



C.R.P.Nos.4140 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.4140 of 2023**  
**and C.M.P.No.25264 of 2023**

Estate of Vijayaraghavan  
Rep.by Intermeddler and legal representative  
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 order and decreetal order made in OS.SR.No.14364 of 2023 dated 03.10.2023 on the file of the I Additional Judge, City Civil Court, Chennai.

For Petitioner : Mr.R.Thiagarajan  
For Respondent : Mr.L.Gavaskar

**ORDER**

This Civil Revision Petition arises against the order passed by the learned I Additional City Civil Court, Chennai in O.S.(SR) No.14364 of 2023 dated 03.10.2023.

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



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2. O.S.(SR) No.14364 of 2023 seeks for the reliefs of

- (a) Declaration that the plaintiff is the absolute owner of the suit schedule mentioned property and for consequential injunction restraining the defendant, their men, agents, servants, person or persons claiming through them or in any manner interfering with peaceful possession and enjoyment of the suit schedule mentioned property by the plaintiff except in accordance with law.
- (b) For a declaration that the purported judgment and decree dated 18.07.2022 passed in O.S.No.36 of 2021 (formerly O.S.No.392 of 2006) on the file of the I Assistant Judge, City Civil Court, Chennai), by the Tamil Nadu Waqf Tribunal, Chennai-600 005 against the plaintiff is illegal, invalid and non-est in the eyes of law and consequently not binding upon the plaintiff, and
- (c) For a permanent injunction restraining the defendant or men or servant or any person/persons in any manner claiming through them from in any manner interfering with the peaceful possession and enjoyment of the plaintiff in respect of the suit property morefully described in the plaint schedule except in accordance with the due process of law.



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(d) Such further or other reliefs

(e) Costs of the suit.

3. The case of the plaintiff is that the suit property was purchased by his grandmother Ethiraju Ammal under the sale deed in Document No.192 of 1941. After the death of Ethiraju ammal and her sons Vijayaraghavan and Selvaraj, the plaintiff succeeded to the property. He would state in the plaint that the defendant Ameerunnisa Begum Sahiba's Endowments, claiming that he is a tenant, filed a suit in O.S.No.36 of 2021. The said suit was decreed and therefore, challenging the decree he presented the suit before the Additional City Civil Court, Chennai. The learned trial Judge framed an issue as to whether the suit is barred by virtue of Section 83 of the Waqf Act of 1995. He heard the learned counsel for the plaintiff and came to the conclusion that the suit is barred. Consequently, he rejected the plaint.

4. At the outset, I have to point out that a rejection of plaint is deemed to be a decree in terms of Section 2(2) of the Civil Procedure Code. Therefore, appropriate remedy would have to be by way of a regular appeal under Section 96 of the CPC. Nonetheless, since the revision has been entertained by this Court on 09.11.2023, I heard the revision on the merits of the case.



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5. Mr.R.Thiagarajan would submit that the plaintiff's paternal grandmother had purchased the property in the year 1941 and therefore she is the owner thereof. He would state that since the defendant was attempting to dispossess the plaintiff pursuant to the judgment and decree in O.S.No.36 of 2021 on the file of the Waqf Tribunal at Chennai, he was constrained to file the present suit in O.S.SR.No.14364 of 2023.

6. He would rely upon the judgment in **Ramesh Gobindram through his legal heirs -vs- Sugra Humayun Mirza Waqf (2010 (8) SCC 726)** to state that the Supreme Court has held that a civil suit such as this is maintainable and therefore he would plead, the order of the learned I Additional Judge, City Civil Court, Chennai be set aside and a direction be given to number the suit.

7. I heard Mr.R.Thiagarajan and Mr.L.Gavaskar for the respective parties and perused the materials placed before me.

8. Insofar as the surveyed and notified Waqfs are concerned, the very fact of notification in the Gazette does not mean that an actual owner loses the right, title and interest over the property. It cannot be disputed that this Waqf is governed by a Scheme decree of this Court, which had been settled as early as in 1914. Thereafter, the Waqf had been surveyed and a notification had also been issued and the notification is reflected in the bound register, of which the proforma and



extract have been placed before me. In case a wrong notification had been issued in terms of Sections 4 and 5 of the Waqf Act, 1954, the remedy for the party aggrieved by such notification was under Section 6 of the said Act.

