



CRP No. 619 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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Dated : 02.06.2025

CORAM :

THE HON'BLE MR.JUSTICE SATHI KUMAR SUKUMARA KURUP

Civil Revision Petition No.619 of 2020

and

C.M.P. No.3451 of 2020

V. Nedumaran

.. Petitioner

Versus

1. The Tamil Nadu Wakf Board

A Statutory Body rep. By its Secretary,
No.3, Santhome High Road, Chennai-4.

2. Soorsha Makkan Wakf

Rep by its Muthavalli Mr.G.Ali Mohamed (Died),
Rep by the Executive Officer, having Office at
17, Venkatesan Street, Chepauk,
Chennai – 5.

3. Mrs. Mahaboos Begum

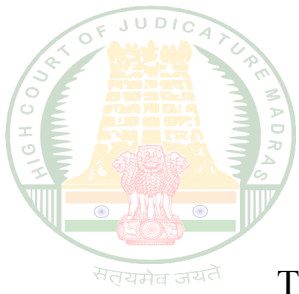
4. Mr.Fisal Mohammed Khan

5. Mr.Bagath Mohammed Khan

.. Respondents

Civil Revision Petition is filed under Article 227 of the Constitution of India against the order dated 31.12.2019 passed in O.S. No. 88 of 2018 on the file of the Tamil Nadu Wakf Tribunal at Chennai.

For Petitioners	:	Mr. S. Parthasarathy, Senior Counsel for Mr. S. Victor Prasath
For R1	:	Mr. Haja Mohideen Gisthi
For R2	:	Ms. A. Ajmath Begum
For R3 to R5	:	Mr. Thenu Madhan



CRP No. 619 of 2020

ORDER

This Civil Revision Petition is filed by the fourth Plaintiff, challenging the validity of the Judgment and Decree dated 31.12.2019 made in O.S. No. 88 of 2018 on the file of the Tamil Nadu Wakf Tribunal at Chennai.

2. By the Judgment dated 31.12.2019 passed in O.S. No. 88 of 2018, the Tribunal decreed the suit in part by holding that the land measuring an extent of 33 cents in Survey Number 193/3 is not a Wakf property and dismissed the suit in all other respects.

3. For the sake of convenience, the parties to this revision shall be referred to as 'Plaintiffs' and 'Defendants' as the case may be.

4. The suit in O.S. No. 88 of 2018 was originally filed by Nawabzada Nawab Ali Khan before the learned I Assistant Judge, City Civil Court, Chennai as O.S. No. 4555 of 2000. Thereafter, the said suit in O.S. No. 4555 of 2000 stood transferred to the Tribunal and re-numbered as O.S. No. 88 of 2018. Pending the suit, the sole Plaintiff Mr. Nawabzada Nawab Ali Khan died and therefore, his legal heirs were brought on record as Plaintiffs in the suit. The suit was filed by the deceased Plaintiff - Mr. Nawabzada Nawab Ali Khan for (i) a declaration declaring that the properties described in the plaint



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are not the Wakf properties (ii) direct the first Defendant to de-notify and delete the suit properties from the proforma schedule of the properties of the second Defendant and also from the records of the first Defendant and (iii) directing the Defendants to pay the costs of the suit.

5. According to the Plaintiff, he is the absolute owner of the agricultural lands measuring a total extent of 16347 square meters (about 3.68 acres) presently comprised in T.S. No. 1 (9940 Sq.mts) (T.S. No. 2 (5072 Sq.mts) and T.S. No. 3 (1335 Sq.mts) in Block No.39 (formerly block No.33), Old Survey No.192/1- measuring 7 cents, Survey No.192/2- measuring 1 acre 20 cents, Survey No.193-1 measuring 70 cents, Survey No.193/2 measuring 1 acre 38 cents and Survey No.193/3 measuring 33 cents situated in Virugambakkam Village, Mambalam-Guindy Taluk, Chennai. It was stated that originally the said properties were owned and possessed by maternal uncle of Plaintiff's mother Mrs. Fazilathunnisa Begum and subsequently they were gifted to her mother under various Hiba Deeds. On 06.02.1967, the mother of the Plaintiff settled the aforesaid property to her husband and four sons, including the Plaintiff. It was further stated that the Plaintiff's mother died on 19.04.1968 and subsequently his father died on 26.07.1984. It was further stated that Mr. Nawabzada Shafiq Mohammed Khan, one of the brothers of the



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Plaintiff died as a bachelor on 29.09.1985 and his share of the property got further divided among the surviving three brothers. As the Plaintiff was residing in Chennai and the other brothers are residing in Madhya Pradesh and Abu Dhabi, a mutual family arrangement was made on 22.12.1985 by which the other two brothers relinquished their share and right in favour of the Plaintiff alone. In return, the Plaintiff relinquished his right and interest in the family property situated in Madhya Pradesh. It was further stated that the Plaintiff and his two brothers are recipient of perpetual from the Government of Tamil Nadu vide G.O. Ms. No.14, Public (Political) Department dated 03.01.1969 in recognition of their past status in the erstwhile Princely State.

6. It was further stated in the plaint that the suit properties were subjected to land acquisition proceedings by invoking the Tamil Nadu Urban Land (Ceiling & Regulation) Act. However, the ceiling proceedings have been dropped after being satisfied with the ancestral nature and history of acquisition by an order dated 11.09.1996. While so, during the year 1998, some unauthorised persons occupied a portion of the suit properties and when questioned, they claimed to be the tenants under the second respondent. The Plaintiff therefore contacted the first Defendant and verified the records. To the dismay of the Plaintiff, the plaint schedule properties were erroneously



CRP No. 619 of 2020

notified as Wakf property vide notification published in Gazette of Government of Madras dated 20.05.1959 (supplement to part II), however, the notification does not even furnish details of the suit properties. According to the Plaintiff, the Survey Commissioner has not verified the revenue records or sent any notice to the predecessors in title before deciding the issue, which is mandatory under Section 5 of The Wakf Act. Further, no survey has been conducted since 1959 as per the provisions of the Act. Therefore, the Plaintiff filed a Petition in R.C. No. 5292/C2/88/MDS dated 03.02.1998 before the first Defendant-Wakf Board. After issuing notices to all concerned, the first Defendant passed an order dated 25.04.2000 stating that the first Defendant has no jurisdiction to adjudicate the dispute as to whether the property is a Wakf property or not or whether the notification issued by Survey Commissioner is correct or not. Therefore, it was held that the first Defendant did not incline to go into the question of title and directed the Plaintiff to approach the Wakf Tribunal. Accordingly, the Plaintiff has filed the suit in O.S. No. 4555 of 2000 before the learned I Assistant Judge, City Civil Court, Chennai.

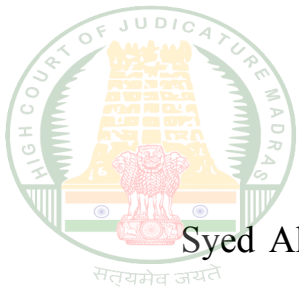
7. On notice, the suit was resisted by the first Defendant by filing a written statement stating that the plaint schedule properties were included in



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the list on the basis of a document No. 2336 of 1913 by which they were purchased by the Wakf from one Janab Syed Ahmed Hussain out of the amounts awarded for the lands acquired by the government. Thereafter, the properties were leased out to third parties by the muthavalli of the Wakf and it is in possession and enjoyment of the Wakf for several decades. The claim of the Plaintiff that the plaint schedule properties were gifted to his mother and she executed a settlement deed have got nothing to do with the plaint schedule properties. Similarly, the Family Arrangement dated 22.12.1985 referred to by the Plaintiff will not bind the first Defendant and they are not aware of the same. It was also stated that only in the year 1997, the Plaintiff effected mutations in the revenue records. The properties were correctly assessed, declared and notified as Wakf. The Plaintiff cannot now question the same after several years. For the last several years, the first Defendant is in enjoyment of the suit properties. The tenants of the second Defendants are now in occupation and prayed for dismissal of the suit.

8. The second Defendant also filed a written statement contending that the Wakf known as Soorsha Makkan is a notified and surveyed Wakf and it owns several properties at Virugambakkam. The said properties are in the list in Document No. 2336 of 1913 purchased by the Wakf from one Janab



CRP No. 619 of 2020

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Syed Ahamed Hussain. The plaint schedule property was a specified Wakf and it was published in Government Gazzette on 20.05.1959. While so, the present suit has been filed for declaration during the year 2000, after 41 years of publication in the Government. It is well settled law that once a Wakf, is always a Wakf. Therefore, the averment that the Plaintiff is the owner of the suit property is not correct. The second Defendant is in no way connected to the claim made by the Plaintiff. The suit schedule property was leased out to one Ethiraj, Subbiah and Mrs. Thirupura Sundari in the year 1980 and the lease agreement was extended until 1995. In the year 1995, the lease deed was cancelled by the erstwhile Muthavalli and suit in O.S. No. 3496 of 1996 and 3797 of 1996 were also filed against them for eviction. The plaint schedule property is a Wakf property and it is managed by the second Defendant. The order dated 25.04.2000 passed by the first Defendant is in accordance with law. The Plaintiff has no right over the plaint schedule property and prayed for dismissal of the suit.

