



C.R.P.(MD)No.76 of 2018

WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 15.03.2024

Pronounced on : 04.06.2024

CORAM:

THE HON'BLE MR.JUSTICE K.MURALI SHANKAR

C.R.P.(MD)No.76 of 2018

and

C.M.P.(MD)Nos.341 of 2018 and 16519 of 2023

S.Jahir Hussain Bigili

Muthawalli – Murtin Jakhan Thaikka

... Petitioner

Vs.

1. Esakkiammal (Died)
2. Raja (Died)
3. The Chief Executive Officer,
Tamil Nadu Wakf Board,
Chennai.
4. Sankaravadivu
5. S.Thangapandi
6. S.Veluchamy
7. S.Ramar
*(Respondents 4 to 7 are brought on record as LR's of
the deceased 1st respondent vide Court order dated*



C.R.P.(MD)No.76 of 2018

09.01.2023 made in CMP(MD)Nos.9659, 9663 and
9664 of 2022 in CRP(MD)No.76 of 2018)

8. R.Subbulakshmi

9. R.Murugan

10. R.Marithangam

*(Respondents 8 to 10 are brought on record as LR's of
the deceased 2nd respondent vide Court order dated
11.09.2023 made in CMP(MD)Nos.12737 to 12739 of
2022 in CRP(MD)No.76 of 2018)*

... Respondents

Prayer : This Civil Revision Petition filed under Section 83(9) Proviso Clause of Wakf Act, 1995, to set aside the judgment and decree dated 18.08.2017 passed in O.S.No.219 of 2011 on the file of the Principal Sub Court, Tirunelveli (Wakf Tribunal) by allowing this Civil Revision Petition with cost.

For Petitioner : Mr.V.Meenakshi Sundaram

For R3 : Mr.K.K.Senthil

For R4 to R7 : Mr.H.Arumugam

For R8 to R10 : M/s.D.Deepamathi

ORDER

The Civil Revision Petition is directed against the judgment and decree passed in O.S.No.219 of 2011 dated 18.08.2017 on the file of the Principal Subordinate Court, Tirunelveli.



C.R.P.(MD)No.76 of 2018

WEB COPY

2. The revision petitioner is the plaintiff and the respondents 1 to 3 are the defendants. Pending revision, the first respondent/first defendant had died and her legal representatives were brought on record as respondents 4 to 7. The second respondent/second defendant had also died and his legal representatives were brought on record as respondents 8 to 10.

3. The case of the plaintiff in short as follows:-

The suit property belongs to Murtin Jakhan Thaikka. The third defendant Board appointed the plaintiff as Muthawalli on 20.04.2011 and since then the plaintiff as Muthawalli has been managing the properties of Murtin Jakhan Thaikka. While measuring the properties on 01.10.2011, the plaintiff came to know that the defendants 1 and 2 had encroached the properties of Murtin Jakhan Thaikka. The plaintiff's request to the defendants 1 and 2 to remove their encroachment were of no use. The suit property will fetch more than Rs.1,000/- per month as rental income and the defendants 1 and 2 have to pay the same as damages. Hence, the plaintiff was constrained to file the above suit to declare that the suit property is belonging to the said Thaikka and for recovery of possession and for damages.



C.R.P.(MD)No.76 of 2018

WEB COPY

4. The defence of the first defendant in short as follows:-

(a) The suit property originally belonged to one M.Velayutham and he sold the property to the first defendant's mother Muthammal in the year 1926 as vacant land and the said Muthammal constructed a tiled house in the said property. Since 1927 the said Muthammal had been residing in the said house along with her family and she was in open, hostile, continuous, uninterrupted and in adverse possession and enjoyment of the suit property from the year 1927 to the full knowledge of the plaintiff and whole world and the said Muthammal died intestate in 1982 leaving behind the first defendant as her legal heir. Thereafter, the first defendant being the sole heir has been in possession and enjoyment of the suit property. The first defendant has been paying property tax and has been paying electricity consumption charges and for water consumption charges.

