



C.R.P.(MD)No.2287 of 2018

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON: 20.02.2024

PRONOUNCED ON: 30.04.2024

CORAM

THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR

C.R.P.(MD)No.2287 of 2018

and

C.M.P.(MD)No.8927 of 2023

Sinda Madhar Ali,
S/o A.S.Mohammed Hussain Ali,
Muthawalli,
Hazarath Moula Ali Pallivasal,
Inam Kesavaneri,
Nanguneri Taluk,
Tirunelveli District.

: Petitioner/Plaintiff

Vs.

P.M.Syed Ahamed (died)

1.The Tamil Nadu Wakf Board,
Chennai,
through its Chief Executive Officer,
D.No.1, Jafar Sirang Street,
George Town,
Chennai-1.

2.Masood Begam
3.Rahmath Beevi
4.Mohamed Ali



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5.Mohammed Ismail

6.Jhangir

7.Abdul Raheem

: Respondents / Defendants

PRAYER:- Civil Revision Petition is filed under Section 83(9) (Proviso Clause) of the Wakf Act, 1995, as against the Judgment and Decree in O.S.No.15 of 2013, on the file of the Wakf Tribunal / Subordinate Judge, Tirunelveli.

For Petitioner : Mr.V.Meenakshi Sundaram

For Respondents : Mr.S.A.Ajmalkhan
for R.1
: Mr.K.Appadurai
for R.2 to R.7

ORDER

The Civil Revision Petition / Statutory revision under Section 83(9) of the Wakf Act, 1995 is directed against the decree and judgment passed in O.S.No.15 of 2013, dated 18.04.2018, on the file of the Wakf Tribunal / Principal Subordinate Court, Tirunelveli.



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2. The case of the plaintiff is as follows:

(a) Hazarath Moula Ali Pallivasal, Inam Kesavaneri, Kalakkad, Nanguneri Taluk is a survived and notified Wakf. Originally the suit was filed against the first defendant and the Tamil Nadu Wakf Board and pending suit, the first defendant had died and hence, his legal representatives were impleaded as defendants 3 to 8. The plaintiff and his ancestors are the hereditary trustees of the Mosque. The first defendant unlawfully formed a committee and claimed that he is the President of the said committee of the Mosque. The first defendant filed a petition before the Tamil Nadu Wakf to approve the committee alleged to have been elected on 02.09.1998 under his Presidentship against the plaintiff and the Wakf Board, after elaborate enquiry, by its resolution dated 23.10.2000 under item No.35/2000, dismissed the application filed by the first defendant and since the first defendant did not take any further legal action, the resolution of the Tamil Nadu Wakf Board holding that the plaintiff and his family are hereditary hughthars of the institution has become final.



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(b) Despite the orders of the Wakf Board, the first defendant has collected donations fraudulently from the Jamath people and also from other Muslim Philanthropist in India and foreign Countries for constructing a Mosque. The first defendant has also cut and sold the trees stood on the Wakf land. The first defendant has no right to act as a Muthawalli for the Mosque at Kesaveneri. The first defendant has also not obtained any permission from the Wakf Board for constructing a Mosque or any building on the Wakf land. The construction of a new building as a Mosque in the Wakf land is unlawful and as such, the first defendant cannot claim any right over the building or Mosque which is in the Wakf land.

(c) The first defendant, taking advantage that he has constructed a new building as Mosque, has been claiming that the newly constructed building is a Mosque and the same belongs to him and he is the Muthawalli of Mosque. Hence, the plaintiff was constrained to file the present suit claiming permanent injunction restraining the first defendant from interfering with the management of the Mosque at Inam Kesavaneri by the plaintiff as its Muthawalli and also directing the first defendant to



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put the plaintiff in possession of the newly constructed building shown in II Schedule of the suit property.

3. The defence of the first defendant in short is as follows:

(a) The plaintiff is not a Muthawalli of Hazarath Moula Ali Wakf and he never managed the Wakf and the elected Jamath committee and its President have been managing the Kesavaneri Hazarath Moula Ali Mosque and Kesavaneri Muslim Jamatha and not by hereditaryship. The second respondent / Wakf Board in its resolution dated 16.06.1972 has accepted the election of Jamath committee. As per the proceedings of the Wakf Board in R.C..6938/C3/72, dated 26.06.1972, an appointment has to be made only through election. The plaintiff's father – Mohammed Hussain Ali has filed a suit in O.S.No.298 of 1971 against Jamath and in that suit, the case of the plaintiff's father that he was a Muthawalli, came to be rejected and the appeal in A.S.No.82 of 1974 was also ended in favour of the defendant. The plaintiff has filed the suit suppressing the writ petition in W.P.No.5839 of 1973 and the writ appeal in W.A.No.16 of 1974. The first defendant and before him, Syed Kulam Mohideen Sahib was managing the Jamath as its President and Secretary for the past 45 years.