9. During the pendency of the suit, the fourth Plaintiff, who claimed himself to be the purchaser of a portion of the plaint schedule property from the deceased Original Plaintiff, has filed an application seeking to implead himself as a party to the suit. The application was allowed and the fourth



Plaintiff was impleaded in the suit for proper and effective adjudication of the
plaint.

10. During trial in the suit, the Plaintiff Nawabzada Nawab Ali Khan examined himself as P.W-1 and marked Ex. A-1 to Ex.A-12. On the side of the Defendants, neither any witness was examined nor document was marked. The trial Court, by the Judgment and Decree dated 26.02.2003, decreed the suit as prayed for by the Plaintiff.

11. Aggrieved by the same, two Civil Revision Petition (NPD) Nos. 1117 of 2003 and 3809 of 2008 were filed before this Court. By a common order dated 04.03.2009, the Civil Revision Petitions were allowed by setting aside the Judgment and Decree dated 26.02.2003 passed in OS. No. 4555 of 2000 and remanded the matter to the trial Court. The order dated 04.03.2009 is extracted hereunder.

“18. The document dated 03.10.1913 sought to be filed as additional evidence by the Petitioner-Board is a certified copy of a deed of conveyance. Therefore, it is essentially required to be marked through a witness unless the opposite party concedes no objection to the marking of the document. The contesting respondents oppose the document being marked as exhibit. Therefore, it may not be possible to accept the document without any one getting into the witness box.

19. Thus, on an over all view of the issues raised on both sides, I am of the considered view that both parties have left many stones unturned, both with regard to the pleadings and with regard to the evidence. Therefore, it would be better to remit the matter back to the trial court for a fresh



consideration, so that the parties may raise all the issues now raised before me and also adduce additional evidence, to enable the court to come to a correct conclusion.

20. Accordingly, the Civil Revision Petition is allowed, the Judgment and Decree of the I Assistant Judge, City Civil Court, Chennai in O.S. No. 4555 of 2000, is set aside and the suit remanded back to the trial court for a fresh consideration. It will be open to the parties to seek amendment of the pleadings, if necessary and adduce additional evidence. There will be no order as to costs.

After orders were pronounced the learned counsel for the respondents requested that a direction may be issued to the Tribunal to dispose of the suit within a time frame. Therefore, the Tribunal is directed to dispose of the suit, within a period of four months from the date of receipt of a copy of this order.”

12. After remand, the plaint was amended and the legal heirs of the deceased sole Plaintiff were added as parties to the plaint. On behalf of the Plaintiffs, Mr. Fisal Mohammed Khan was examined as P.W-1 and Ex. A-1 to Ex.A-19 were marked. On the side of the Defendants, no witness was examined or any document marked. The Trial Court, by a decree and judgment dated 24.02.2010, once again decreed the suit.

13. Assailing the judgment and decree dated 24.02.2010, CRP (NPD) No. 2348 of 2010 was filed before this Court. By order dated 03.08.2010, this Court, allowed the Civil Revision Petition by setting aside the Judgment and Decree dated 24.02.2010 passed in the suit and once again remanded the matter back to the trial Court. The relevant portion of the order is extracted hereunder:-

“17. Here, it is quite clear that such an order was passed without



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hearing the other side. The lower court misunderstood the entire gamut of the proceedings and passed the order on 05.07.2010 dismissing the application and hence in the interest of audi alterem partem, I would like to grant one more opportunity to the revision petitioner herein to cross-examine the witness concerned and also adduce further evidence and argue the matter.

18. Accordingly, the order dated 05.07.2010 passed in I.A. No. 4564 of 2010 is set aside and consequently the said I.A. Shall stand allowed, setting aside the Judgment and decree dated 24.02.2010 with a direction that the parties shall appear before the lower court on 11.08.2010 and the court shall proceed further with the matter as indicated above and dispose of the same on merits.

In the result, the civil revision petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.”

14. Pending suit, the second Defendant in the suit filed I.A. No. 14977 of 2010 in O.S. No. 4555 of 2000 under Order 13 Rule 3 to reject the document, which is marked as Ex.A7, an unregistered Mutual Family Agreement dated 22.12.1985. The trial Court allowed the said application and rejected Ex.A7 by an order dated 12.11.2010 passed in I.A. No. 14977 of 2010 in O.S. No. 4555 of 2010. As against the said order dated 12.11.2010, CRP (PD) No. 4172 of 2010 was filed. By order dated 14.03.2011, this Court held as follows:-

“13. Applying the principles laid down in the above referred judgments, it is clear that unstamped and unregistered documents cannot be looked into by Court for any purpose. It cannot be said that the value of the property divided between the petitioners would be less than Rs.100/-. Definitely, the value of the properties would be more than Rs.100/- and therefore the registration of the document is mandatory under Section 17 of the Registration Act. Since the document was marked only in the proof affidavit, the first respondent had no opportunity to object to the marking of the said document. The proof affidavit was filed on 28.8.2009. The Honourable Supreme Court disposed of the petition in SLP (Civil) No. 24260 of 2010 on 01.10.2010 which arose against the order in CRP (NPD) No.



2348 of 2010. Immediately after the disposal of the SLP, the first respondent filed the present application on 05.10.2010.

14. Further, as per Section 35 of the Stamp Act, an instrument shall be inadmissible in evidence, if the same is not duly stamped. The trial court relying upon the Division Bench Judgment of this Court reported in 2001 (1) MLJ 1 found that Ex.a7 is not at all admissible in evidence and rejected the document. As rightly found, since the value of the property is more than Rs.100/-, in Ex.A7, registration of the document is mandatory. However, the said document has not been properly stamped and is an unregistered document which is liable to be rejected. The trial court rightly rejected the said document.”

15. As against the order dated 14.03.2011 in CRP (NPD) No. 4172 of 2010, Special Leave to Appeal (Civil) No. 9876 to 9877 of 2011 was filed. The Honourable Supreme Court, by an order dated 20.12.2011 set aside the order dated 14.03.2011 in CRP (NPD) No. 4172 of 2010 as well as the order passed by the Tribunal on the admissibility of the document, Ex.A7 and held that the document will not be relied upon by the Plaintiffs for a decision in the suit. However, it was made clear that the Plaintiffs-appellants will not be non-suited only because it was held that they will not rely on the family settlement.

16. Subsequently, I.A. No. 13990 of 2012 in O.S. No. 4555 of 2000 was filed the Plaintiffs under Order 7 Rule 14 (2) and (3) of the Code of Civil Procedure to receive the documents specified in the schedule of the petition, in evidence through one V. Nedumaran, who was intended to be examined as P.W-2. The said application was allowed by the Trial Court. As against the same, CRP (PD) No. 1592 of 2013 was filed before this Court. By order dated



20.01.2014, the CRP (PD) No. 1592 of 2013 was allowed. In Para No.14 of

WEB COPY the order dated 20.01.2014, it was held thus:-

“As rightly contended by the learned counsel for the revision petitioner, for the first time, that too in the affidavit filed in support of the petition in I.A. No. 19990 of 2012, the Plaintiffs have introduced a new case which has not been pleaded in the plaint, saying that the proposed witness PW2- Mr. V. Nedumaran and his wife Mrs. V. Reunka have been in possession of the suit property since 1997, as the absolute owner. If it is so the plaint itself has to be struck off, on the ground of competency of Plaintiffs to maintain the suit.”

17. Aggrieved by the order dated 20.01.2014 in CRP (PD) No. 1592 of 2013, the Plaintiffs have filed Civil Appeal No. 8298 of 2015 before the Honourable Supreme Court. By order dated 06.10.2015, the Honourable Supreme Court allowed the appeal with the following observations:-

“3. In our opinion, at this juncture, the High Court should not have objected to the examination of witnesses and production of documents.

4. Needless to say that it would be open to the parties to raise all contentions available to them at law and produce documents, which should have been produced before the trial court.

5. In the circumstances, we set aside the impugned order and the interim relief granted by this Court is vacated.

6. The learned counsel appearing for the parties desire that the trial court be requested to conclude the trial at an early date.

7. We are sure that the learned counsel appearing for the parties before the trial court shall extend their cooperation to the trial court. The trial court shall proceed with the trial and conclude it as soon as possible.

8. The parties are directed to appear before the trial court on 2nd November 2015. Intimation of this order be forwarded to the trial court forthwith.