(b) The first defendant leased out the suit property to the second defendant in the year 1997. Since the first defendant was requiring the suit property for her own occupation and as the second defendant has refused to vacate the suit property, the first defendant was constrained to file an eviction petition in R.C.O.P.No.2 of 2008. After full trial, eviction was



C.R.P.(MD)No.76 of 2018

ordered. The second defendant has preferred an appeal and thereafter revision before this Court and the same came to be dismissed. Thereafter, the first defendant has filed an execution petition in E.P.No.110 of 2011 on the file of the Principal District Munsif Court, Tirunelveli and delivery of the suit property was taken through Court Amin and the aid of police.

(c) In order to take vengeance, the second defendant had instigated the plaintiff and filed the above suit. Since the second defendant is not in the possession of the suit property, he is not at all a necessary party to the present suit. Since the suit property does not belong to Wakf, the suit filed before the Wakf Tribunal is not legally maintainable. The plaintiff has wantonly not given the measurements, boundaries and correct survey number for the suit property and as such, the suit is hit by Order 7 Rule 3 C.P.C. The plaintiff has no title, interest or possession of the suit property as alleged in the plaint. Hence, the suit is liable to be dismissed.

5. Additional defence taken by the first defendant in short as follows:-

The third defendant Board through its Secretary filed a suit in O.S.No.450 of 1973 for declaration of title and recovery of possession



C.R.P.(MD)No.76 of 2018

WEB COPY

regarding the property situated in Town Survey No.2591 against one Arunachala Nadar and others, who were the adjacent land owners of the suit property. The above said suit after full trial was dismissed by the District Munsif, Tirunelveli, holding that the land comprised in Town Survey No.2591 does not belong to Wakf Board. Hence, Wakf Board itself does not have any right over the property comprised in Town Survey No. 2591. The plaintiff, by suppressing the earlier suit, had fraudulently filed the present suit seeking the relief of declaration and recovery of possession of the property situated in Town Survey No.2591. The present suit is nothing but a re-litigation. Hence, the suit is liable to be dismissed on this ground also.

6. The third defendant Board in their written statement has taken a stand in support of the plaintiff, wherein, it has been stated that the suit property belongs to Murtin Jakhan Thaikka and it is a surveyed and notified Wakf in Gazette Serial No.759/TNV, that the third defendant Board appointed the plaintiff as Muthawalli vide its order dated 20.04.2011 and that the defendants 1 and 2 are encroachers of the suit property and as such, they have to pay mean profits and damages to the said Thaikka.



C.R.P.(MD)No.76 of 2018

WEB COPY

7. The Wakf Tribunal, upon considering the pleadings of both the parties, has framed the following issues;

1. Whether the plaintiff is entitled to get declaration that the suit property belongs to the plaintiff's Thaikka?
2. Whether the plaintiff is entitled to get the relief of recovery of possession of the suit property from the defendants 1 and 2?
3. Whether the plaintiff is entitled to get damages at Rs.1,000/- per month from the defendants 1 and 2 till handing over the possession of the suit property?
4. Whether the plaintiff's suit is not maintainable?
5. Whether the suit is barred by limitation?
6. To what other relief, the plaintiff is entitled to?

8. During trial, the plaintiff has examined its Muthawalli as P.W.1 and exhibited 2 documents as Ex.A.1 and Ex.A.2. The first defendant has examined her son Velsamy as D.W.1 and her neighbour Lakshmanan as D.W.2 and exhibited 17 documents as Ex.B.1 to Ex.B.17. The second defendant had remained *ex parte*. The third defendant Board has examined its Superintendent Umar Farook as D.W.3 and adduced no documentary evidence.



C.R.P.(MD)No.76 of 2018

WEB COPY

9. The learned trial Judge, upon considering the evidence both oral and documentary and on hearing the arguments of both the sides, has passed the impugned judgment and decree dated 18.08.2017 by holding that the suit as framed is maintainable before the Wakf Tribunal but the suit is barred by limitation and that the plaintiff is not entitled to get the reliefs of declaration and recovery of possession and other reliefs, dismissed the suit. Aggrieved by the dismissal of the suit, the plaintiff has filed the present statutory revision.

10. **C.M.P.(MD)No.16519 of 2023** : The revision petitioner/plaintiff has filed the above petition under Order 41 Rule 27 C.P.C. seeking orders for reception of additional evidence.