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(b) The plaintiff's father in his evidence in O.S.No.298 of 1971 has stated he has no records to show that the Mosque was in his possession after 1966. The electricity bills, compensation of Wakf Board, salary paid to Lebbai, rice received from the Government in subsidy rice in Ramzan period would go to show that the first defendant was the Jamath President. The first defendant alone has been maintaining the Nikah register and also maintaining the correspondence and buildings. The plaintiff's own brother has been paying subscription to the Pallivasal. The Pallivasal and the buildings were constructed between April 2000 and 25.01.2013. The first defendant's last son Janab S.Abdul Rahim has contributed nearly Rupees Three and half Lakhs for the construction. The plaintiff is not entitled to get any of the relief as claimed in the suit and hence, the suit is liable to be dismissed.

4. The stand taken by the second defendant is as follows:

It is true that the schedule property belongs to Hazarath Moula Ali Pallivasal, Kesavaneri and it is a surveyed and notified Wakf. The Gazette Serial Number is 115/TNV. The said Wakf is managed under the supervision of the second defendant Board. The second defendant Board



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has rejected the application filed by the first defendant claiming right to manage the Wakf properties. The Wakf Board had not granted any permission to construct any building in the Wakf land. Hence the suit may be decreed as prayed for by the plaintiff.

5. The defence of the newly impleaded defendants 3 to 8 in short is as follows:

The first defendant was managing the Wakf as elected President of the Jamath. After his death on 27.01.2014, one Janab Raja Mohammed was elected as Jamath President and he was managing the Wakf, After his demise, the sixth defendant – Mohamed Ismail was elected as President of Jamath and he is now managing the Wakf. Since the sixth defendant is managing the Wakf as elected President of the Jamath, the other defendants 3 to 5, 7 and 8 are not necessary parties to the suit. The plaintiff has filed the suit suppressing the material facts. Hence, the suit is liable to be dismissed.

6. The issues recasted by the trial Court are as follows:

(1) Whether the plaintiff is a hereditary Hugdar and Muthawalli of

Hazarath Moula Ali Pallivasal, Inam Kesavaneri?



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(2) Whether the plaintiff is entitled for permanent injunction as prayed for?

(3) Whether the plaintiff is entitled for recovery of possession as prayed for?

(4) What other relief the plaintiff is entitled to?

7. During trial, the plaintiff has examined himself as P.W.1 and his brother Kamal as P.W.2 and exhibited seven documents as Exs.A.1 to A.7. The defendants 3 to 8 have examined the sixth defendant as D.W.1 and one Mohamed Sherif as D.W.2 and exhibited 11 documents as Exs. B.1 to B.11. The learned trial Judge, upon considering the evidence both oral and documentary and on hearing the arguments of both sides, has passed the impugned judgment and decree dated 18.04.2018 holding that the suit is not maintainable for want of notice under Section 89 of the Wakf Act, that the plaintiff was not acting as Muthawalli and not managing the Wakf and that the new Mosque was constructed in Government poromboke land and not in Wakf property, dismissed the suit. Aggrieved by the judgment of dismissal, the plaintiff has preferred the present statutory revision.



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8. The grounds raised in the Civil Revision Petition are as follows:

(1) The Judgment and Decree passed by the Wakf Tribunal is against law, weight of evidence, facts and circumstances of the case;

(2) The claim of the first defendant was rejected by the Tamil Nadu Wakf Board as early as on 1988 and the same was also accepted by the Wakf Board in their written statement, but the Tribunal has not considered the same;

(3) Mere possession of Nikah register or payment of tax will not establish his right of the management of the Wakf in dispute;

(4) The Wakf Tribunal instead of considering the entire deposition, has considered only slip answers;

(5) The Tribunal has not considered the material documents under Exs. A.4 and A.5;

(6) The Tribunal has not enquired the claim of the plaintiff as a hereditary Muthawalli and there is no adjudication of nature of Muthawalliship in Wakf in dispute;

(7) The Wakf profoma report is a primary document to give a prima facie evidence regarding the nature of Muthawalliship in the Wakf in dispute and the Wakf Tribunal has not taken any steps to call for those documents from Wakf Board to decide the nature of Muthawalliship, but



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the same is produced as additional evidence along with statutory revision;

(8) The decision of the Wakf Tribunal on the point of issuance of notice under Section 89 of the Wakf Act is completely on the misconception of law;

(9) Hence, the judgment and Decree dated 18.04.2018 made in O.S.No.15 of 2013, on the file of the Tribunal is liable to be set aside;

9. Considering the submissions made on either side and on perusing the materials available on record, the points that arise for consideration are as follows:

(1) Whether the Wakf Tribunal erred in holding that the suit is not maintainable for want of notice under Section 89 of the Wakf Act, despite showing that no relief was claimed against the second respondent – Wakf Board and was added only as a formal party?

(2) Whether the Tribunal erred in giving a finding that the first defendant was managing the said Wakf as its Muthawalli by taking note of the electricity consumption bills, receipt of rice on concession and payment of salary to Lebbai, but without considering the vital aspect that the first defendant's application to approve the committee allegedly



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electd on 02.09.1998 under his presidentship was rejected and in the absence of any challenge to the said order, the decision of the Board that the plaintiff and his family are hereditary hugthars of the institution has attained finality?

(3) Whether the Wakf Tribunal erred in giving a finding that the new constructions made in II Schedule of property are not belonging to the Wakf, as the same was constructed in S.No.585, which is classified as Government poromboke, despite showing that the land in S.No.585 was in possession of the said Wakf?