9. The appeal is disposed of so allowed with no order as to costs.”

18. After the aforesaid order passed by the Honourable Supreme



CRP No. 619 of 2020

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Court on 06.10.2015, the parties to the suit participated in the trial. The trial court, by the judgment dated 31.10.2019, which is impugned in this Civil Revision Petition, partly decreed the suit by declaring that 33 cents of land in Survey No.193/3 is not a Wakf property and dismissed the suit in other respects. As against the Judgment and decree dated 31.12.2019 passed in O.S. No. 88 of 2018, the present Civil Revision Petition is filed.

19. Mr. Parthasarathy, learned Senior Counsel for the Revision Petitioner would submit that the Revision Petitioner has taken out an application and impleaded himself as the 4th Plaintiff in the suit. The suit was filed for a declaration to declare that the suit property do not belong to the Wakf. In support of such plea, Ex. A-1 and Ex. A02 were marked, which are of the years 1943 and 1946, to show that the property has been gifted to the mother of the original Plaintiff (since deceased). Pursuant to such settlement, the revenue records have been mutated and the original Plaintiff asserted an exclusive right over the plaint described property. On the other hand, Ex.B-1 filed by the Defendants does not deal with the suit property and there is no reference about the suit property thereof.

20. The learned Senior Counsel for the Revision Petitioner also



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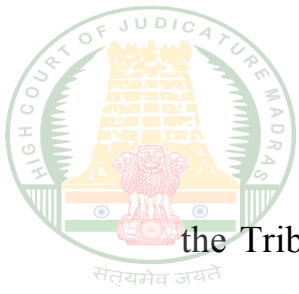
placed reliance on the admission of the Second Defendant as D.W-1 and he was unable to give clear details of the claim made by the Defendants in the suit regarding the particulars of Survey Numbers with clear extent and boundaries. It is the submission of the learned Senior Counsel for the Revision Petitioner that after remand to the High Court by the Supreme Court there cannot be adverse inference as claimed by the 2nd Defendant in the suit. The Learned Senior Counsel for the Revision Petitioner further submitted that D.W-1 was unable to prove the claim of the Wakf. Therefore, the learned Wakf Tribunal ought to have granted a decree in favour of the Plaintiffs as prayed for instead of partly allowing the suit in so far as the land in Survey No.193/3 measuring 33 cents.

21. Mr. Haja Mohideen Gisthi, learned Counsel for the first Respondent placed reliance on the evidence of the Plaintiffs' witness, P.W-1 and P.W-2 and submitted that from their evidence, it is found that they were unable to prove the case as per the plaint averments. P.W-1 had stated that he was unable to decipher what was stated in Urdu. Also, he admitted that in the earlier litigation before the same parties, the learned Counsel appearing for the Plaintiffs herein undertaken that they will not rely on documents Ex.A-1, Ex.A-2, Ex.A-3, Ex.A-5 and Ex.A-7. Under those circumstances, the judgment



of the learned Wakf Tribunal granting a decree for 33 cents is found acceptable in the light of the appreciation of evidence by the learned Trial Judge.

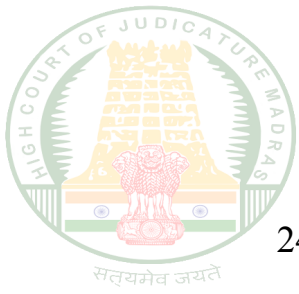
22. Mr. M.M.I. Khaleel, learned Counsel for the Second Respondent submitted that the Plaintiff in O.S. No. 4555 of 2000 had filed the suit seeking the relief of negative declaration, (i) to declare that the suit properties are not the Wakf properties (ii) consequently directing the 1st Defendant to de-notify and delete the suit properties from the Proforma schedule of the properties of the Second Defendant, Soorsha Makkan Wakf. Originally, the suit was filed in the year 2000 and it was pending on the file of the Wakf Tribunal (learned I Assistant Judge, City Civil Court, Chennai). Subsequently, on formation of the Wakf Tribunal, the case was withdrawn from the file of the learned I Assistant Judge, City Civil Court, Chennai and transferred to the file of the learned Special Tribunal constituted under the Wakf Board and re-numbered as O.S.No.88 of 2018. The Revision Petitioner is the 4th Plaintiff in the suit. He is alleged to have purchased the suit properties before filing of the suit under registered documents marked as Ex.A-28 to Ex.A-30. On the date of filing of the suit, the Plaintiff is not the absolute owner of the suit properties. The fact that he had alienated the properties has been suppressed by the Plaintiff before



CRP No. 619 of 2020

the Tribunal. A person who had suppressed the material fact and approached the Civil Court, is not entitled to any relief in equity.

23. The learned Counsel for the Second Respondent invited the attention of this Court to the three un-registered Hiba Deeds dated 24.03.1943, 01.12.1946 and 18.07.1947 executed by Gulam Ghouse Sahib in favour of Amathul Fasal Fazulethunisa Begum. All the three are unregistered documents and they are in Urdu or Persian. Only English translation is made available before the trial Court. Based on the three Hiba Deeds, the properties are alleged to have been gifted to Amathul Fasal Fazulethunisa Begum. The learned Counsel therefore vehemently objected to the said three gift deeds, which is in Urdu, wherein only Pimash Number is mentioned. The Survey Number, details of the property and boundaries of the property, where the property is situate, the Taluk, Village had not been mentioned. Further, the person executing the Hiba did not disclose anything in the recitals as to how he succeeded to the property and in how he become the owner of the property and in possession of the property. Therefore, those deeds are found to be vague in all respects. Whether it was acted upon by the donor and donee is not substantiated and there is no proof available through any document.



24. The learned Counsel also submitted that during trial, Hiba Deeds were marked as Ex.A-1 to Ex.A-3 and another Document dated 22.12.1985, which is the Mutual Family Agreement between the sons of Amathul Fasal Fazulethunisa Begum, was marked as Ex.A-7 which is also an un-registered document. Therefore, marking of the said documents under Ex.A-1 to Ex.A-3- Hiba Deeds in favour of Amathul Fasal Fazulethunisa Begum and the Mutual Family Agreement dated 22.12.1985 marked as Ex.A-7 were objected to by the 2nd respondent by filing I.A.No.14977 of 2007 in O.S.No.4555 of 2000. Though the trial Court allowed the application in I.A. No. 14977 of 2007, by order dated 20.10.2011, the Honourable Supreme Court set aside the said order and held that the Plaintiffs shall not rely upon those documents for a decision in the suit.

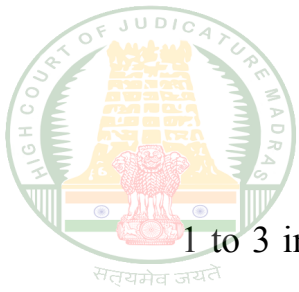
25. Also the learned Counsel for the Second Respondent invited the attention of this Court to Ex.A-5 which was also an un-registered document executed by Amathul Fasal Fazulethunisa Begum in favour of her husband and 4 sons, for which, the stamp paper was purchased from Trichy whereas the document was executed at Chennai. In the same document, which is marked as Ex.A-5-Gift Deed executed by Amathul Fasal Fazulethunisa Begum, S.No.190 is mentioned, in which, she claims to be the beneficiary of the Hiba Deed



CRP No. 619 of 2020

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dated 24.03.1943 for the Survey No.190 of Virugambakkam measuring about 37 cents. Further, another Hiba Deed dated 15.06.1945 was marked through which she claims ownership in (i) Survey No.221 of Virugambakkam measuring about 1 acres 36 cents (ii) Survey No.222 of Virugambakkam measuring about 80 cents and (iii) Survey No.223 of Virugambakkam measuring about 1 acre based. She claims right over the property in Survey No.193 of Virugambakkam measuring about 0 acre 33 cents through Hiba Deed dated 01.12.1946. Also she claims ownership through Hiba Deed dated 18.07.1947 for the vacant land comprised in Survey No.192 of Virugambakkam, measuring about 1 acre 20 cents and Survey No.193 of Virugambakkam measuring about 0.70 cents and 1 acre 38 cents. By this Gift Deed, she had gifted the property to her husband and 4 sons. After this gift deed from Amathul Fasal Fazulethunisa Begum, the parties to the Gift Deed had executed a Mutual Family agreement, which was marked as Ex.A-7, that was also an un-registered document. All these documents, which were marked as Ex.A-1 to Ex.A-3, Ex.A-5 and Ex.A-7 were objected in I.A.No.14977 of 2007, The said petition was allowed on 12.11.2010, against which, the Plaintiffs 1 to 3 in O.S.No.4555 of 2000 had approached this Court by filing C.R.P.(PD) No.4172 of 2010. The Civil Revision Petition was dismissed by this Court, vide order dated 14.03.2011. Aggrieved by the same, the Plaintiffs



1 to 3 in O.S.No.4555 of 2000 had preferred Civil Appeal Nos.8868- 8869 of 2011 (SLP(C) Nos.9876-9877 of 2011) before the Hon'ble Supreme Court. By

order dated 20.10.2011, the Hon'ble Supreme Court set aside the order of the High Court with the following observation:

“We set aside the impugned orders of the High Court as well as of the Tribunal on the admissibility of the said document and hold that the document will not be relied upon by the Plaintiffs for a decision in the suit. We, however, make it clear that the Plaintiffs-appellants will not be non-suited only because we have held that they will not rely on the family settlement”.

