possession as prayed for?
4. Whether the suit property belongs to the 2nd defendant's paternal grandmother and as such the plaintiff has no title to the same as alleged by the 2nd defendant ?
5. Whether the suit is not maintainable for want of notice of termination of tenancy as alleged by the 2nd defendant?
6. To what other relief?

7. On behalf of the plaintiff Waqf, one M.Mohammed Ashfaq, the Accountant of the Waqf and the authorised representative entered the witness box and deposed in support of the suit. On his side, he marked Ex.A1 to A14. The second defendant entered the witness box and deposed in support of his case. He did not mark any document.

8. The learned Waqf Tribunal, on the basis of the documents and evidence let in before it, came to the conclusion that the Waqf has proved its right, title and



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interest in the property and therefore decreed the suit as prayed for. Aggrieved by the said decree, the present revision has come up before me.

9. On 16.06.2023, this Court passed the following order:

" During the course of hearing, the learned counsel for respondent has submitted that on account of orders passed by the learned Trial Judge, proceedings have been initiated to auction leasehold rights of the schedule of premises and the petitioner has submitted that he can be given protection until auction proceedings are completed with a liberty to participate in the auction and he also undertakes that once auction completed and if he is not successful bidder in respect of leasehold rights, then he will vacate the premises and he has also agreed to file an undertaking affidavit to that effect.

2. List the matter on 19.06.2023."

10. Subsequently, the matter was listed on 19.06.2023. As per the directions of this Court, the respondent-plaintiff filed an affidavit stating that a sum of Rs.1,64,000/- is due as rents and had further given an undertaking that the respondent Waqf will not disturb the possession of the petitioner till the lease is confirmed in auction. Taking note of this affidavit, this Court passed the following order on 19.06.2023.

" The learned counsel for the respondent has filed an affidavit, whereas the learned counsel for the petitioner requests one (1) week time for filing affidavit. Permitted. List on 26.06.2023."

11. As per the undertaking given by the learned counsel before the Court,



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the undertaking affidavit had not been filed. Thereafter, the matter is listed before me.

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12. I heard Mr.R.Thiagarajan for the civil revision petitioner and Mr.N.A.Nassir Hussain for the respondent.

13. Mr.R.Thiagarajan would invite my attention to the written statement and would plead that since the defendant had denied the title of the plaintiff, the Tribunal ought to have dismissed the suit directing the parties to work out their rights in the manner known to law. He would state that no title document had been produced by the plaintiff in order to substantiate its case and therefore he would state that the suit ought to have been dismissed.

14. Per contra, Mr.Nassir Hussain would submit that the plaintiff had produced Ex.A4 viz., the sale deed under which Ethiraju Ammal, the grandmother of the defendant had come into possession of the property. He would also produce a copy of Ex.A5 which is the permanent land register reflecting the survey number of the property. Furthermore, he would place heavy reliance on the proforma report under Ex.A10, in particular, the schedule attached to the proforma, in order to state that the suit schedule mentioned property is a part of Annexure 'A'. He would state that the lands in Survey No.193 has been notified by the Tamil Nadu Government as Waqf and this is clear from the proforma report itself. He would also invite the



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attention of the Court to the affidavit filed by the deceased first defendant and his brother V.Selvaraj seeking for No-Objection Certificate (NOC) in order to put up a superstructure over the property. He would therefore state that the order of the Waqf Tribunal is perfectly justified in law and does not require any interference in this revision.

15. I have carefully considered the submissions made on either side and perused the materials on record.

16. This is a suit for ejectment filed by the landlord as against the tenant. It is the specific case of the plaintiff that the suit schedule mentioned property belongs to it, whereas it is the case of the defendant that the property belongs to his family by virtue of a purchase made by his grandmother Ethiraju Ammal in the year 1941. The defendant did not produce title deed in support of his averment. However, the plaintiff has produced the said deed under Ex.A4. It is a sale deed dated 05.03.1941. A perusal of Ex.A 4 would show that, what had been purchased by Ethiraju Ammal was the superstructure over the land belonging the plaintiff Waqf. This itself is sufficient to show that the plaintiff Waqf is the owner of the land and if at all any right vests with the defendant, it is the right over the superstructure.