(4) Whether the judgment and decree dated 18.04.2018, made in O.S.No.15 of 2013 is liable to be interfered with?

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10. The above petition has been filed under Order 41 Rule 27 C.P.C., for reception of additional evidence.

11. The revision petitioner is the petitioner. The case of the petitioner is that since he had failed to prove that II schedule property



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wherein the new construction has been made belongs to the Wakf, his relief for recovery of possession was rejected, that due to the non-availability of documents, he could not produce the same at that time, that the additional evidence now sought to be received are the documentary evidence correlating the old survey number with new survey number and the suit proceedings conducted by him in the capacity of Muthawalli of the Wakf, that the reason for non-production of the same before the trial Court is neither wilful nor wanton, but the same was available after hectic efforts taken by him at his old age, that the petitioner is entitled to produce additional evidence for the above said substantial cause, that the petitioner has clearly averred in the plaint with respect to his claim, that he got documents now through Right to Information Act from various authorities in order to prove his plea taken in the plaint, that the documents produced are very much essential to decide the lis involved in the revision, which is the subject matter in O.S.No.15 of 2013 and that the petitioner will be put to irreparable loss and immense hardship, if the documents are not received.

12. The second respondent Wakf Board has filed a counter affidavit stating that the reasons for filing the additional evidence is



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unsustainable, that the petitioner has contested the case from the year 2013 and filed the present petition for receiving additional documents, that the petitioner did not mention any proper reason for filing the present petition, that the petitioner wanted to receive 16 documents in the revisional Court, which is not acceptable, that the petitioner has failed to explain the delay for non-filing of the above documents before the Tribunal and hence, the petitioner is not entitled to produce the additional evidence in the appellate Court and he did not establish any reasons why such evidence was not produced before the Tribunal, that the petition mentioned documents should not be received as additional evidence on the ground of delay and latches, that the documents are not necessary to decide the present issue and the petitioner has not made out any valid grounds for filing the present petition to receive the additional documents and that therefore, the petition is liable to be dismissed.

13. The contesting defendants 3 to 8 have not filed any counter statement to the above petition.

14. The only point for consideration is whether the documents now produced along with the petition are to be received as additional evidence.



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15. Let us first take the issue regarding the maintainability of the suit. Before entering into further, it is necessary to refer Section 89 of the Wakf Act, which is as follows:

89. Notice of suits by parties against Board.—

No suit shall be instituted against the Board in respect of any act purporting to be done by it in pursuance of this Act or of any rules made thereunder, until the expiration of two months next after notice in writing has been delivered to, or left at, the office of the Board, stating the cause of action, the name, description and place of residence of the plaintiff and the relief which he claims; and the plaint shall contain a statement that such notice has been so delivered or left.”

16. The learned trial Judge, by referring to the judgment of this Court in the case of ***The Secretary, Tamil Nadu Wakf Board Vs. Kancheepuram Oili Mohamed – Pettai Labbai Jumma Masid and others*** reported in ***2010(3) LW 914*** and by observing that though no



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relief is claimed against the Wakf Board, the notice under Section 89 of the Wakf Act is mandatory, has held that since no notice was issued to the Wakf Board, the suit is not maintainable. The relevant portion referred by the trial Court from the judgment above referred is extracted hereunder:

“In the instant case, though as against the Appellant/10th Defendant no relief is claimed as per the averment made in the plaint yet, it is a necessary party to the suit as opined by this Court. Eventhough as against the Appellant/10th Defendant no relief is claimed by the 1st Respondent/plaintiff in the suit since the Appellant/10th Defendant has General Superintendent and control of the 1st Respondent/plaintiff's Mosque and inasmuch as the 1st Respondent/plaintiff is represented by Muthavalli who can be removed from his office as per the provisions of the Wakf Act, 1995, and since he has to carry out the directions of the Board and to perform other duties enjoined under the Act, this Court is of the considered view that pre-suit notice as required under Section 89 (old Section 56) of the Act is very much necessary/mandatory and in the instant case, the plaintiff has not issued the pre-suit notice as per Section 89 (Old Section 56) of the Act and this material defect affects the very foundation of the filing of the suit



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and the substantial questions of law 2 and 3 are answered against the 1st Respondent/plaintiff.”

17. In the said decision case, the suit was for recovery of money filed by the Muthawalli. The learned Judge of this Court, by observing that Muthawalli is merely a Manager of the Wakf and is directly under the control and superintendence of the Board and therefore, he cannot institute a suit by himself and Wakf Board is the competent authority to file a suit and that though no relief is claimed against the Wakf Board, the plaintiff being the Muthawalli has to carry out the directions of the Wakf Board and that pre-suit notice as required under Section 89 of the Wakf Act is very much necessary / mandatory, has held that since the non-issuance of the pre-suit notice affects the very foundation of the filing of the suit, the suit is not maintainable and the relevant passages are extracted hereunder:

“ 26. A mutawalli is merely a manager of the Wakf and is directly under the control and superintendence of the Board and may even be removed from his office in accordance with Section 43. He has to carry out the directions of the Board and to perform other duties as specified in Section 36. There is nothing in the Act which