26. The learned Counsel for the Second Respondent also invited the attention of this Court to the cross examination of P.W-1 and P.W-2. The suit was filed in the 2000. P.W-1 was examined in the year 2016. P.W-1 was unable to state whether he had seen the documents being executed under Ex.A-1 to Ex.A-3, Ex.A-5 and Ex.A-7 and whether he is familiar with the language, in which those documents under Ex.A-1 to Ex.A-3 were executed. He had clearly admitted that he had not filed any document to prove that the Gift Deeds were acted upon. Also he had admitted that he had not filed any document to show that the Plaintiff was in continuous possession till the suit was filed.

27. The learned Counsel for the Second Respondent further invited



the attention of this Court to the cross examination of P.W-2. P.W-2 had stated in his cross examination that the suit was not filed seeking the relief of declaration of title of the suit property in the name of the Plaintiff. But it was filed to declare that the suit properties are not Wakf properties.

28. The learned Counsel would further submit that on appreciation of evidence, the learned Tribunal had passed the order holding that the Plaintiff, who is the subsequent purchaser can have a right and ownership only in respect of the land measuring 33 cents and for the remaining extent of land, the suit was dismissed. The Revision Petitioner, who is only the subsequent purchaser of the property, has not made out any grounds for consideration. The decree and judgment passed by the Tribunal is well merited and it does not warrant any interference. There is no merit in this Civil Revision Petition and the same has to be dismissed.

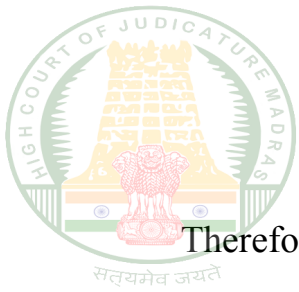
29. By way of reply, the learned Senior Counsel for the Revision Petitioner submitted that there is a specific admission by the Wakf Board that there is no document to prove that the property was purchased by Soorsha Makkan Wakf through a registered document. Also the learned Senior Counsel for the Revision Petitioner submitted that the proceedings of the District



CRP No. 619 of 2020

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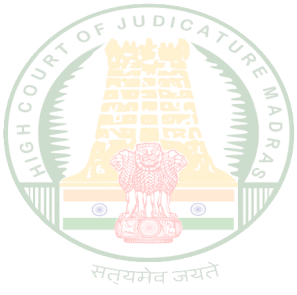
Collector dated 12.08.2004 is clear on this point. The learned Senior Counsel for the Revision Petitioner submitted that as per the Mohammedan Law, the Hiba Deed need not be registered. It is a valid document in the eyes of law. Further, he submitted that the parties to the Hiba documents are the family members of the Nawab of Arcot. P.W-1 is the great grandson of Nawab of Arcot. He is not expected to speak on first person account, he can only speak based on his knowledge. He was cross examined whether he had seen the execution of the documents, which was executed by his mother's uncle, for which, he cannot be expected to have first hand knowledge or first person account. Therefore, those part of cross examination will not hold good in favour of the second respondent. Further, the learned Senior Counsel for the Revision Petitioner submitted that they had filed applications under The Right to Information to ascertain whether any property was purchased by Sooraha Makkan Wakf and whether any sale deed is available with the Wakf Board. They have given a clear finding that such documents are not available with the Wakf Board. Also the learned Senior counsel invited the attention of this Court to the cross examination of D.W-1, the witness for the Wakf Tribunal claiming that the Sale Deed mentioned by the learned Counsel for the Second Respondent that the property was purchased by Mukthavalli of Soorsha Makkan Wakf and the original document is available with the Wakf Board.



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Therefore, the claim of the second respondent that the properties belonged to him is only based on forged documents. The judgment of the learned Wakf Tribunal dated 31.12.2019 is not based on appreciation of the evidence. If the Tribunal had appreciated the oral evidence with the documentary evidence available before the Wakf Tribunal, the Tribunal ought to have removed the suit properties from the proforma maintained by the Wakf Board based on the documents furnished by the Plaintiffs before the Wakf Tribunal. The proceedings of the District Collector had not been agitated by the second respondent. Therefore, it had attained finality. Similarly, the gift deed executed by Amathul Fasal Fazulethunisa Begum in favour of her husband and 4 sons were also not challenged till till date. Therefore, the submissions of the Learned Counsel for the Second Respondent has to be rejected and the Civil Revision Petition has to be allowed and the judgment and decree passed by the learned Wakf Tribunal has to be modified by decreeing the suit as prayed for.

30. Heard the learned Senior Counsel for the Revision Petitioner, the learned Counsel for the first Respondent, the learned Counsel for the second Respondent and the learned Counsel for the Respondents 3 to 5. Perused the records, including the order passed by the Tribunal, which is impugned in this Civil Revision Petition.



CRP No. 619 of 2020

WEB COPY *Point for consideration :*

Whether the Judgment of the learned Wakf Tribunal in O.S.No.4555 of 2000 dated 31.12.2019 is to be set aside as perverse warranting interference of this Court?

31. Fisal Mohammed Khan S/o. Newabzada Nawab Ali Khan/second Plaintiff had implicated himself after the death of Newabzada Nawab Ali Khan along with his sisters Makaboosa Begum and Bagath Mohammed Khan. The son of the Plaintiff, after impleading himself as one among the legal heirs had let in evidence. He had filed a proof affidavit in which he had stated the fact as stated by his father/Plaintiff in the Plaint. In support of the affidavit, he had filed documents as Ex.A-1 to Ex.A-19. Ex.A-1 is the Hiba gift deed executed by Gulam Ghouse in favour of the mother of Newabzada Nawab Ali Khan/Fazilatunisa Begum who is the paternal grandmother of the deponent by which the Suit properties were conveyed through three Heeba deeds dated 24.03.1943, 01.12.1946 and 18.07.1947 marked as Ex.A-1 to Ex.A-3. Hiba deeds are in Urdu and they are unregistered deeds. The properties are in Paimash Survey No.190 as evident from Ex.A-1 and Ex.A-2.

32. Another maternal uncle of Mrs. Fazilatunisa Begum, namely



CRP No. 619 of 2020

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Abdul Samad Sahib, by a Hiba deed dated 18.7.1947, gifted the lands measuring 1 acre and 27 cents in Paimash Survey No.192 and lands ad-measuring 2 acres 41 cents comprised in survey No.193 which could be evident from Ex.A-3. The entire Suit property measuring a total extent of 16,347 square meters or 3.68 acres through these three Hiba deeds belongs to the maternal uncle of Fisal Mohammed Khan, which was gifted to Fazilatunisa Begum. It is further stated that in 1959, the Government of Tamil Nadu (then Madras) issued Gazette Notification giving details of Wakf property existing in then State of Madras. In the Gazette notification published by the State of Madras, the names of the Wakf and their land revenue were published. The details of the lands were not published. Fazilatunisa Begum is the paternal grandmother of the deponent Fisal Mohammed Khan and he was not aware of the same and no notices were served on him. The copy of the Gazette notification dated 20.05.1959 was marked as Ex.A-4. The paternal grandmother/ Fazilatunisa Begum, by a settlement deed dated 06.02.1967, settled the entire property under Ex.A-1 to Ex.A-3 to her husband and sons by gift deed executed by her on 06.02.1967 which was also not registered. It was executed in favour of her husband and four sons. Fazilatunisa Begum died on 19.04.1968 leaving behind her husband and four sons. Hiba deed in favour of the husband and sons of Fazilatunisa Begum was declared through a

