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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 27.11.2024

DELIVERED ON : .12.2024

CORAM

THE HONOURABLE MR.JUSTICE N.SENTHILKUMAR

C.R.P.(MD)No.1043 of 2020

and

C.M.P.(MD)No.6662 of 2020

1.Narasullah
2.Mohamed Sadique
3.Shaik Mohadeen
4.Jainulbuddin
5.Halimunissa

... Petitioners

vs.

The Tamil Nadu Wakf Board,
Represented by its Secretary,
No.3, Santhome Highj Road,
Mylapore, Madras,
Present Address;
No.1, Jaffar Syrang Road,
Vallal Seethakadi Nagar,
Chennai-1.

...Respondents

PRAYER: Civil Revision Petition is filed under Article 227 of Constitution of India, to set aside the fair and final order passed by the Principal Subordinate Court, Tiruchirappalli, dated 03.09.2019 made in I.A.No.905 of 2014 in A.S.No. 206 of 2011 by allowing this Civil Revision Petition.

For Petitioners : Mr.G.Karnan

For Respondent : Mr.S.A.Ajmal Khan



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ORDER

The Civil Revision Petition has been filed by the plaintiffs in O.S.No.1085 of 1985 against the order of dismissal in I.A.No.905 of 2014 in A.S.No.206 of 2011, dated 03.09.2019, on the file of the Principal Subordinate Court, Tiruchirappalli.

2.The petitioners are the plaintiffs in O.S.No.1085 of 1985 on the file of the District Munsif Court, Tiruchirappalli. The suit was filed for declaration and permanent injunction. The said suit was dismissed by the trial Court and as against which, the plaintiffs/petitioners preferred an appeal in A.S.No.206 of 2011 on the file of the Principal Subordinate Court, Tiruchirappalli. During the pendency of the said appeal, the plaintiffs have filed an application in I.A.No.905 of 2014 praying to dismiss the suit by granting liberty to the plaintiffs to file a fresh suit for the same cause of action.

3.The learned Principal Subordinate Judge, Tiruchirappalli, after taking into consideration the facts and circumstances of the case, had come to the conclusion that the petitioner is not entitled to withdraw the suit and to file a fresh suit for the same subject matter and transferred the entire appeal to the Wakf Tribunal. Aggrieved by the same, the present Civil Revision Petition is filed.



4.The main contention of the revision petitioners is that the order of the First Appellate Court, transferring the entire appeal to the Wakf Tribunal, is not in accordance with law and it is beyond the jurisdiction and scope of the appellate Court. The learned Counsel for the revision petitioners contended that the Wakf Tribunal is constituted only for the purpose of deciding the disputes arising under the Wakf Act and it had no jurisdiction to try the appeal suits, which should be decided by the civil Court itself. He further contended that there is no impediment for the First Appellate Court to decide the appeal suit.

5.The First Appellate Court, while disposing the interlocutory application referred a judgment reported in **2019 (2) MWN (Civil) 533** stating that the suit is not maintainable in view of the Wakf Act, 1995 and transferred the appeal to the Wakf Tribunal.

6.The learned Counsel for the petitioners contended that the suit was instituted in the year 1985 and the cause of action had arisen in the year 1985, whereas, the Wakf Act came into effect only in the year 1995. In the absence of any pleadings before the trial Court, the First Appellate Court has without taking cognizance of the pleadings before the trial Court, transferred the appeal suit to the Wakf Tribunal under Wakf Act.



7.The learned Counsel for the petitioners contended that Order XXIII Rule 1 and 2 of CPC, refer only with regard to the permission to be sought from the Court to withdraw the suit and file another suit with the leave of the Court for the very same cause of action. The language of the proviso to Order XXIII Rule 1 and 2 makes it clear that it is applicable only to withdrawal of the suit and it is not applicable at the appeal stage, when the right of a minor is also involved.

8.For better appreciation, Order XXIII Rule 1 and 2 of CPC is extracted hereunder:

“1. Withdrawal of suit or abandonment of part of claim.

(1) At any time after the institution of a suit, the plaintiff may as against all or any of the defendants abandon his suit or abandon a part of his claim:

Provided that where the plaintiff is a minor or other person to whom the provisions contained in rules 1 to 14 of Order XXXII extend, neither the suit nor any part of the claim shall be abandoned without the leave of the Court.

(2) An application for leave under the proviso to sub-rule (1) shall be accompanied by an affidavit of the next friend and also, if the minor or such other person is represented by a pleader, by a certificate of the pleader to the effect that the abandonment proposed is, in his opinion, for the benefit of the minor or such other persons.

(3) Where the Court is satisfied,—

(a) that a suit must fail by reason of some formal defect, or



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(b) that there are sufficient grounds for allowing the plaintiff to institute a fresh suit for the subject matter of suit or part of a claim, It may, on such terms as it thinks fit grant the plaintiff permission to withdraw from such suit or such part of the claim with liberty to institute a fresh suit in respect of the subject-matter of such suit or such part of the claim.

(4) Where the plaintiff

(a) abandons any suit or part of claim under sub-rule (1), or

(b) withdraws from a suit or part of a claim without the permission referred to in sub-rule (3), he shall be liable for such costs as the Court may award and shall be precluded from instituting any fresh suit in respect of such subject-matter or such part of the claim.