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empowers a mutawalli to institute and defend suit and proceedings in a court of law relating to Wakfs on his own. This power is vested in the Board which is a corporate body which must sue and be sued in its own name. Execution proceedings of a decree passed in a suit for possession of Wakf property. After the Wakf Act came into force in the State of Bihar cannot be instituted by the Mutawalli of the Wakf property. The execution case could have been filed only in the name of the Board and by the Board. It may be that the mutawalli was elected as mutawalli and was recognised as such by the Board but that would not empower him to institute any suit or proceeding in his own name in view of the specific provisions in the Act giving this power only to the Board. Further, it cannot be said that Section 15(2)(i) which vests the power to institute and defend suits and proceedings in a court of law relating to Wakf in the Board is an unreasonable restriction on the right of a mutawalli as it purports to take away his rights under the Mohammedan Law. A mutawalli has no personal right in the Wakf property except to manage and administer the Wakf property. He is merely a manager. There is no question of taking away any of the rights of a mutawalli under the Mohammedan law by vesting the right of instituting and defending any suit or proceeding in the Board. In any case by doing so it is only intended to administer and manage the trust properties in a better manner. Also, in the aforesaid decision at page No.



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302, in paragraph No. 13, it is laid down as follows: Having considered the facts and circumstances of this case and various submissions advanced by the learned Counsel I am of the opinion that it is the Board alone which can institute and defend suits and proceedings in a court of law relating to Wakfs after Wakf Act, 1954, came into force and no eh mutawalli. The execution proceeding instituted by the mutawalli has been rightly held to be not maintainable.

27. It is to be noted that as per Section 32(2)(i) of the Wakf Act, 1995, the power to institute and defend suits and proceedings pertaining to Wakf lies with the board and therefore the present suit filed before the trial Court by the Muthavalli representing the 1st Respondent/plaintiff's Mosque is not maintainable in the eye of law.

28. In regard to the plea of the Appellant/10th Defendant that issuance of notice to the Appellant/Wakf Board is a condition precedent to the filing of the suit, this Court points out that new Section 89 (old Section 56) of the Wakf Act, 1995, has not undergone any change and the notice under Section 56 (new Section 89) is analogous to Section 80 of the Code of Civil Procedure and it prohibits the filing of any suit against the Wakf Board in respect any Act purporting to be done by it in pursuance of the Act or the rules framed thereunder unless, the proper notice is served on the Wakf Board before



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filing of the suit. Defect of want of notice goes to the root of the matter and it cannot be viewed likely.

29. In the instant case, though as against the Appellant/10th Defendant no relief is claimed as per the averment made in the plaint yet, it is a necessary party to the suit as opined by this Court. Eventhough as against the Appellant/10th Defendant no relief is claimed by the 1st Respondent/Plaintiff in the suit since the Appellant/10th Defendant has General Superintendent and control of the 1st Respondent/Plaintiff's Mosque and inasmuch as the 1st Respondent/Plaintiff is represented by Muthavalli who can be removed from his office as per the provisions of the Wakf Act, 1995, and since he has to carry out the directions of the Board and to perform other duties enjoined under the Act, this Court is of the considered view that pre-suit notice as required under Section 89 (old Section 56) of the Act is very much necessary/mandatory and in the instant case, the plaintiff has not issued the pre-suit notice as per Section 89 (Old Section 56) of the Act and this material defect affects the very foundation of the filing of the suit and the substantial questions of law 2 and 3 are answered against the 1st Respondent/Plaintiff. “

18. The Hon'ble Supreme Court in the case of ***Bibi Saddiqa Fatima vs Saiyed Mohammad Mahmood Hasan*** reported in ***1978 SC***



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1362, has specifically held that a Muthawalli can very well file a suit so as to protect the interest of Wakf or its property and the relevant passage is extracted hereunder:

"Under the Mahomedan Law, which is a personal law, the Mutawalli has right to file a suit in respect of the ex-wakf property. This right has not been taken away by Statute. In other words, the mere fact that S.36 of the wakf Act does not speak about the management and administration of the wakf property as one of the duties of Mutawalli, does not imply that the Mutawalli has no right to file a suit in respect of wakf property. Nor do the provisions of S.55 of the wakf Act disentitle a Mutawalli from instituting a suit in respect of wakf property. The definition of Mutawalli u/s.3(f) of the Act presupposes that the first and foremost duty of the Mutawalli would be to manage or administer the property. The Mutawalli has to perform two types of duties, religious duties and secular duties. The religious duties may be in the nature of offering prayers, dhup etc., while secular duties would include the collection of rent, managing the property, keeping the property in good condition, preparation thereof, administering the property and if somebody encroaches upon the wakf property then to protect those rights. Thus, the fact that S.36 does not speak about the management and administration of the property as one of the duties of Mutawalli is immaterial. One has to take into consideration



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the very purpose for which the Act is enacted. It is clearly in the preamble that it is an Act to provide for the better administration and supervision of wakfs. Therefore, the Legislature intended that in addition to their duties under the Personal Law there must be further statutory duties and these duties are prescribed under S.36 of the said Act. Therefore, whatever the rights or duties the Mutawalli has under the personal law cannot be said to have been taken away merely because they are not so expressly provided as duties and powers of Mutawalli under the provisions of the wakf Act."