11. The case of the revision petitioner/plaintiff, in the affidavit filed in support of the petition filed under Order 41 Rule 27 C.P.C., is that the revision petitioner/plaintiff has produced only the order of his appointment as Muthawalli in the year 2011 as Ex.A.1 and extract of Wakf Proforma as Ex.A.2, that the trial Court has misinterpreted Ex.A.2-Wakf Proforma, that the revision petitioner/plaintiff has subsequently filed a suit in O.S.No.9 of



C.R.P.(MD)No.76 of 2018

2023 before the Wakf Tribunal, Chennai as against third parties in respect of Wakf properties, in which, he has produced many important documents for establishing their Wakf right, title over many properties including the suit property in Town Survey No.2591, that when advocate on record from this Court informed the revision petitioner/plaintiff regarding listing of this case for final hearing, he instructed his advocate on record to file the additional documents which are very much necessary to decide the dispute involved in the present revision, that all the documents which are now produced as additional documents were filed in O.S.No.9 of 2023 before the Wakf Tribunal, Chennai and now he is producing the same before this Court as additional documents which will establish Murtin Jakhan Thaikka's right, title in Town Survey No.2591, that these additional documents will tilt the decision of the Wakf Tribunal, Chennai and that therefore, the documents may be received as additional evidence in the interest of justice.

12. The respondents 4 to 7-legal representatives of the deceased first respondent/first defendant have filed their counter affidavit raising objections for the reception of additional evidence stating that there is no



C.R.P.(MD)No.76 of 2018

pleading at all in respect of the additional documents which are now produced along with this petition, that the documents produced will not establish the title of the revision petitioner/plaintiff, that mere production of the documents will not show for what purpose they are produced, without even explaining the nature of the documents and its requirement, that the revision petitioner/plaintiff has not given any explanation why these documents were not produced before the trial Court, that the revenue documents will not prevail over the title deeds and as such, the very reference of all these documents are not necessary and that therefore, the petition is liable to be dismissed.

13. Under Rule 27 of Order 41 C.P.C., production of additional evidence is permitted only under the following circumstances;

“Where (i) the trial Court had refused to admit the evidence, though it ought to have been admitted; (ii) the evidence was not available to the party, despite exercise of due diligence and (iii) the appellate Court requires the additional evidence so as to enable it to pronouncement judgment or for any other substantial cause of like nature.”



C.R.P.(MD)No.76 of 2018

WEB COPY

14. In the case on hand, it is not the case of the revision petitioner/plaintiff that he had produced the documents now sought to be received, before the trial Court but the trial Court had refused to admit the same. It is also not the case of the revision petitioner/plaintiff that the documents now sought to be received were not available or he was not able to get the same, despite due diligence.

15. Even according to the revision petitioner/plaintiff, the documents now sought to be received were already filed along with the suit in O.S.No.9 of 2023 before the Wakf Tribunal, Chennai and after coming to know about the listing of the above revision for final hearing, he instructed his counsel on record to file the said documents as additional evidence. It is pertinent to note that the present suit was filed in the year 2011 and the impugned judgment and decree came to be passed on 18.08.2017. Even according to the revision petitioner/plaintiff, the said documents were produced before the Wakf Tribunal, Chennai only in the year 2023 at the time of filing of the suit in O.S.No.9 of 2023 and as such, the revision petitioner/plaintiff has not shown as to who was in possession of those documents during the trial of the present suit in O.S.No.219 of



C.R.P.(MD)No.76 of 2018

2011 and why the said documents were not produced before the trial Court.

16. Regarding the third circumstance or condition, it is settled law that the requirement must be of the Court and not of any party to the suit and that the said rule is clearly not intended to allow litigant, who had been unsuccessful in the trial Court to patch up the weak points of his case and to fill up the omission in appeal. It is pertinent to note that the additional evidence as contemplated under Order 41 Rule 27 C.P.C. can be admitted only where the appellate Court requires it i.e., finds it needful, to enable it to pronounce judgment or for any other substantial cause and in either case, it must be the Court that requires it. In the case on hand, the revision petitioner/plaintiff has not shown any material or any basis, upon which, the Court can form an opinion that without the additional evidence judgment cannot be pronounced.