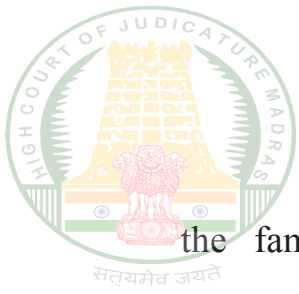


CRP No. 619 of 2020

Government Order dated 03.01.1969. Ex.A6 is the copy of G.O. Ms. No. 14

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33. The husband of Fazilatunisa Begum, the father of the Plaintiff/Newabzada Nawab Ali Khan and the paternal grandfather of the deponent/Bahdhur Newabzada Sheriff Mohamed Khan died intestate on 26.07.1984. After the death of paternal grandfather of the deponent, father of the deponent, the Plaintiff Newabzada Nawab Ali Khan and his brothers have succeeded to the property. Newabzada Nawab Ali Khan's brother/Newabzada Sheriff Mohamed Khan remained Bachelor through out his life and died intestate at Bangalore on 29.09.1985 leaving his three brothers to succeed his property. The Plaintiff Newabzada Nawab Ali Khan was permanently residing with his family at Chennai. His brother Nawab Zada Khurshid Mohammad Khan was living in Madhya Pradesh with his family permanently. Another brother/Nawab Zada Raffiq Mohammad Khan was settled in Abhudhabi and his interest in the family properties were being taken care of by Nawab Zada Khurshid Mohammad Khan as regard the properties in Madhya Pradesh and by the father of the deponent, the Plaintiff in the Suit/Newabzada Nawab Ali Khan regarding the properties in Chennai. All the three brothers having settled in three other places deemed it fit to settle amongst themselves



CRP No. 619 of 2020

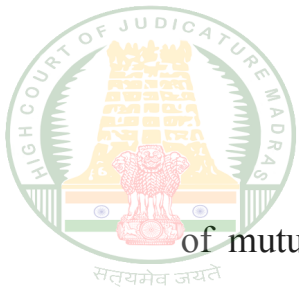
the family properties. Accordingly a mutual family agreement dated 22.12.1985 was executed at Chennai whereby all the properties in and around Chennai belonging to the family were relinquished in favour of the Plaintiff in O.S.No.4555 of 2000/late Newabzada Nawab Ali Khan and the properties of the family in Madhya Pradesh was settled in favour of Nawab Zada Khurshid Mohammad Khan. Thereby Nawab Zada Raffiq Mohammad Khan settled in Abhudabi, relinquished in rights over the property in favour of the brothers at Madhya Pradesh and Chennai. The Plaintiff in O.S. No. 4555 of 2000/Newabzada Nawab Ali Khan released his share in the properties at Madhya Pradesh. The brother of the Plaintiff/ Nawab Zada Khurshid Mohammad Khan who is permanently residing in Madhya Pradesh relinquished his right over the properties in Chennai and Tamil Nadu. The said family arrangement is marked as Ex.A-7. Therefore, the property having an extent of 3 Acres and 68 Cents was conveyed by the said family arrangement vested with the Plaintiff in O.S. No. 4555 of 2000/Newabzada Nawab Ali Khan. The chitta dated 25.04.1996 for family properties measuring 3 Acres and 68 Cents in Paimash Survey Nos. 190, 192 & 193 stood in the name of Newabzada Nawab Ali Khan which was marked as Ex.A-8. The receipts for tax paid by Newabzada Nawab Ali Khan for the Patta Nos.81 and 90 for the Suit property extending 3 Acres and 68 Cents marked as Ex.A-9



CRP No. 619 of 2020

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34. As per the affidavit of the deponent, the Plaintiff is the son of Fazilatunisa Begum. Fazilatunisa Begum is the eldest of two daughters of late Prince of Arcot. The Suit properties were given to her as gift by her maternal uncles. The Plaintiff and his brothers are the lineal descendants of the former Pathari State/Central India, now in Madhya Pradesh. Hence, all the Hiba deeds settled by their family arrangements were given authenticity and value though they were unregistered document. These documents were duly acted upon and reflected in the revenue records. The succession of the properties were duly recognised by the Government and Revenue Authority. The Suit properties being agricultural land and subjected to lands Cess and Kists. Hence, Tamil Nadu Urban Ceiling Authority initiated proceedings against the Plaintiff in O.S.No.4555 of 2000 and his brothers under the provisions of the Urban Land Ceiling Act. After being satisfied with the nature and its ancestral nucleus, the competent authority under the Land Ceiling Act passed orders dropping all further proceedings in respect of Suit properties by their order dated 11.09.1996. The said order was marked as Ex.A-10. It is the further claim of the deponent in the affidavit that his father and his brothers' names still reflects in the revenue records in respect of the Suit properties. By virtue



CRP No. 619 of 2020

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of mutual family arrangement dated 22.12.1985 and father of the deponent filed O.S. No .4555 of 2000 contending that he is the absolute owner of the property. The FMB sketch regarding the Suit property dated 06.11.1997 was marked as Ex.A-11. The encumbrance certificate No.5646 dated 25.11.1999 for a period from 01.01.1930 to 30.05.1968 was marked as Ex.A-12. The encumbrance certificate No.9114 dated 20.11.1999 for the period from 01.06.1968 to 24.01.1983 was marked as Ex.A-13. The encumbrance certificate No.8193 dated 22.11.1999 for the period from 01.06.1982 to 16.11.1999 was marked as Ex.A-14.

35. During 1998, it is stated that the Plaintiff noted that some of the trespassers encroached upon the Suit property. Therefore, he made enquiries and came to know that they are not encroachers, but tenants under the Wakf Board. Therefore, he represented to the Muthavalli by name G.Ali Mohammed and called upon to verify the records. It was found that the Suit property was erroneously notified as Wakf property vide notification published in the Gazette of Government of Madras dated 20.05.1998. The father of the Plaintiff also came to know that the Survey Commissioner had not verified the revenue records and had not sent any notice to the predecessor in title before deciding the issue whether the Suit properties are Wakf properties. Thus,



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without ascertaining the owners on whose name the property stood, the Survey Commissioner proceeded with issuing the notification notifying the Suit property under the second Defendant/Wakf. Therefore, the notification is illegal, null and void and not binding on the Plaintiff. The deponent in the affidavit further states that no survey had been conducted and the mandatory provisions were not followed. Therefore the Plaintiff approached the first Defendant seeking de-notification of the Suit property from the second Defendant on the strength of the title deeds and revenue records standing in his favour. The proceedings of the first Defendant dated 25.04.2000 is marked as Ex.A-15. Though the first Defendant agreed with the Plaintiff that the Suit property belongs to private persons, he expressed his view that they did not have jurisdiction to try such title dispute over the property. Therefore, he was forced to file a Suit before the Wakf Tribunal for a declaration to declare that the suit properties does not belong to Wakf.

36. For the first time, the first Defendant have introduced a plea that the Suit properties were purchased by Wakf from one Janab Adhmed Hussain on the basis of a document No.2326/1993. Such existence of an alleged transaction is introduced for the first time sans any primary evidence. Such documents cannot be brought in as evidence by the Defendants. The plea of



CRP No. 619 of 2020

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the Defendants that they have perfected title by adverse possession contradicts their claim of derivation of title under the aforesaid document. The Defendants are not in possession of the Suit property and in any event the Suit properties are not Wakf properties. The statement of the Defendants are denied as unacceptable. The Patta has been issued in the name of M/s. Nawab Zada Nawab Ali Khan, Nawab Zada Khurshad Mohamed Khan and Nawab Zada Rafiq Mohamed Khan by the Tahsildar Mambalam-Gundy Taluk with respect to the Suit property, dated 25.5.2004. The said Patta with respect to T.S.Nos.1, 2 & 3, Block No.39 was marked as Ex.A-16 to Ex.A-18 respectively. The proceedings of District Collector, Chennai dated 12.08.2004 was marked as Ex.A-19.

37. P.W-1/son/Nawab Fisal was impleaded as third Plaintiff after the death of the original Plaintiff. He was subjected to cross-examination by the Defendants. In the cross-examination, he admitted that Ex.A-1 to Ex.A-3 are in Urudhu and he does not know Urdu. Also, he claimed that they are unregistered Hiba deeds. Gulam Ghose, maternal uncle of paternal grandmother - Fazilatunisa Begum had not settled the Hiba deeds of the properties. Therefore, how the possession of the properties came into the hands of Gulam Ghose and Abdul Samad Sahib is not known. This is admitted



by P.W-1 in his cross-examination. Also, he had admitted that stamp papers for Ex.A-1 to Ex.A-3 documents were purchased from Trichy and Tiruchendur. He had also states that Ex.A-7 was marked by him was rejected by the Court. The copy of the order passed by the Hon'ble Supreme Court was also marked. P.W-1 was unable to claim where the original deeds are? The chitta copy marked on the side of the Plaintiff as Ex.A-8. Ex.A-8 stood in the name of Abdul Samad Sahib and it was also admitted by P.W-1 in his cross-examination. Also, he admitted that Ex.A-16 to Ex.A-18 came into existence after filing of the Suit in O.S. No. 4555 of 2000. The claim of the Respondent that these documents had been procured illegally by the Plaintiff was denied by P.W-1. P.W-1 claimed ignorance regarding the suggestion of learned Counsel for the Defendant that the father of the deponent, the Plaintiff faced criminal cases. He had also denied the suggestion of the Defendants that during his lifetime, he faced criminal case for land grabbing. The suggestion of the Defendant that the claim of the Plaintiff had not been established through Ex.A-1 to Ex.A-3 and documents are created with an ulterior motive to grab the properties by the original Plaintiff was denied during his cross-examination. Also, the suggestion that he faced criminal cases for land grabbing was denied by him. Ex.A-8-Chitta stood in the name of Abdul Samad Sahib. He denied the suggestion that Ex.A-16 to Ex.A-18 were created



for the purpose of the Suit. He feigned ignorance regarding the filing of a charge sheet against his father during his lifetime. The Plaintiff had not marked documents or revenue records from 1962 to 2000 and claimed ignorance regarding filing of revenue records to prove that the possession of Suit properties vested in the family as claimed by the Plaintiff/father of the deponent. As per the undertaking given by the learned Counsel for the Plaintiff herein before the Hon'ble Supreme Court Ex.A-7 family arrangement cannot be relied on was admitted by P.W-1. P.W-1 during cross-examination feigns ignorance regarding the enjoyment of the property in question.