17. Apart from this fundamental document, Exs.A6, A7, A8 and A9 would



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show that the deceased first defendant, through whom the second defendant claims title, had issued a letter to the plaintiff Waqf seeking for permission to put up a superstructure. After having sought for permission, he had also obtained a No-Objection Certificate from the plaintiff on 04.06.2000. This would show that V.Selvaraj, accepting the tenancy that existed between Ethiraju Ammal and the Waqf had wanted to pull down the old superstructure and put up a new one and for the said purpose, he has sought for permission from the plaintiff Waqf. In consideration of this request, the plaintiff Waqf had also granted the said permission on 04.06.2000.

18. Dehors these two documents, the proforma that has been produced before the Court would show that this was a Waqf which was governed by the Scheme Suit settled by this Court at least 100 years ago. A Scheme decree had been formed for the purpose of administration of the plaintiff Waqf. The Scheme was framed in C.S.No.196 of 1913 on 02.11.1914. After the Waqf had been surveyed and notified, a Gazette notification had also been published in terms of Section 4 to 6 of the Waqf Act of 1954.

19. A perusal of annexure 'A' of the proforma which is the extract from the bound register maintained by the Tamil Nadu Waqf Board for all the Waqfs in the State would show that the Waqf is the owner of the property situated at Survey Nos.190 to 199 at Triplicane. The total extent that was available with the Waqf was



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15-22-1437 CG Sq.ft. This makes it clear that, not only was the Waqf surveyed and notified, but a detailed anneure was prepared for the properties of which the Waqf is the owner.

20. Ethiraju Ammal had purchased the superstructure under Ex.A4. If she had any right, title and interest over the land, the remedy would have been to approach the civil court under the Waqf Act of 1954 by presenting a suit for title. Ethiraju Ammal did not do so, instead, 50 years later the first defendant has sought for extension of his tenancy. As discussed above, the Waqf Tribunal has referred to all these documents and had come to a conclusion that the plaintiff has proved his case.

21. Mr.Raj Prince, representing Mr.R.Thiagarajan would submit that the documents under Exs.A6 to A9 and A11 to A13 are all fabrications by the plaintiff Waqf and therefore, they do not deserve any consideration by the Court. The burden of proof is on the defendant to show that the signature found in these documents are not that of Vijayaraghavan but had been forged by the plaintiff Waqf institution. In case the documents have been forged, nothing prevented the defendant from taking steps like sending the document for comparison of handwriting expert for the said purpose. However, he did not do so. Therefore, I find this is an argument that has been raised for its rejection alone. In fact, on a perusal of the sale deed Ex.A4 as well as the other documents, the Waqf Tribunal



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came to the conclusion that the plaintiff is entitled for a decree.

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22. It is made clear that in case the Waqf brings the leasehold right in the property for auction, the defendant will be entitled to participate in the same after he clears all the arrears that is payable to an extent of Rs.1,64,000/-. I have to note that the plaintiff Waqf is the owner of the land and not the superstructure. Though a decree of eviction has been granted by the Tribunal, the plaintiff will be entitled to only the land and in case the civil revision petitioner / defendant so desires, he can always remove the superstructure.

23. Sitting in revision, I am not in a position to re-appreciate the evidence unless and until the petitioner is in a position to prove that the same are perverse or contrary to the records. Consequently, I do not find any reason to interfere with the order passed by the learned Waqf Tribunal in O.S.No.36 of 2021 dated 18.07.2022. The Civil Revision Petition is dismissed. Costs throughout. Consequently, connected miscellaneous petition is also dismissed.

02.07.2024

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Index : Yes/No

Neutral Citation : Yes/No

KST

To



The Tamilnadu Waqf Tribunal
Chennai.

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V. LAKSHMINARAYANAN, J.
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