17. Considering the above, this Court has no hesitation to hold that the revision petitioner/plaintiff has not shown the existence of any of the grounds as contemplated under Order 41 Rule 27 C.P.C. for the reception



C.R.P.(MD)No.76 of 2018

of additional evidence. Hence, this Court concludes that the above petition is devoid of merits and the same is liable to be dismissed.

18. The points for consideration in the revision are :

1. Whether the Wakf Tribunal erred in rendering a finding that the revision petitioner/plaintiff has failed to prove their title and possession of the suit property, despite showing that the suit property is a Wakf property on the basis of Ex.A.2-proforma report and through the evidence of Superintendent of Wakf-D.W.3 that the suit property is a Wakf property and without considering the facts that Ex.B.7 to Ex.B.9 and Ex.B.15 related to Rent Control proceedings between the defendants 1 and 2 and the defendants' failure to prove as to how the judgment and decree-Ex.B.16 and Ex.B.17 passed in O.S.No.450 of 1973 is relevant to decide the present suit?
2. Whether the Wakf Tribunal erred in giving a finding that the suit is barred by time, despite showing that the Limitation Act, 1963 has no application to any suit for possession of immovable property comprised in any Wakf as contemplated under Section 107 of the Wakf Act?



C.R.P.(MD)No.76 of 2018

WEB COPY

3. Whether the impugned judgment and decree dated 18.08.2017 is liable to be interfered with?

19. The case of the revision petitioner/plaintiff is that the suit property belongs to Murtin Jakhan Thaikka but whereas, the case of the first defendant is that the suit property was originally owned by one Velayutham and he sold the property on 13.05.1926 to the first defendant's mother Muthammal, that the said Muthammal, after constructing a tiled house in the suit property, had been in possession and enjoyment of the same and that after her death, the first defendant being the sole heir of the deceased Muthammal has been in possession and enjoyment of the suit property as its absolute owner. Since the revision petitioner/plaintiff has laid the suit claiming the reliefs of declaration and possession of the suit property alleging that the same is belonging to Murtin Jakhan Thaikka, the revision petitioner/plaintiff is duty bound to prove the title of the said Thaikka to the suit property.

20. As already pointed out, the revision petitioner/plaintiff has produced the proceedings of the Principal Executive Officer of the third



C.R.P.(MD)No.76 of 2018

WEB COPY

respondent/ third defendant Board dated 20.04.2011 appointing the revision petitioner/ plaintiff as Muthawalli to the said Thaikka as Ex.A.1 and the proforma report as Ex.A.2. No doubt, the trial Court counsel for the revision petitioner/plaintiff has given much importance to Ex.A.2-proforma report, but the learned trial Judge, after referring to its contents, has observed that they have entered as Nil in column 13 and 13a with regard to the properties of the Wakf but only a list of encumbrance over the property was annexed with the proforma. Considering the proforma-Ex.A.2, the Wakf Tribunal has rightly come to a conclusion that the revision petitioner/plaintiff has failed to prove that the suit property is a Wakf. But on the other hand, the first defendant has produced the sale deed dated 13.05.1926 standing in favour of the first defendant's mother Muthammal and encumbrance certificate under Ex.B.3.

21. It is not in dispute that the suit property is situated in Town Survey No.2591. No doubt, as rightly pointed out by the learned counsel appearing for the revision petitioner/plaintiff, survey number was not mentioned in Ex.B.2-sale deed, but as rightly observed by the learned trial Judge, boundaries were given and tallied with the other evidence available



C.R.P.(MD)No.76 of 2018

WEB COPY

on record. It is not the specific case of the revision petitioner/plaintiff that the property purchased under Ex.B.2 and the suit property are different properties. Though P.W.1 was cross-examined with the above stand, the revision petitioner/plaintiff has not produced any iota of evidence to show that the suit property is belonging to the said Thaikka.

22. It is pertinent to note that the revision petitioner/plaintiff, in his plaint description of property, has stated that the suit property is a house bearing Door No.46 and the adjoining places, situated in Town Survey No. 2591 in Thottipala Theru of Tirunelveli Town.

23. The first defendant's specific case is that he has leased out the suit property to the second defendant and subsequently when the first defendant has demanded the second defendant to vacate the suit property, the second defendant has not agreed for the same, that therefore the first defendant was constrained to take Rent Control proceedings against the second defendant, that the proceedings taken up to High Court were all ended in favour of the first defendant and that by laying the execution, he had taken possession of the suit property through Court.