38. On perusal of cross-examination, it is found that whenever he is cornered regarding possession and details of enjoyment, he claims that only his father knew about the facts. When P.W-1 was impleaded on the death of his father, a burden is cast upon him to prove the claim. After the death of his father, he is duty bound to prove the averments made in the plaint. To the pointed question on what basis the Plaintiff claim that no survey of the properties was conducted by the Commissioner of Survey in Wakf properties, he is unable to answer. The affidavit of the Plaintiff/P.W-1, as son of the original Plaintiff, is found to have no evidentiary value when he is unable to state clearly as to how properties are vested in the family. Therefore, the

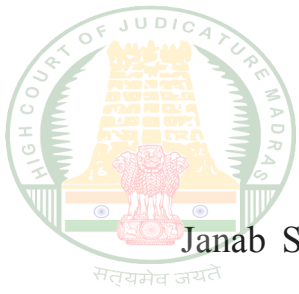


CRP No. 619 of 2020

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finding of the learned Wakf Tribunal that the Hiba through which the Plaintiff claims title is an unregistered document, it is not reflected in the Government records whereas the Soorsha Makkan Wakf claims title through a registered sale deed of the year 1913 and it has been continuously in possession of the property. The cross-examination is a method to assess the veracity of the claim made by the witness in a Court of law. Therefore in the cross-examination, the claim of the Plaintiff was not proved as P.W-1 answered many of the questions regarding the claim made in the plaint in the negative. Therefore, the evidence of the son of the original Plaintiff will not help the case of the Plaintiff.

39. During the arguments in this Civil Revision Petition, the learned Senior Counsel for the Revision Petitioner submitted that Soorsha Makkan was unable to prove their claim. D.W-1 is the Executive Officer of Soorsha Makkan Wakf. On perusal of the affidavit filed by Mohamood S/o. D.S. Amir Jhan who is the Executive Officer of Soorsha Makkan Wakf it is stated that Soorsha Makkan Wakf is the second Defendant in the Suit. The Wakf of Soorsha Makkan is a notified and surveyed Wakf with G.S. No. 126/Mds having its properties at Krishnampet and Virugambakkam, Chennai. It is based on the document No. 2632 of 1913 purchased by the Wakf from one



CRP No. 619 of 2020

Janab Syed Ahamd Hussain. It was specified and published in the Official Gazette on 20.05.1959 marked as Ex.B-1. The Gazette notification was marked as Ex.B-2. It is the claim of D.W-1 in his affidavit marked as examination-in-chief of D.W-1 that the Suit was filed by the Plaintiff only in the year 2000 which is time barred. As per the Wakf Act, 1995, the Tribunal shall not entertain any Suit after lapse of one year from the date of publication. The Suit property belongs to Soorsha Makkan Wakf which was leased out to third parties by Muthavalli of the said Wakf. The agreements were marked as Ex.B-4 to Ex.B-6. Further, he had stated that the Suit property had been in continuous possession and enjoyment of Wakf for the last several decades and the claim made by the Plaintiff is not at all maintainable. The plaint in O.S. No. 3496 of 1996 was marked as Ex.B-10. The judgment and decree in O.S. No. 3496 of 1996 was marked as Ex.B-11. The plaint in O.S. No. 3497 of 1996 was marked as Ex.B-12. The judgment and decree in O.S. No. 3497 of 1996 was marked as Ex.B-13. The claim of the Plaintiff that the Wakf properties were erroneously notified and no Survey Commissioner has verified the revenue records was denied by Soorsha Makkan Wakf. The legal action taken by the Wakf against its tenant shows that the Soorsha Makkan Wakf was in possession of the property. Also, he would submit that Muthavalli was removed from the office under Section 64 of the Wakf Act, 1995 and the Wakf



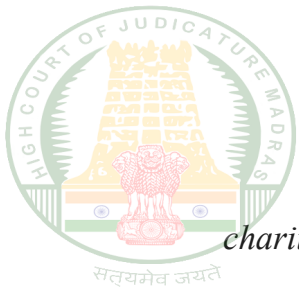
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Board has taken direct Management of the said Wakf and the Executive Officer has been appointed to manage the property. Therefore, the claim of the Plaintiff that they are in uninterrupted possession is false, according to D.W-1. D.W-1 was also subjected to cross-examination by the learned Counsel for the Plaintiff. In the cross-examination, the learned Counsel for the Plaintiff suggested that Ex.B-1 was falsely created document. On verification of Ex.B-1, it is found that it is a certified copy of the sale deed of the year 2013 which cannot be said to be a created document. The said suggestion had been rightly denied by D.W-1. The claim of D.W-1 that the original sale deed document No.2326/2013 is not available in the office of Wakf Board is plausible and it cannot be a reason to reject Ex.B-1.

40. As contended in the written statement, the Assistant Commissioner of Wakf had in the proforma report has stated as follows:-

“Annexure for the Column 22:-

The Muslim religious endowment named Soor Shah Makkan situated at Krishnampet, Barbers Bridge Road, Mylapore was created in 1772 by then Nawab of the Carnatic. According to Wakfnamah dated 2-1-1908 written by Sardar Surguru Khurshid Ali the whole property bearing R.S.No.825/1, 2 and 829 etc., measuring about 5 ¼ Cawnies dedicated for religious and charitable purposes. It is stated in the above Wakfnamah that the Trustee to take at the rate of Rs.15/- per month for his food and clothes from the income of the coconut garden, Rs.8/- to be paid to Fathima Bi for her maintenance as long as she was alive and the balance of the amount to be applied to conduct charitable service according to custom to the sacred priest coming once in a year to Khader Owliah Jhanda, Mahbub Subhani Jhanda, as usual to other



charitable purposes.

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.....Under order of the court dated 17-7-1911 a plot of land at Veerambakkam Village Saidapet Taluk bearing R.S.No.192/2, 193/2, 193, 193/1 measuring 3 acres 41 cents was purchased for Rs.1,250/- in document No.2326/13 dated 4-10-1913 and added to the corpus of the Wakf. Another plot of land bearing S.No.221 Patta No.81 in Veerambakkam Village, Saidapet Taluk was also purchased for Rs.1025/- in document No.962 of 1913 dated 19-5-1913 and added to the corpus of the Wakf.”

41. Therefore, the claim of the Plaintiff based on the oral gift deed cannot at all be accepted in the light of the registered document. On perusal of Ex.B-1, it is found that the properties were purchased based on the Court auction on the file of the then Poonamallee District Munsif executed by Syed Ahamed Hussain Sahib S/o. Gani Sahib. Paish Himam of the Mosque residing in the village of Virugambakkam, Saidapet Taluk is the vendor executed the deed in favour of Mohammad Ali Sha, Muthavalli Trustee of Soorsha Makkan, Mohammedan Charitable Endowment, Krishnampet, Madras. The details of the properties are also mentioned in S.Nos.192/2, 193/2 along with extent. The property purchased by the Muthavalli of Soorsha Makkan Sahib is based on the registered sale deed which is to be treated as more than thirty years old document.

42. In this background, when the claim of the Plaintiff is considered, the Hiba does not contain the details of the property. It is a unregistered deed and its in Urdu. The Plaintiff witness is unable to answer many of the



questions regarding the origin and authority of the person who created such

WEB COPY Hiba deed in favour of the grandmother of P.W-1. In short, claim of the Plaintiff cannot be accepted by any Court of law in the absence of acceptable documents.