(5) Nothing in this rule shall be deemed to authorise the Court to permit one of several plaintiffs to abandon a suit or part of a claim under sub-rule (1), or to withdraw, under sub-rule (3), any suit or part of a claim, without the consent of the other plaintiff.]

[1A. When transposition of defendants as plaintiffs may be permitted.—Where a suit is withdrawn or abandoned by a plaintiff under rule 1, and a defendant applies to be transposed as a plaintiff under rule 10 of Order I the Court shall, in considering such application, have due regard to the question whether the applicant has a substantial question to be decided as against any of the other defendants.]

2. Limitation law not affected by first suit.—*In any fresh suit instituted on permission granted under the last preceding rule, the plaintiff shall be bound by the law of limitation in the same manner as if the first suit had not been instituted.”*



9. The learned Counsel for the respondent contends that the First Appellate Court transferred the entire appeal before the Wakf Tribunal for proper disposal of the appeal.

10. Heard the learned counsel appearing on either side and perused the materials placed on record.

11. As rightly contended by the learned counsel for revision petitioners that the First Appellate Court has no jurisdiction to transfer the appeal to the Wakf Tribunal, when there is a specific bar under Section 7(5) of the Wakf Act, 1995. The only issue to be considered in this petition is *whether the First Appellate Court has jurisdiction to transfer the appeal to the Wakf Tribunal?*

12. The Hon'ble Supreme Court in the case of ***Sardar Khan and others vs. Syed Najmul Hasan (Seth) and others [(2007) 10 SCC 727]***, has clearly held that after the commencement of the Wakf Act, 1995, no suit or proceedings shall be instituted before any civil Court that is from 01.09.1996. The relevant portion is extracted hereunder:

“13. Now coming to the facts of the present case, it is an admitted fact that suit was filed on 19.12.1976 before Additional District Judge, Jaipur and arguments were heard and judgment was received on 16.12.1995 and the judgment was delivered on 23.12.1996 against which



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*the appeal was filed before the High Court on 1.3.1996. Therefore, from these facts it is clear that the suit was pending since 19.12.1976, i.e., prior to the commencement of the Act, i.e., 1.1.1996. Therefore, by virtue of sub-section (5) of Section 7, the Tribunal will have no jurisdiction to decide the suit or the appeal arising from that suit. In the present case, the appeal which was filed by the Respondents (herein) arises out of the Judgment and decree passed by the Additional District Judge, Jaipur on 23.1.1996 in a suit filed on 19.12.1976. Therefore, the appeal which was filed before the High Court against the judgment and decree passed on 23.1.1996 by the Additional District Judge, Jaipur, will not be governed by this Act. By sub-section (5) of Section 7, a special provision has been made that on pending suit or proceeding or appeal or review or revision, the Act will not be applicable. In the case of **Syed Inamul Hag Shah** (supra), the learned Single Judge only considered the effect of Section 85 but did not examine the effect of sub-section (5) of Section 7 and, on the basis of section 85, it was held that all the proceedings which were pending before the Civil Court, the Civil Court will have no jurisdiction. With great respect, perhaps the attention of the learned Single Judge was not drawn to sub-section (5) of Section 7 which specifically provides an exception that this will not be applicable to the pending suits, appeals and revisions. It has purpose behind it that when Act was made prospective, how can it operate retrospectively, therefore, all pending matters were taken out from purview of this Act.*

*14. On a conjoint reading of sub-section (5) of Section 7 and Section 85, the result would be that the Act will not be applicable to the pending suits or proceedings or appeals or revisions which have commenced prior to 1.1.1996, i.e., coming into force of the Wakf Act, 1995. Therefore, the view taken by the learned Single Judge was not correct in the case of **Syed Inamul Hag Shah** (supra). Hence, in view of the above discussion, we are*



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of the view that the learned Single Judge has gone wrong in relying on the decision rendered by the Single Judge in the case of Syed Inamul Hag Shah (supra). Consequently, the impugned order passed by the learned Single Judge is set aside and the matter is remitted back to the High Court for deciding the appeal in accordance with law, expeditiously.”

13.The plaintiffs instituted the suit in the year 1985 and the said suit was disposed on 07.07.2011. The appeal filed against the said judgment was taken on file in the year 2011 as A.S.No.206 of 2011 by the Principal Subordinate Court, Tiruchirappalli. As the original suit was filed in the year 1985 much prior to the enactment of the Wakf Act, as per the dictum laid by the Hon'ble Supreme Court, the order passed by the trial Court in I.A.No.905 of 2014 cannot be sustained in the eye of law and it is liable to be set aside. Accordingly, it is set aside and this Civil Revision Petition is allowed.

14.Since the suit is of the year 1985 and the appeal suit is also pending from the year 2011, the First Appellate Court is directed to conclude the appeal proceedings within a period of six months from the date of receipt of a copy of this order. No costs. Consequently, connected miscellaneous petition is closed.

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Internet :Yes/No
NCC :Yes/No
Index :Yes/No

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The Principal Subordinate Court,
Tiruchirappalli.



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N.SENTHILKUMAR, J.

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Pre-delivery order made in
C.R.P.(MD)Nos.1043 of 2020

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