C.R.P.(MD)No.76 of 2018

WEB COPY

24. The learned counsel appearing for the respondents 4 to 7 would submit that they have produced the copies of the fair and decreetal order passed in R.C.O.P.Nos.2 and 12 of 2008 under Ex.B.7 and Ex.B.8 and R.C.A.No.16 of 2009 under Ex.B.15 and also copy of the delivery warrant under Ex.B.9. It is evident from the said records that the first defendant has filed an eviction petition against the second defendant and obtained an eviction order and that the appeal preferred by the second defendant in R.C.A.No.16 of 2009 came to be dismissed and in the execution proceedings initiated by the first defendant, delivery was effected on 28.10.2011. As rightly pointed out by the learned counsel appearing for the respondents 4 to 7, the Rent Control proceedings were taken in respect of the house bearing Door No.46 situated in Town Survey No.2591 against the second defendant.

25. Though the revision petitioner/plaintiff has attempted to canvass a hypothetical stand that the Rent Control proceedings came to be initiated by the first defendant in collusion with the second defendant, but the fact remains that the Rent Control proceedings were initiated in the year 2008 itself. As already pointed out, it is the specific stand of the first defendant



C.R.P.(MD)No.76 of 2018

WEB COPY

that after filing of the execution petition for taking delivery of the suit property in pursuance of the Rent Control proceedings, the revision petitioner/plaintiff at the instigation of the second defendant has filed the above suit. It is evident from the records that after the executing Court passed an order of delivery against the second defendant, the present suit came to be presented on 18.10.2011 and within 10 days therefrom the first defendant had taken possession of the suit property on 28.10.2011 from the second defendant through Court process.

26. The learned counsel appearing for the respondents 4 to 7 would also submit that the counsel appearing for the second defendant has also appeared for the plaintiff. The revision petitioner/plaintiff has not specifically denied or disputed the said factum. Considering the above, the contention of the respondents 4 to 7 that there existed collusion between the revision petitioner/plaintiff and the second defendant cannot be ruled out.

27. The first defendant has also produced the copies of the judgment and decree passed in O.S.No.450 of 1973 dated 23.11.1974 under Ex.B.16



C.R.P.(MD)No.76 of 2018

and Ex.B.17 respectively. It is evident from Ex.B.16 and Ex.B.17 that the third respondent/third defendant Board has filed the suit to declare that the suit properties therein are Wakf properties and for recovery of possession against one Arunachala Nadar and others and that the said suit, after trial, was dismissed. It is pertinent to note that the house property situated in Town Survey No.2591 was shown as suit property in O.S.No.450 of 1973. It is also pertinent to note that the said suit in O.S.No.450 of 1973 was dismissed mainly on the ground that the third respondent/third defendant Board has miserably failed to prove their title over the suit property therein. As rightly contended by the learned counsel appearing for the respondents 4 to 7, the revision petitioner/plaintiff, who filed the present suit claiming the same reliefs of declaration and recovery of possession in respect of the house property in Town Survey No.2591, has completely suppressed the earlier proceedings initiated by the third respondent/third defendant Board and the result of the same.

28. The first defendant has also produced property tax receipt, tax book, electricity consumption bills and drainage receipt under Ex.B.10 to Ex.B.14 to prove her long possession. The first defendant has also



C.R.P.(MD)No.76 of 2018

examined D.W.2 Lakshmanan, who is her neighbour and he would depose that the first defendant has been in possession and enjoyment of the suit property for 50 years. The revision petitioner/plaintiff has not produced any material or evidence to show that the documents produced by the first defendant are not connected with the suit property.

