



C.R.P(MD).Nos.1810 to 1816 of 2007

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on	:	28.03.2024
Pronounced on	:	08.11.2024

CORAM:

THE HON'BLE Mr. JUSTICE K.K.RAMAKRISHNAN

C.R.P.(MD).Nos.1810 to 1816 of 2007

C.R.P(MD).No.1810 of 2007:

Kouthul Alam Meera Maideen Pallivasal,
Sammbandapuram,
Rajapalayam Town,
Through its President A.Mohammed Ismail,
S/o.Abdul Wahab, Pallivasal Seethakathi Street,
Rajapalayam. ... Petitioner/Plaintiff

Vs.

1. P.Shahul Hameed (Died)
2. Tamilnadu State Waqf Board,
through its Chief Secretary
Santhome High Road, Chennai. ... Respondent/Defendants

3. Samsunnisha Amma

4. Sikkander

5. Subedhar

6. Samsunnisa ... Respondents
(R3 to R6 are brought as LR's of the deceased R1 as per the order
dated 27.06.2019 in M.P.(MD).Nos.1 to 3 of 2011 in C.R.P(MD).No.
1810 of 2007)



C.R.P(MD).Nos.1810 to 1816 of 2007

PRAYER : Civil Revision Petition filed under Article 227 of Constitution of India, praying to set aside the judgment and decree of the Subordinate Judge, Srivilliputhur (Waqf Tribunal), dated 23.07.2007 in O.S.No.130 of 1999.

For Petitioner : Mr.S.Ramesh

For Respondents : R1- Died

: Mr.P.M.Vishnuvarthanan for R3 to R6

C.R.P(MD).No.1811 of 2007:

Kouthul Alam Meera Maideen Pallivasal,
Sammabandapuram,
Rajapalayam Town,
Through its President A.A.Mohammed Ismail,
S/o.Abdul Wahab, Pallivasal Seethakathi Street,
Rajapalayam. ... Petitioner/Plaintiff

Vs.

1. Subban

2. Tamilnadu State Waqf Board,
through its Chief Secretary
4, Santhome High Road, Chennai. ... Respondents/Defendants

PRAYER : Civil Revision Petition filed under Article 227 of Constitution of India, praying to reverse and set aside the judgment and decree of the Subordinate Judge, Srivilliputhur (Waqf Tribunal), dated 23.07.2007 in O.S.No.133 of 1999.

For Petitioner : Mr.S.Ramesh

For Respondents : R1- No appearance



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C.R.P(MD).No.1812 of 2007:

Kouthul Alam Meera Maideen Pallivasal,
Sammabandapuram,
Rajapalayam Town,
Through its President A.A.Mohammed Ismail,
S/o.Abdul Wahab, Pallivasal Seethakathi Street,
Rajapalayam. ... Petitioner/Plaintiff

Vs.

1. Noorjahan

2. Tamilnadu State Waqf Board,
through its Chief Secretary
4, Santhome High Road, Chennai. ... Respondents/Defendants

PRAYER : Civil Revision Petition filed under Article 227 of Constitution of India, praying to reverse and set aside the judgment and decree of the Subordinate Judge, Srivilliputhur (Waqf Tribunal), dated 23.07.2007 in O.S.No.131 of 1999.

For Petitioner : Mr.S.Ramesh

For Respondents : R1- No appearance

C.R.P(MD).No.1813 of 2007:

Kouthul Alam Meera Maideen Pallivasal,
Sammabandapuram,
Rajapalayam Town,
Through its President A.A.Mohammed Ismail,
S/o.Abdul Wahab, Pallivasal Seethakathi Street,
Rajapalayam. ... Petitioner/Plaintiff

Vs.



C.R.P(MD).Nos.1810 to 1816 of 2007

1. Ameer Sahib (Died)

2. Tamilnadu State Waqf Board,
through its Chief Secretary
4, Santhome High Road, Chennai.

... Respondents/Defendants

3. Mariam Beevi

4. Imamsha

5. Shajahan

6. Ramzan Beevi

... Respondents

(R3 to R6 are brought as Lrs of the deceased R1 as per order dated 27.06.2019 in M.P.(MD).Nos.1 to 3 of 2015 in C.R.P(MD).No.1813 of 2007)

PRAYER : Civil Revision Petition filed under Article 227 of Constitution of India, praying to reverse and set aside the judgment and decree of the Subordinate Judge, Srivilliputhur (Waqf Tribunal), dated 23.07.2007 in O.S.No.132 of 1999.