19. Relying on the above decision of the Hon'ble Supreme Court, a learned Judge of this Court in the case of ***M.K.Sulthan and Others VS. Hameed Shafi and Others*** reported in ***2013(3) MWN (Civil) 20***, has observed as follows:

"24. A close reading of the dictum given by the Hon'ble Apex Court, it is made clear that a muthavalli can very well institute a Suit so as to protect interest of wakf or its properties.

25. In (2008) 8 MLJ 365 (Bibijan and 49 others Vs. Anwarsha Idgah & Mosque Avuila Durgah, Panruti and 70 others), this Court has dealt with similar question and ultimately found that even worshippers can file a suit to



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protect wakf property or property of other religious institutions. They are entitled to maintain a suit for preserving trust property or restoring the property to the trust."

26. From the conjoint reading of the decision referred to supra, it is made clear that the plaintiffs are having locus standi to institute the present Suit for the reliefs sought for therein"

20. When a suit is filed against a Wakf Board, 60 days notice is mandatory under Section 89 of the Wakf Act. In our case, no doubt, the Wakf Board is made as second defendant. But in the plaint itself, it has been specifically stated that the Wakf Board has been added as a party to the suit under Section 19(1) of the Act and no relief is asked against the second defendant. As already pointed out, the plaintiff has filed the suit also to recover the possession of II Schedule property alleging that it is also a Wakf property. To put it in other way, the suit is laid in the interest of Wakf property and not against the Wakf or Wakf property.

21. Recently a learned Judge of this Court in ***Ahale Sunnathwal Jamath Jogi Madam Majid and Durga Gudiyattam,***



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Represented by its duly appointed Muthavalli, S.A.Rahim Vs. Haji Syed Irfan Hussain Sahib (died) and others in C.R.P.(NPD).No.964 of 2016, dated 14.12.2023, after taking note of Section 90 along with Section 89 of the Wakf Act, has held that notice is essential only in case covered by Section 89 where relief is sought for against the Wakf Board, Section 90 does not insist upon a pre-suit notice where any right, title or interest on the Wakf property or a claim is made by Muthawalli or a beneficiary and in such proceedings, the Wakf Board has not been made as a party, the statute demands upon the Court or the Tribunal to issue notice to the Board and that therefore, that in all cases where the Wakf Board is a party, notice must be issued under Section 89 is a misreading of the section and the relevant passages are extracted hereunder:

“53. In order to attract Section 89, the suit must be presented against the Wakf Board for any act purporting to be done by it in pursuance of the Act and Rules. The perusal of the plaint shows that the plaintiff has not challenged any action of the Wakf Board, but on the contrary, has attempted to clear the cloud over the Wakf's title and has challenged the sale deeds executed by the legal heirs of the Muthavalli in favour of the eighth defendant through the power of attorney, the seventh defendant. In other words, the plaintiff has not instituted a suit in respect of any action taken by the



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Board under the Act or the Rules made thereunder. Hence, Section 89 does not apply. Therefore, the argument of Mr.N.Manokaran has to fail.

54. A reading of the judgment in Rahmat Bi and another Vs. the State Wakf Board, AIR 1982 Mad 202 would show that in that case, the relief that had been sought for was against the Wakf Board by the plaintiff. This view of mine is supported and in line with the view taken by the Gujarat High Court in the case of Syed Khersha Sajanshah Mutvalli, Bhuj Kutch Vs. The Bhuj Municipality and another, AIR 1986 Guj 1. The Court in that case held that the Wakf Board had been joined as the defendant in the suit without claiming any relief. The Wakf Board was a proper party and hence, it had been impleaded.

55. It would be apposite to refer to Section 90(1) of the Waqf Act. This Section reads as follows:

“90. Notice of suits, etc., by courts.

(1) In every suit or proceeding relating to a title to or possession of a wakf property or the right of a mutawalli or beneficiary, the court or Tribunal shall issue notice to the Board at the cost of the party instituting such suit or proceeding.” A glance at this provision shows where any right, title or interest in a Wakf property or a claim is made by a Muthavalli or a beneficiary and in such proceedings,



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the Wakf Board has not been made a party, the statute demands upon the Court or the Tribunal to issue notice to the Board.

This implies that the Wakf Board is a proper and a necessary party in any proceedings, where the aforesaid issues are to be dealt with. However, Section 90 does not insist upon a pre-suit notice in such case. Notice is essential only in cases covered by Section 89, where relief is sought for against the Wakf Board. As per this Section, since the Board is a proper and necessary party and if Board is not impleaded, the Court while issuing the notice should insist upon the party instituting the proceedings to pay the cost for issuance of such notice. While Section 90 is general in application, Section 89 applies only to specified cases. Therefore, the view of the learned Tribunal that in all cases where the Wakf Board is a party, notice must be issued under Section 89 is a misreading of the Section. If this argument is to be accepted, then the Parliament would not have enacted two separate Sections, namely, Sections 89 and 90. The learned Judge has telescoped the interpretation given to Section 89 to Section 90 and therefore, is contrary to the fundamental principles of statutory interpretation. One Section must not be read in a manner to defeat the purpose of other Section. As pointed out above, in all categories covered under Section 90(1), the Wakf Board is a proper and necessary



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party, but that does not mean in all such cases, notice is necessary under Section 89. To reiterate, notice under Section 89 is necessary only if it comes within the scope of that Section.”