29. Now turning to the plea of limitation, it is the specific case of the first defendant that since herself and her mother have been in possession and enjoyment of the property since 1926, the suit for declaration of title and recovery of possession is clearly barred by time. But the learned counsel appearing for the revision petitioner/plaintiff would submit that there is no period of limitation for recovering Wakf properties, as per Section 107 of the Wakf Act (Act No.43 of 1995). No doubt, Section 107 of the Wakf Act contemplates that Limitation Act, 1963 would not apply to any suit for possession of immovable property comprised in any Wakf or for any interest in Wakf. In order to counter the said arguments, the learned counsel appearing for the respondents 4 to 7 would submit that when the right of suit is barred under the law of limitation in force before the new provision came into operation and a



C.R.P.(MD)No.76 of 2018

vested right has accrued to another, the new provision cannot revive the barred right or take away the accrued vested right and relied on the judgment of the Hon'ble Supreme Court in the case of ***T.Kaliamurthi and another Vs. Five Gori Thaikkal Wakf and others*** reported in (2008) 9 SCC 306. No doubt, the learned trial Judge has also relied on the same decision (reported in ***AIR 2009 SC 840***) and the relevant passages are extracted hereunder:-

“39. Section 107 lays down that nothing contained in the Limitation Act, 1963 shall apply to any suit for possession of immovable property comprised in any Wakf or for possession of any interest in such property. Thus it can be said that this section virtually repeals the Limitation Act, 1963 so far as the Wakf properties are concerned. Therefore, it can be concluded without any hesitation in mind that there is now no bar of limitation for recovery of possession of any immovable property comprised in a Wakf or any interest therein.

40 In this background, let us now see whether this section has any retrospective effect. It is well settled that no statute shall be construed to have a retrospective operation until its language is such that would require



WEB COPY



C.R.P.(MD)No.76 of 2018

such conclusion. The exception to this rule is enactments dealing with procedure. This would mean that the law of limitation, being a procedural law, is retrospective in operation in the sense that it will also apply to proceedings pending at the time of the enactment as also to proceedings commenced thereafter, notwithstanding that the cause of action may have arisen before the new provisions came into force. However, it must be noted that there is an important exception to this rule also. Where the right of suit is barred under the law of limitation in force before the new provision came into operation and a vested right has accrued to another, the new provision cannot revive the barred right or take away the accrued vested right.”

30. The Hon'ble Apex Court has specifically held that Section 107 of the Wakf Act cannot revive a barred claim or extinguished rights. As already pointed out, the first defendant has produced evidence to show that they have been in possession and enjoyment of the suit property for more than 50 years. Moreover, the third respondent/third defendant Board has filed a suit against some of the occupants of Town Survey No.2591 in O.S.No.450 of 1973 and the same came to be dismissed as the Wakf Board has failed to prove its title to the Town Survey No.2591. As already



C.R.P.(MD)No.76 of 2018

pointed out, the suit in O.S.No.450 of 1973 was ended in dismissal on 23.11.1974 itself. It is not the case of the revision petitioner/plaintiff or the third respondent/third defendant Board that the third respondent/third defendant Board has preferred an appeal and the same is pending. Moreover, the first defendant has also shown that she has initiated Rent Control proceedings against the second defendant for whom the suit property was leased out earlier. Considering the above, the finding of the trial Court that the suit is barred by limitation cannot be found fault with. Consequently, the trial Court has come to a decision that the revision petitioner/plaintiff is not entitled to get any of the reliefs claimed and dismissed the suit.

31. Considering the above, this Court is not inclined to interfere with the reasonable findings given by the Wakf Tribunal and the consequent dismissal of the suit. Hence, this Court concludes that the revision is devoid of merits and the same is liable to be dismissed.

32. In the result, the Civil Revision Petition is dismissed, confirming the judgment and decree passed in O.S.No.219 of 2011, dated



C.R.P.(MD)No.76 of 2018

18.08.2017, on the file of the Principal Subordinate Court, Tirunelveli.

WEB COPY

The petition in C.M.P.(MD)No.16519 of 2023 is dismissed and the other connected Miscellaneous Petition is closed. No costs.

04.06.2024

NCC :yes/No
Index :yes/No
Internet:yes/No
csm

To

1. The Principal Subordinate Judge,
Tirunelveli.
2. The Section Officer,
VR Section,
Madurai Bench of Madras High Court,
Madurai.



WEB COPY



C.R.P.(MD)No.76 of 2018



WEB COPY



C.R.P.(MD)No.76 of 2018

K.MURALI SHANKAR,J.

csn

Pre-Delivery Order made in
C.R.P.(MD)No.76 of 2018
and
C.M.P.(MD)Nos.341 of 2018 and 16519 of 2023

Dated : 04.06.2024