For Petitioner : Mr.S.Ramesh

For Respondents : R1- Died

: No appearance for R3 to R6

C.R.P(MD).No.1814 of 2007:

Kouthul Alam Meera Maideen Pallivasal,
Sammbandapuram,
Rajapalayam Town,
Through its President A.A.Mohammed Ismail,
S/o.Abdul Wahab, Pallivasal Seethakathi Street,
Rajapalayam. ... Petitioner/Plaintiff



C.R.P(MD).Nos.1810 to 1816 of 2007

Vs.

1. Jani Seth

2. Tamilnadu State Waqf Board,
through its Chief Secretary
Santhome High Road, Chennai.

... Respondents/Defendants

PRAYER : Civil Revision Petition filed under Article 227 of Constitution of India, praying to reverse and set aside the judgment and decree of the Subordinate Judge, Srivilliputhur (Waqf Tribunal), dated 23.07.2007 in O.S.No.137 of 1999.

For Petitioner : Mr.S.Ramesh

For Respondents : Mr.P.M.Vishnuvarthanan for R1

C.R.P(MD).No.1815 of 2007:

Kouthul Alam Meera Maideen Pallivasal,
Sammabandapuram,
Rajapalayam Town,
Through its President A.A.Mohammed Ismail,
S/o.Abdul Wahab, Pallivasal Seethakathi Street,
Rajapalayam.

... Petitioner/Plaintiff

Vs.

1. Anwar Batcha

2. Tamilnadu State Waqf Board,
through its Chief Secretary
4, Santhome High Road, Chennai.

... Respondents/Defendants



C.R.P(MD).Nos.1810 to 1816 of 2007

PRAYER : Civil Revision Petition filed under Article 227 of Constitution of India, praying to reverse and set aside the judgment and decree of the Subordinate Judge, Srivilliputhur (Waqf Tribunal), dated 23.07.2007 in O.S.No.134 of 1999.

For Petitioner : Mr.S.Ramesh

For Respondents : R1- Died

: Mr.D.S.Haroon Rasheed for R2

C.R.P(MD).No.1816 of 2007:

Kouthul Alam Meera Maideen Pallivasal,
Sammabandapuram,
Rajapalayam Town,
Through its President A.A.Mohammed Ismail,
S/o.Abdul Wahab, Pallivasal Seethakathi Street,
Rajapalayam. ... Petitioner/Plaintiff

Vs.

1. Abdul Khader

2. Tamilnadu State Waqf Board,
through its Chief Secretary
4, Santhome High Road, Chennai. ... Respondents/Defendants

PRAYER : Civil Revision Petition filed under Article 227 of Constitution of India, praying to reverse and set aside the judgment and decree of the Subordinate Judge, Srivilliputhur (Waqf Tribunal), dated 23.07.2007 in O.S.No.136 of 1999.



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For Petitioner : Mr.S.Ramesh
For Respondents : No appearance for R1
: Mr.D.S.Haroon Rasheed for R2

COMMON ORDER

The revision petitioner/Kouthul Alam Meera Maideen Pallivasal filed this revision against the common judgment passed in O.S.Nos.130 to 134, 136 and 137 of 1999, dated 23.07.2007, by the Waqf Tribunal (the Principal Subordinate Judge) Srivilliputtur, seeking declaration of suit scheduled property and recovery of possession.

2.In the plaint, it is averred that the property belongs to the unknown Waqf and the same is notified as a Waqf property, but the petitioner/Pallivasal was in continuous possession and enjoyment of the said property. In the said property, the first defendant, namely first respondent, constructed the house and illegally in occupation of the property. Hence, they earlier filed a summary suit in O.S.Nos.1 to 7 of 1994 and 3 to 5 of 1995 seeking arrears of rent and same was dismissed with the observation that they filed the suit for declaration and recovery of possession. Hence,



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they filed suits in O.S.Nos.130 to 134, 136 and 137 of 1999 seeking declaration of suit scheduled property and recovery of possession.