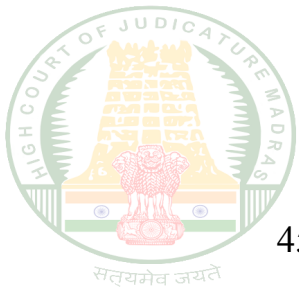
43. On consideration of the cross-examination of P.W-1, he feigned ignorance regarding questions put to him in cross-examination. The Plaintiff therefore cannot seek a decree by picking holes in the evidence of the Defendant Witness. As per the settled position of law, the Plaintiff has to stand or fall on the strength of his evidence and cannot seek the Court to grant a decree by picking holes in the evidence of the Defendants. Here also the claim of the Plaintiff that the properties are not the properties of Soorsha Makkan Sahib, but it is a property of the private individuals had not been established through cogent evidence. The Plaintiff is attempting to seek a decree challenging the registered sale deed of the year 1930, by filing the Suit in the year 2000, which cannot be accepted. In the light of Ex.B-1, plaintiff pleadings are found to be clever drafting. The suggestion put to P.W-1 in cross-examination indicates that the father of the Plaintiff/original Plaintiff was charge sheeted for land grabbing. Under those circumstances, the Civil Revision Petition filed seeking to set aside the Judgment of the Wakf Tribunal



is found unacceptable.

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44. On perusal of the documents marked on the side of the Plaintiff under Ex.A-1 to Ex.A-19 and on the side of the Defendants under Ex.B-1 to Ex.B-4 and on perusal of the Judgment of the learned Wakf Tribunal, the learned Wakf Tribunal had on cogent analysis of the entire materials including oral evidence as well as the documentary evidence had arrived at a correct conclusion. The claim of the Plaintiff under Ex.A-1 to Ex.A-3 in favour of Fazilatunisa Begum was not established. The learned Wakf Tribunal had found that the Plaintiff claims right over the property based on the deed executed by the then Muthavalli of Soorsha Makkan. Under Mohammedan Law, Muthavalli are the management of Wakf and they were not given the power of alienation of the properties owned by Wakf. Abdul Samed Sahib was Muthavalli and Executor of Soorsha Makkan, whose name is incorporated in the Adangal Extract relating the property gifted by him. Further, there was no mention about the gift deed or as to how the said Samad Shabi acquired properties. Thus, the alienation of Wakf property by way of gift in favour of the said Fazilatunisa Begum cannot be accepted or it confers any title through a void transaction.



CRP No. 619 of 2020

45. Ex.A-1 is in Urdu/Persian/Arabic. The Plaintiff had filed an

English translated version which is attested by the Notary Public M.M. Bukari,

which is extracted as follows.

*“TRUE TRANSLATION FROM URDU TO ENGLISH
HEEBA DOCUMENT (GIFT DEED)*

Today the 24th March 1943, I Ghulam Ghouse Sahib, Sterling Road, Nungambakkam, Madras by my will and with my sound health and good mind and without any influence of any one. The following properties to niece AMATHUL FASAL FAZULETHUNISA BEGUM the R.S.No.190 about 37 cent land, AMATHUL FASAL FAZULETHUNISA BEGUM. I am transferring to her, From today she is the owner of the said property and independent owner. This gift without any influence, with free will, AMATHUL FASAL FAZULETHUNISA BEGUM, I am making in her name this document. My relationship uncle and my niece.

I am making this endorsement, She from today without any persons claim, She is the absolute owner, and myself I have given the documents with full owner, with this I also state that the property is not mortgaged and no one has right or claim over the same. I have signed the document in the presences of the witnesses.

Stamp No.591 Dt: 22.3.43

(Signed) GHOUSE SAHIB

WITNESSES:

- 1. RAHIM BASHA*
- 2. NAWAZ SHERIFF”*

46. Ex.A-2 is also in Urdu/Persian/Arabic, which is also translated in

broken English and is extracted as below:

*“TRUE TRANSLATION FROM URDU TO ENGLISH
HEEBA DOCUMENT (GIFT DEED)*

Today dated 1st December 1946, I. Ghulam Ghouse Sahib residing at Sterling Road, Nungambakka, Madras out my own free will and keeping good health and sound mind without any influence compulsion and gifting the following the property to my niece AMATHUL FASAL FAZALUTHUNISA BEGUM the property RS.No.193 measuring 33 cents and I am transferring the said property the name of AMATHUL FASAL FAZALUTHUNISA BEGUM and from today she becomes the absolute



CRP No. 619 of 2020

owner. Other persons has gone no right. I am making this gift deed without any compulsion or undue influence with my free will in favour of AMATHUL FASAL FAZALUTHUNISA BEGUM I hereby transfer the said property been the uncle of AMATHU FASAL FAZALUTHUNISA BEGUM.

From today you are the absolute owner without any interruption with any person.

I have given the said document to transfer the said property in her name. I give my consent for the same.

I undertake that the aid property is not mortgaged or any person has got any right or claim.

I am making this document in the presence of the witnesses.

I again state that is not encumbered nor any other person has got any claim or any right over the said property.

I am signing this document the presence of:-

(Signed) GHULAM GHOUSE

STAMP NO.911 Dt: 24.8.46

1503 Dt: 24.11.1946

WITNESSES:

1. ARUMUGAMOOIYAN

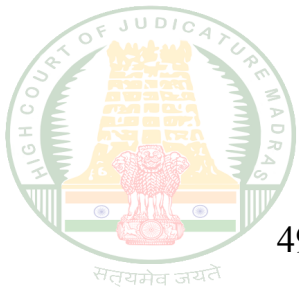
2. SAFDER HUSSAIN .H”

47. Ex.A-3 is also in Urdu/Persian/Arabic which is also translated in broken English.

48. Ex.A-4 is the photostat copy of the Gazette publication – No.20-A Madras dated May 20 1959 [Visakha 30,1881]

“Wherein the list of Wakf existing in madras Stage is given “Soor shah Makkan Wakf” which is stated the gross income of the properties comprised in Wakf, the amount of land revenue cesses rates and tax payable in respect of properties. The expenses incurred in realization of the income where the name of the Soor Shah Makkan is mentioned which is in Krishnampet, Mylapore. The nature and objective of the Wakf is treated as Pious, religious and charitable for the performance of fathias and urs.

Where the gross income is 1805, the amount of land revenue is 30981. The expenses incurred is 155519/-.”



49. Ex.A-5 is the deed of settlement executed at Madras 01.02.1967

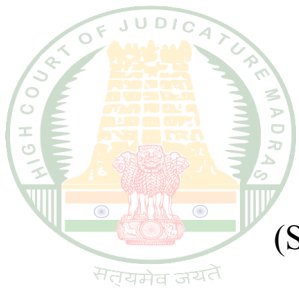
by Fazilatunisa Begum in favour of her husband Khan Bahadur Nawabzada Sharief Mohammed Khan and four sons. i) Nawab Ali Khan ii) Nawabzada Khursheed Mohammed Khan iii) Nawabzada Shafiq Mohammed Khan and iv) Nawabzada Rafiq Mohammed Khan. It is not registered. It is attested by Notary Public by name Mr. Jacob A. Chakramakal.

50. Ex.A-6 is the copy of the G.O. M.S.No.14 dated 3rd January 1969. public (Political) Department, with reference to G.O.Ms.No.1915, Public (Political) dated 17.09.1962. From the Paymaster, Carnatic Stipends, Madras Letter No.Rc.31/68, dated 22.11.1968.

“ORDER:

The Government direct that the perpetual monthly stipend of Rs.19.27/- (Rupees Nineteen and paise twenty seven only) drawn by the late Thirumathi Amathul Fazal Fazelethunnissa Begam who died on the 19th April, 1968, devolve on her legal heirs as specified below:

- | | |
|--|-----------------------|
| 1) Thiru Khan Bahadur Nawabzada Sheriff
(Rupees five and Md. Khan – (Husband)
thirty five only (Aged 66 years) | Rs.5.35 |
| 2) Thiru. Nawabzada Nawab Ali Khan
and paise forty eight only)
(Son) (Aged 29 years) | Rs.3.48 (Rupees three |
| 3) Thiru Nawabzada Kursheed Md.Khan
and paise forty eight only)
(Son) (Aged 28 years) | Rs.3.48 (Rupees three |
| 4) Thiru Nawabzada Shafiq Md. Khan
and paise forty eight only) | Rs.3.48 (Rupees three |



CRP No. 619 of 2020

(Son) (Aged 25 years)

5) Thiru Nawabzada Rafiq Md.Khan
(Rupees three and paise forty eight only)
(Son) (Aged 22 years)

Rs.3.48

2. Thiru Nawabzada Nawab Ali Khan, the first son of the deccesasd stipendiary is allowed to draw the stipend amount of Rs.19.27 (Rupees Nineteen and paise twenty seven only) for himself, his father and his three brothers on a Joint Coupon issued in the names of all the above persons.