22. In the case on hand, as already pointed out, the second defendant Wakf Board has filed a written statement in support of the plaintiff and the Board has specifically stated that the suit may be decreed as prayed for by the plaintiff. So, by no stretch of imagination, the suit filed by the plaintiff cannot be taken as against the Wakf Board. Moreover, the non-issuance of the two months pre-suit notice as contemplated under Section 89 of the Act is a ground available only to the Wakf Board and not to the first defendant or other defendants against whom the reliefs are claimed. More importantly, the second defendant Board will not be affected in any way if any order or decree is passed against the first defendant.

23. Considering the above, this Court has no hesitation to hold that the finding of the Tribunal that the suit is not maintainable for want of Section 89 notice cannot legally be sustained and the same is liable to be set aside.



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24. Now turning to the merits of the case, the plaintiff has claimed that he is the hereditary trustee. But on the other hand, the first defendant and the sixth defendant had been claiming that the appointment is only by election, not by hereditaryship. The Tribunal, taking note of the proceedings under Ex.A.5, that the plaintiff was appointed by the second defendant Board as Muthawalli for only 3 years, has come to a decision that the plaintiff has failed to prove that he was a hereditary Muthawalli. Regarding the relief of permanent injunction, the Tribunal, taking note of the electricity consumption charges bills, house tax receipts, proceedings of the District Civil Supplies Officer giving rice on concessional basis and Nikah register along with the evidence of P.W. 2 has come to a decision that the Mosque is being managed by the first defendant's committee and not by the plaintiff and that since the plaintiff was not acting as Muthawalli on the date of plaint and not managing the Pallivasal, he is not entitled for injunction as prayed for.

25. Regarding the relief of recovery of possession of II Schedule of the suit property, taking note of Exs.B.2 and B.3, that the properties owned by Hazarath Moula Ali Pallivasal, Inam Kesavaneri are situated in



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S.Nos.588/2 and 588/4, that the new constructions were made in S.No. 588, which is Government poramboke land and that since the plaintiff has failed to prove that the property in S.No.588 is a Wakf property, has held that the plaintiff is not entitled to get the relief of recovery of possession.

26. As rightly contended by the learned Counsel for the plaintiff, the Tribunal has not considered the rejection of the application filed by the first defendant to approve his committee alleged to have been elected on 02.09.1998 vide resolution dated 23.10.2000 and his alleged failure to challenge the same.

27. The learned Counsel for the plaintiff would submit that the plaintiff has filed additional documents under Order 41 Rule 27 C.P.C., for not to fill up the lacuna, but the said documents are very much necessary for the pronouncement of the judgment in the appellate stage, that the additional document Nos.2 and 3 along with document Nos.15 and 16 would establish that Old S.Nos.39 and 40 are Wakf properties and those old survey numbers are correlated with new Survey No.585, that the additional document Nos.5 to 14 would go to establish that the



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plaintiff was recognised by the second defendant Board as hereditary Muthawalli of Hazarath Moula Ali Pallivasal, Inam Kesavaneri and that the additional documents are more important to decide the main issue involved in the case. He would further submit that since the main contesting defendants have neither filed any counter nor raised any objection, the additional evidence may be received and the case may be remanded back to the Wakf Tribunal and decide the case afresh.

28. The learned Counsel for the respondents/defendants would submit that the plaintiff has not made out any ground for the reception of additional evidence as contemplated under Order 41 Rule 27 C.P.C., that an application for taking additional evidence at a belated stage cannot be filed as a matter of right, that the plaintiff has to plead and prove the satisfactory reasons for non-production of the evidence before the trial Court, that the inadvertence of the party or his inability to understand the legal issues involved or that the party did not realise the importance of the document, cannot be considered as a valid reason or ground for reception of additional evidence and that therefore, the above petition for reception of evidence is liable to be dismissed.



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29. It is time to consider the legal position with regard to the additional evidence under Order 47 Rule 21 C.P.C. A Privy Council in the case of ***Parsotim Thakur vs Lal Mohar Thakur*** reported in ***AIR 1931 PC 143***, has specifically held that it is the duty of the Court to come to a valid conclusion that it is really necessary to accept the documents as additional evidence to enable it to pronounce the judgment and true test is whether the appellate Court is able to pronounce the judgment from the materials available without taking into consideration the additional evidence sought to be produced.

30. The learned Counsel for the plaintiff has relied on the judgment of this Court in ***N.Natarajan Vs. The Executive Officer, Chitlapakkam Town Panchayat*** reported in ***2015(2) MWN (Civil)1*** and the relevant passages are extracted hereunder:

“26. A perusal of the above provisions would show that it empowers the Appellate Court to receive additional evidence, whether oral or documentary, only in exceptional circumstances enumerated in Sub-Rule 1(a), 1(aa) and 1(b) of the Rules. So far as the present appeal is concerned, Sub-Rule 1(a) and 1(aa) are not at all applicable. Let us examine whether Sub-Rule 1(b) is applicable to the instant case. This



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provision states that a document may be required by the Appellate Court or examination of any witnesses may be required to enable the Court to pronounce judgment satisfactorily and only in such an event the Court can receive a document as additional evidence or allow a witnesses to be examined. That apart, if the Court finds that for "any other substantial cause" if a document is required or examination of a witness is required, the Court may allow such evidence to be received or witness to be examined.