3.The first defendant filed a written statement stating that the Pallivasal is not the absolute owner of the said property. Earlier, they filed a suit in O.S.Nos.130 to 134, 136 and 137 of 1999 against the municipality claiming the title over the suit scheduled property and the same was dismissed. In the said suit, there is a specific finding that the suit scheduled property is a Government land. The said Pallivasal has no right over the said property. Against which, there was no appeal. Subsequently, they filed a summary suit in O.S.Nos.1 to 7 of 1994 and 3 to 5 of 1995 seeking arrears of rent from the defendants and the defendants contested the suit and the same was dismissed with the specific finding that the property was situated not in the survey number alleged by the said Pallivasal. They are not the owner of either the site or the building. Hence, the suit was dismissed. The said finding is the after adjudicata in the suit and hence, there was no cause of action to seek the declaration. He further raised that in the suit for ejectment, the plaintiff should establish the title to the said property. There was no document produced except the patta obtained after the number of



litigation, which also is not a valid title to prove the declaration and the recovery of possession. In the said circumstance, he seeks for dismissal.

4.The learned Subordinate Judge, Srivilliputhur (Waqf Tribunal), dismissed the suit after holding that the plaintiff failed to establish that the suit scheduled properties belonged to the Waqf and they are in enjoyment of the suit scheduled property and also they relied the earlier judgment stating that the house located in the suit scheduled property has not been shown in the name of the plaintiff. In the said circumstance, the learned trial judge also stated that they are in enjoyment of the property for number of years by making the construction and hence, the suit also barred by limitation. Challenging the same, the petitioner/Pallivasal preferred this revision.

5.The learned counsel for the petitioner/Pallivasal made the following submissions:-

5.1.From the records, it is clear that the petitioner established the title to the suit properties. The Waqf issued the communication in which, the properties were mentioned and hence, the Tribunal failed to note the above observation and hence, he seeks for the interference in the judgment. The



learned counsel further submitted that in the earlier summary suit, it was admitted about the petitioner's title to S.No.65/3 and hence, the property is situated in the said survey number and hence they are estopped from raising the subsequent pleading that the plaintiff has no right over the properties.

5.2.The learned counsel further submitted that when there was a clear declaration and the same was notified as Waqf. Then the Waqf property is deemed to be Waqf and he specifically stated that once it was Waqf always it is Waqf. In the said circumstance, he seeks for allowing this petition.

5.3.The learned counsel further submitted that the learned trial judge committed error in not considering the earlier summary suit is not binding on the comprehensive suit for declaration and recovery of possession and hence, he seeks for allowing the appeal and be decreed as prayed for. He also submitted that Waqf form has been marked and the town survey sketch also has been marked. The same was not properly considered by learned trial judge,



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6.Per contra, the learned counsel appearing for the respondent submitted that no scrap of paper was produced to establish that the property belonged to Waqf. Further, no declaration was marked by the Waqf Board. Even if the declaration was issued it should be issued after following the procedure as stated by the Waqf Board. In the absence of any legally valid title, the declaration of suit is not maintainable and hence, the learned trial judge correctly held that the plaintiff has failed to establish the title to the suit's property. In the earlier summary suit, there is a specific finding that the construction is not within Survey No.65/3. Further, the construction has not been made by the Pallivasal. Further, the properties are not situated in the alleged Waqf property. The same was situated in the Government land. In the said circumstances, the learned trial Judge correctly dismissed the suit holding that the petitioner/Pallivasal is neither the owner of the site nor the owner of the building. The learned counsel further submitted that as per the law laid down by the Hon'ble Supreme Court in number of cases, even the summary case finding that the building and the site do not belong to the waqf is binding as res-judicata in the present suit. Hence, he seeks for the confirmation of the judgment passed by the learned trial Judge.



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7.This Court considered rival submission made on either side and also perused the record and also also precedents relied upon by them.

8.In this case, the following points arise for determination:-

8.1.Whether the revision petitioner established the title to the suit scheduled property?

8.2.Whether the revision petitioner is entitled for the relief of possession of the suit scheduled property, after demolition of the building situated in suit scheduled property?

8.3.Whether the judgment in O.S.Nos.1 to 7 of 1994 and 3 to 5 of 1995 marked under Ex.P.1 operates as res-judicata to decide the issue in the present case.