9. Section 6 of the Waqf Act of 1954 would state as follows:

*6. Disputes regarding wakfs. (1) If any question arises whether a particular property specified as wakf property in a list of wakfs published under sub-section (2) of section 5 is wakf property or not or whether a wakf specified in such list is a Shia wakf or Sunni wakf, the Board or the mutawalli of the wakf or any person interested therein may institute a suit in a civil court of competent jurisdiction for the decision of the question and the decision of the civil court in respect of such matter shall be final :*

10. An opportunity had been given to Ethiraju Ammal to file a suit as early as in 1955. She did not present the suit. Subsequently, after having suffered the decree in O.S.No.36 of 2021 before the Waqf Tribunal at Chennai, by way of the present Civil Revision Petition, the petitioner wants to assert a right, that he traces to Ethiraju Ammal.

11. The Waqf Act of 1995 which came into force from 01.01.1996 repealed the Waqf Act of 1954. After the repeal of the 1954 Act, no civil suit is maintainable. This is by virtue of Section 83 of the Waqf Act of 1995. Under the new dispensation, if Waqf Tribunal has been created, it is that Tribunal which shall "determine any dispute, question or other matter relating to Waqf or Waqf property,



eviction of tenant or determination of rights and obligations of the lessor and lessee of such property under this Act."

12. The Waqf Act of 1995 also has another provision viz., under Section 85, where under no suit or other legal proceeding can be initiated before a Civil Court, the Revenue Court or any other authority in respect of any dispute, question or other matter relating to any Waqf, Waqf property or other matter which is required by or under this Act to be determined by the Tribunal.

13. A reading of Section 85 makes it clear that if the Waqf Tribunal has jurisdiction, automatically the jurisdiction of the Civil Court stands excluded. Therefore, insofar as the findings of the learned I Additional City Civil Court, Chennai that it is the Waqf Tribunal which possesses jurisdiction from its creation, to deal with disputes related to Waqf property, I cannot have a different opinion.

14. Insofar as the judgment relied upon by Mr.R.Thiagarajan is concerned, the issue before the Supreme Court was whether the Waqf Tribunal has the jurisdiction or Civil Court has the jurisdiction with respect to a suit for ejectment. It did not deal with the situation as contemplated either under Section 6 of the Waqf Act of 1954 or under Section 6 read with Section 83(1) of the Waqf Act of 1995. The judgment referred to by Mr.R.Thiagarajan is certainly not a judgment for the proposition that the Civil Court has the jurisdiction to declare the title of a party



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claiming an interest adverse to the Waqf while a Waqf Tribunal has already been created.

15. Insofar as the second prayer is concerned, which seeks for a declaration that the decree passed by the Waqf Tribunal in O.S.No.36 of 2021 is null and void, if the Waqf Tribunal has passed a decree which is contrary to law, the remedy is not to file a suit before the Civil Court. The very Section which creates the Tribunal viz., Section 83 gives a remedy to the party to approach the High Court which has the jurisdiction to call for and examine the records and also vests the High Court with the power to confirm, reverse or modify any determination made by the Waqf Tribunal.

16. Therefore, from the order of the Waqf Tribunal, the only remedy for a party is to prefer a revision before the High Court. In fact, such a revision had been preferred by the Civil Revision Petitioner in C.R.P.No.1770 of 2023 and I have also confirmed the decree of eviction passed by the Tribunal by my judgment dictated today.

17. In the light of the above discussion, especially on Section 6 of the Waqf Act of 1954 and Section 83(1) of the Waqf Act of 1995, the order passed by the learned I Additional Judge (TADA), City Civil Court, Chennai in O.S.SR.No.14346 of 2023 dated 03.10.2023 does not require any interference. The Civil Revision



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Petition stands dismissed. No costs. Consequently, connected miscellaneous petition is also dismissed.

18. At this stage, Mr.R.Thiagarajan states that he may be permitted to work out his rights before the Waqf Tribunal at Chennai. In case it is open to the civil revision petitioner, he can always approach the Waqf Tribunal for appropriate remedy. No liberty of this Court is necessary for the purpose of moving the Court of competent jurisdiction.

**02.07.2024**

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Index : Yes/No

Neutral Citation : Yes/No

KST

To

I Additional Judge,

City Civil Court, Chennai.



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**V. LAKSHMINARAYANAN, J.**  
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