28. In my considered view, there can be no doubt that clause 1(b) controls clauses 1(a) and 1(aa), but at the same time, at no stretch of imagination, it can be stated that clause 1(b) will not have its independent existence so as to empower the Court to receive any additional evidence either oral or documentary at the appellate stage. In other words, even if the conditions enumerated in Sub-Rules 1(a) and 1(aa) are not satisfied and even if no party seeks to produce additional evidence, in order to enable itself to pronounce judgment satisfactorily or for any other substantial cause as enshrined in Sub-Rule 1(b), the Appellate Court can suo motu require such document to be received in evidence and witnesses to be examined. This is the impression, both initial and final, one gets by closely reading Sub-Rule 1(b) along with Sub-Rule 1(a) and 1(aa).

35. A deep reading of all the above judgments and the relevant provisions of the Code of Civil Procedure would



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leave no doubt that additional evidence, whether oral or documentary, can be received by the appellate Court either at the instance of the parties as provided in Sub-Rules (1)(a) and (1)(aa) or suo motu by the Court as provided in Sub-Rule (1)(b) provided any one of the contingencies enumerated in Sub-Rule 1(b) exists impelling the Appellate Court to receive such additional evidence both oral and documentary. To exercise the power to receive additional evidence under Sub-Rule (1)(b) it is not at all necessary that a party to the appeal should make an application. What all that is required is the satisfaction of the Appellate Court that the additional evidence is required either for pronouncing the judgment satisfactorily or for any other substantial cause.”

31. In the decision reported in **2015(2) MWN (Civil) 283 (N.Ravi and Others Vs. S.K.Thirunavukkarasu (died) and others)**, relied on by the learned Counsel for the petitioner, a learned Judge of this Court while considering the order passed under Order 41 Rule 27 C.P.C., has referred the following decisions of the Hon'ble Supreme Court and the same are extracted hereunder:



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“13. In [Union of India vs. Ibrahim Uddin and Another](#) reported in (2012) 8 SCC 148 , the Supreme Court has made the following observation:

"An application under [Order 41 Rule 27 CPC](#) is to be considered at the time of hearing of appeal on merits so as to find out whether the documents and/or the evidence sought to be adduced have any relevance/bearing on the issues involved."

"The true test, therefore is, whether the appellate court is able to pronounce judgment on the materials before it without taking into consideration the additional evidence sought to be adduced. Such occasion would arise only if on examining the evidence as it stands the court comes to the conclusion that some inherent lacuna or defect becomes apparent to the court."

14. In [K.R.Mohan Reddy vs Net Work Inc. Represented through MD](#) reported in (2007) 14 SCC 257, the Supreme Court made the following observation:

" It is now a trite law that the conditions precedent for application of clause (aa) of sub-rule (1) of Rule 27 of Order 41 is different from that of clause (b). In the event the former is to be applied, it would be for the applicant to show that the ingredients or conditions precedent mentioned therein are satisfied. On the other hand if clause (b) to sub-rule (1) of



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*Rule 27 of **Order 41 CPC** is to be taken recourse to, the appellate court is bound to consider the entire evidence on record and come to an independent finding for arriving at a just decision; adduction of additional evidence as has been prayed by the appellant was necessary."*

32. It is also necessary to refer the judgment of the Hon'ble Supreme Court in ***Union of India Vs. Ibrahim Uddin and another*** reported in ***2012(8) SCC 148***, wherein the Hon'ble Apex Court has specifically observed that where the additional evidence sought to be adduced removes the cloud of doubt over the case and the evidence has a direct and important bearing on the main issue in the suit and interest of justice clearly renders it imperative that it may be allowed to be permitted on record such application may be allowed.

33. In the case of ***A. Andisamy Chettiar vs A. Subburaj Chettiar*** reported in ***2015(17) SCC 713***, the Hon'ble Apex Court has held that the admissibility of additional evidence does not depend upon the relevancy to the issue on hand, or on the fact, whether the applicant had an opportunity for adducing such evidence at an earlier stage or not, but it depends upon whether or not the appellate court requires the evidence



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sought to be adduced to enable it to pronounce judgment or for any other substantial cause. The true test, therefore is, whether the appellate court is able to pronounce judgment on the materials before it without taking into consideration the additional evidence sought to be adduced.

34. In the case on hand, as already pointed out, the plaintiff has produced the copy of the judgment in O.S.No.152 of 1950, on the file of the District Munsif Court, Ambasamuthiram, the proceedings of the Tahsildar, Nanguneri, dated 16.12.1958, Gazette notification issued on 13.05.1959 and the proceedings of the second respondent dated 13.05.1976 and 23.11.2000. The petitioner has also produced the copies of the judgment and decree passed in five Original Suits filed in the year 2015 by the plaintiff and also the informations obtained under Right to Information Act with regard to the Survey No.585. As rightly contended by the learned Counsel for the plaintiff, the documents sought to be received are the official records and public documents and are not of recent origin.