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9.This Court considered all the documents produced by the plaintiff and the defendant. This Court also perused the earlier litigation between the Pallivasal and the respondent in O.S.Nos.1 to 7 of 1994 and 3 to 5 of 1995. This Court also perused the judgment rendered in O.S.Nos.1 to 7 of 1994 and 3 to 5 of 1995 filed by the Pallivasal against the Municipality. From the above reading of all the early litigations, it is clear that the Pallivasal has not established the title to the suit scheduled property. The Pallivasal never produced any declaration of the Waqf. As per the Waqf Act, the declaration is to be issued by the Waqf Board. There was no declaration issued after following the procedures stated by the Waqf Tribunal. Apart from that, in the earlier suit, a clear finding is there that the properties claimed by the plaintiff in the suit belonged to the Municipality. Even though the said suit is not between the petitioner and the defendants, the finding is against them relating to the suit scheduled property. The finding that they are not the owner of the property, is binding on them. Further, in the earlier summary suit, there is a finding of the competent Court that the building and the site did not belong to the plaintiff. In the said circumstances, as rightly argued



by the learned counsel for the defendant/respondent herein, and in the considered opinion of this Court, the plaintiff has failed to establish the title to the said property. It is a well-settled principle, as law laid down by the Honorable Supreme Court in the case of ***Moran Mar Basselios Catholicos and another Vs. Most Rev.Mar Poulouse Athanasius and others*** reported in ***1954 2 SCC 42***, in the case of the ejectment suit, it is duty of the plaintiff to prove the title. The relevant portion is as follows:

36.....As the suit is for possession of the church properties the plaintiffs, in order to succeed, must establish their title as trustees and this they can only do by adducing sufficient evidence to discharge the onus that is on them under Issue 1(b) irrespective of whether the defendants have proved the validity of their meeting, for it is well established that the plaintiff in ejectment must succeed on the strength of his own title.

38.....Here again the suit being one in ejectment it is more important for the plaintiffs to establish their own title by getting Issues 19 and 20 decided in their favour than to destroy the defendants' title by getting Issues 14 and 15 decided against the defendants, for a mere



destruction of the defendants' title, in the absence of establishments of their own title carries the plaintiffs nowhere.

10. In this case, this Court finds no document to establish title on the side of the petitioner and they produced the patta, that too obtained in the year 1998, after the dismissal of the summary suit and also the earlier suit. It is also well-settled, mere patta is not established title to the suit scheduled property. In the said circumstances, this Court finds no merit in the contention of the revision petitioner that they have established title to the suit scheduled property through their document. On the other hand, the defendant's contention is well-merited one, on the basis of the earlier judicial decision. As held by the Honorable Supreme Court in the case of ***Mohammed Nooman and others Vs. Mohammed Javed Alam and others***, reported in **2010 9 SCC 560**, the finding in the earlier summary suit relating to the building that is is not located in the suit mentioned survey number and there was no landlord or tenant relationship and also building is not constructed by the Pallivasal, is operates as res-judicata in this present case. Apart from that, the finding in the earlier suit filed by the Pallivasal against the Municipality claiming the title over the suit scheduled property operates



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as a res-judicata in the present case and the same is well in accordance with the law.

11.In view of the above discussion, this Court finds that the plaintiff failed to establish the title to the suit scheduled property and they also failed to establish that they constructed the building and they are the owner of the building. In view of the above circumstances, this Courts finds that they are not the owner of the property in O.S.Nos.130 to 134, 136 and 137 of 1999 and they are not entitled to relief of demolition of the building, put up by the defendant and recovery of possession. In view of the above, this Court finds no merit in these revisions.

13.Accordingly, these civil revisions petitions are dismissed by confirming the judgment in O.S.Nos.130 to 134, 136 and 137 of 1999, dated 23.07.2007, by the Waqf Tribunal (the Principal Subordinate Judge) Srivilliputtur. No costs.

08.11.2024

NCC : Yes / No
Index : Yes / No
Internet : *Yes / No*
vsg



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To

1. The Subordinate Judge,(Waqf Tribunal)
Srivilliputhur.
2. The Section Officer,
VR Section(Records)
Madurai Bench of Madras High Court, Madurai.



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K.K.RAMAKRISHNAN, J.

vsg

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