35. It is surprising to notice that though the second defendant Board has taken a stand in support of the plaintiff before the trial Court



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has now taken a different stand before this Court and the same is very much evident from the objections raised for the reception of additional evidence. It is pertinent to note that though the second defendant Board has raised some objections, the main contesting defendants have not raised any objections for the reception of additional evidence as I do not find any counter affidavit nor any memo of objections for the reception of additional evidence.

36. The learned Counsel for the plaintiff would submit that the documents now produced would go to show that the plaintiff and his predecessors were the hereditary Muthawallis, that the plaintiff alone has filed several suits against the tenants for recovery of Wakf properties and that the property in S.No.585 is also belonging to Wakf Board.

37. No doubt, though the plaintiff has not shown any of the grounds so as to attract Clause 1-a, 1-aa of Order 41 Rule 27 C.P.C., but as per the legal position above referred, the appellate Court can receive the additional evidence under sub-rule 1(b), in order to enable itself to pronounce the judgment satisfactorily. As rightly contended by the learned Counsel for the plaintiff, the evidence as of now available are not



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sufficient enough to decide the main issue as to whether the Hazarath Moula Ali Pallivasal, Inam Kesavaneri, is by hereditary or by election and whether the property in S.No.585 is belonging to the Wakf Board and not connected with the existing Pallivasal situated in S.Nos.588/2 and 588/4.

38. The plaintiff has not claimed any independent right or title over the suit property, but he has claimed on the ground that it is a Wakf property. The Tribunal, taking note of the nature of the dispute and the property involved in the suit and the claim putforth by the parties, should have directed the second defendant/Wakf to produce the necessary records to show the nature of Muthawalliship of Hazarath Moula Ali Pallivasal, Inam Kesavaneri and the ownership or possession of the property in S.No.585 to arrive at a correct decision to the issues involved in the suit, but the Tribunal without taking care of the above aspects, has considered the issues in a casual manner and dismissed the suit.

39. The Hon'ble Supreme Court in the case of *Sirajudheen vs Zeenath and others* reported in *2023 Live Law SC 145*, while considering the scope of remand, has observed as follows:



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“11.2. After having taken note of the salient features of the impugned judgment as also the significant omissions therein, if we refer to the provisions empowering the Appellate Court to make an order of remand, it is difficult to find any justification for remand by the High Court in the present case. As noticed, the scope of remand in terms of Rule 23 of [Order XLI CPC](#) is extremely limited and that provision is inapplicable because the suit in question had not been disposed of on a preliminary point. The remand in the present case could only be correlated with Rule 23-A of [Order XLI CPC](#) and for its applicability, the necessary requirements are that “the decree is reversed in appeal and a re-trial is considered necessary”. As noticed hereinabove, there is no reason whatsoever available in the impugned judgment as to why and on what basis the decree was reversed by the High Court. Obviously, the reversal has to be based on cogent reasons and for that matter, adverting to and dealing with the reasons that had prevailed with the Trial Court remains a sine qua non. Thus, remand in the present case cannot be held justified even in terms of Rule 23-A of [Order XLI CPC](#).

40. As rightly contended by the learned Counsel for the plaintiff, if the additional evidence sought for is received, then there is every chance for the trial Court to take different decision. In case if the additional



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documents are ordered to be received, then the Court has to follow the mandate under Order 41 Rule 28 C.P.C.

41. On considering the evidence sought to be received and the evidence already adduced, this Court is of the view that a re-trial is necessary and consequently, the case has to be remitted back to the Tribunal. Hence, this Court concludes that the impugned judgment and decree of the Tribunal is liable to be set aside and the case has to be remitted back to the Wakf Tribunal, now at Chennai, with a direction to receive the additional evidence subject to the existence, authenticity and genuineness of the said documents and also the contents thereof as required by law.

42. In the result, the Civil Revision Petition is allowed and the impugned judgment and decree, dated 18.04.2018 passed in O.S.No.15 of 2013, on the file of the Wakf Tribunal / Principal Subordinate Court, Tirunelveli is set aside and the case is remitted to the Wakf Tribunal at Chennai. The Wakf Tribunal, Chennai is directed to take the case on file and permit both the parties to adduce additional evidence including the documents now ordered to be received, but subject to the existence,



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authenticity and genuineness of the said documents and also the contents thereof as required by law and dispose of the case, within a period of three months from the date of receipt of a copy of this order. The petition in C.M.P.(MD)No.8927 of 2023 is also allowed and the Tribunal is directed to receive the documents and mark the same, subject to the existence, authenticity and genuineness of the said documents and also the contents thereof as required by law. There shall be no order as to costs.

30.04.2024

NCC : Yes : No

Index : Yes : No

Internet : Yes : No

SSL

To

1. The Tamil Nadu Wakf Tribunal,
Chennai.
2. The Tamil Nadu Wakf Board,
Chennai,
through its Chief Executive Officer,
D.No.1, Jafar Sirang Street,
George Town, Chennai-1.



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2. The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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K.MURALI SHANKAR,J.

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PRE-DELIVERY JUDGMENT MADE IN

C.R.P.(MD)No.2287 of 2018

30.04.2024