(BY ORDER OF THE GOVERNOR)

C.A.Ramakrishnan
Chief Secretary to Government"

51. Ex.A-7 is written in Urdu and it is translated to English language

by M.M.Bhukari, Advocate, Notary

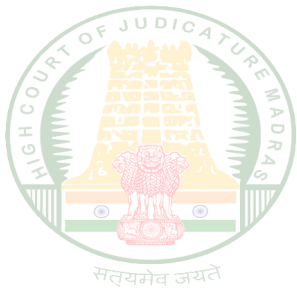
"MUTUAL FAMILY AGREEMENT

Today, 23rd December 1985, where the three brothers;

- i) Nawabzada Nawab Alikhan
- ii) Nawabzada Kusheed Mohamed Khan
- iii) Nawabzada Rafiq Mohamed Khan

residing at No.5, Wellayan Road, Kotturpuram, Madras-85, entering into the following agreement mutually and signing the same. That our family property which is situated in the State of Tamil Nadu and Madhya Pradesh is hereby divided according to the following agreement;

1. Nawabzada Nawab ali Khan takes the property situated in the City of Madras and Moffusal, and properties situated in the city of Tamil Nadu, i.e properties at Mackeys Garden, Madras-6,, land tat Virugambakkam, land at Velachery Madras - etc., towards his 1/3 share;
2. Nawabzada Kusheed Mohammed Khan 3. Nawabzada Rafiq Mohammed Khan has got no right over these properties, as per this agreement. The parties 2 and 3 viz., Nawabzada Kursheed Mohammed Khan and Nawabzada Rafiq Mohammed Khan hereby take 1200 acres in the village of Padmiyai, Madhya Pradesh, equally and jointly and elder



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CRP No. 619 of 2020

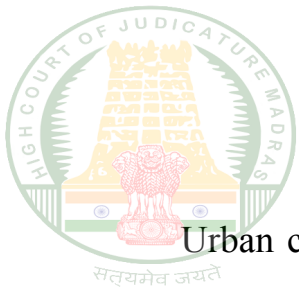
brother Nawabzada Nawab Ali Khan has got no right over this property. The above cited agreement has come into existence without any outside pressure or hindrance. The three signed this agreement with our well and pleasure.

Note: Translated from Urdu document.”

52. Ex.A-8 is the Chitta for the Fasli year 1405. It stands in the name of Abdul Zamath Zahib Muthavalli for the properties in S.No.192.2, 193.1, 193.2 and 221.

53. Ex.A-9 is the urban land tax Receipt in the name of G.M.Hussain Khan S/o. Nawabzada Ali Khan for the properties in S.No.192/2, 193/2, 193/3 for the fasli 1385 to 1424. The properties is in Virugambakkam village. Receipt was issued by the Village Karna.

54. Ex.A-10 is the proceeding of the Assistant Commissioner Urban Land ceiling wherein it is stated that the properties in S.No.193/2, 193/3 was enjoyed by Gulam Gouse Sahib from 01.12.1942. He has executed Hiba deed in favour of his niece of Fazilathunisa Begum. Subsequently she had settled it in favour of husband and sons, the legal heirs of the Fazilathunisa Begum. Her husband Khan Bahadur Nawabzada Sherif Mohamed Khan and her children Nawabzada Nawab Ali Khan, Nawabzada Kurshid Md Khan, Nawabzada Shafiq Mohamed khan, Nawabzada Rafiq Mohamed Khan are equally enjoying the properties. The proceedings of the Assistant Commissioner,



CRP No. 619 of 2020

Urban ceiling indicates that the properties devolved on the husband and sons in S.No.193/2 and 193/3.

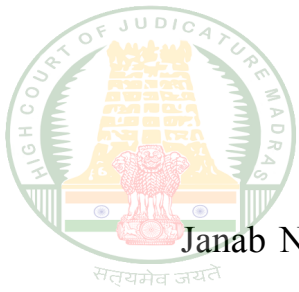
55. Ex.A-11 is the copy of the FMB extract for the S.No.192 and 193. T.S.No.1, 2, 3 issued by the Assistant Director of land ceiling, Assistant Commissioner land ceiling and Registration.

56. Ex.A-12 is the encumbrance certificate for the property in S.No.192/2, 193/1, 2 and 3. New T.S.No.1, 2 and 3 issued from the Sub-Registrar Office dated 1.1.30 to 30.05.1968.

57. Ex.A-13 is also encumbrance certificate for the property in S.No.192/2, 193/1,2 and 3, New S.No.T.S.No.1, 2 and 3 with “Nil” encumbrance.

58. Ex.A-14 is also encumbrance certificate, 01.06.1982 to 16.11.1999 with “Nil” encumbrance.

59. Ex.A-15 is the proceedings of the Tamil Nadu Wakf Board – 600 004 regarding the claim of the Petitioner before the Tamil Nadu Wakf Board.



Janab Nawab Ali Khan regarding the properties in S.No.192/2, 193/1, 193/2, 193/3 Virugambakkam village comprising 3 acres 62 cents. The petition had been filed by Janab Nawab Ali Khan claiming that the properties belong to their family was mistakenly notified as Wakf property in the year 1959 without issuing any notice to the Petitioner which is a mandatory requirement before issuing such notification. Therefore, he requested the Wakf Board to set aside the order passed by the Secretary of the Wakf Board to denotifying the lands. As per the proceedings of the Wakf Board, they had refused to entertain the petition filed by the Petitioner Janab Nawab Ali Khan with the following observations:-

“Section 7 the expression in person interested therein shall any relation to any property specified as Wakf property in the list of Wakfs published after the commencement of this Act shall included also every person who did not interest in the Wakf concern is interested in such property and to whom reasonable opportunity had been afforded to represent his case by notice served on him in that behalf during the course of the relevant enquiry under Section 4. If the petitioner claims he has got right over the properties it is well within his ambit of right and power to invoke the jurisdiction of the civil Court (Wakf Tribunal) in violation to the alleged title over the properties.

As per Section 6 of the Wakf Act 1995 the jurisdiction in respect of any dispute over the property whether it is a Wakf property or not whether the notification by Survey Commissioner is correct or not the question has to be decided only by the Wakf Tribunal constituted as per G.O.Ms.No.458 dated 24.10.1997 (Commerical Taxes and Religious Endowment Department) by the Government of Tamil Nadu.

In view of the restrictive jurisdiction of this Board in so for on the present claim before us, we are not inclined to go into the question of deciding this issue as should otherwise hit by Section 6 of the Wakf Act wherein the Jurisdiction only vest with the Wakf Tribunal.

Therefore the Board is of the view that the petitioner can seek his remedy in respect of his claim only before the Wakf Tribunal who is the



CRP No. 619 of 2020

competent Authority to decide the issue as per Section 6 of the Wakf Act 1995. In view of this findings this Board hereby close this petition.”

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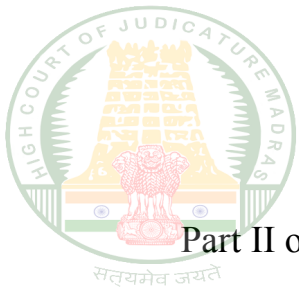
60. Ex. A-16, Ex.A-17 and Ex.-18 are the extracts from the Town Survey Land Register where the S.No.192/2, 193/1, 192/1, 190/3A1A1 is in the name of Nawab Zada Nawab Ali Khan, Nawab Zada Khursheed Md. Khan, Nawab Zada Rafiq Md. Khan, describing the property as vacant house site.

61. Ex.A-19 is the proceeding of the District Collector, Chennai in J5/31220/2004 dated 12.08.2004. This proceeding emanated based on the petition raised by One Subbiah and two others against the patta for the land measuring 3.82 acres in Old S.No.192/1, 192/2, 193/1, 193/3A1A1A Pt, 193/2, 193/3 corresponding to T.S.Nos.1, 2, 3 of Block No.39 of Virugambakkam Village in Mambalam-Guindy Taluk. The objection regarding the grant of patta against the Nawab Zada Nawab Alikhan is as follows:-.

“By the proceeding of the District Collector, Chennai, the petitions filed by M.Subbiah and two others had been rejected. The request of the said persons does not deserve consideration. It is observed that

“transfer of registry and issue of patta made in favour of thiru. Nawab Zada Nawab Alikhan in TR.No.277/04-05 in Mambalam-Guindy Taluk is ordered to be upheld”.

62. Ex.A-20 is the general notification list of Wakf that are existing in the State of Madras. It was published on 20th May 1959 – Supplement to



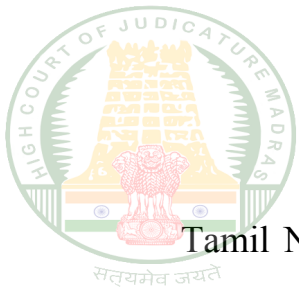
CRP No. 619 of 2020

Part II of the Fort St. George Gazzette.

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63. Ex.A-21 is the agreement of sale dated 05.11.1988 between (i) Nawab zada Nawab Ali khan (ii) Nawabzada Khursheed Mohammed Khan (iii) Nawabzada Rafiq Mohammed Khan (iv) Nawabzada Sherif Mohammed Khan, the sons of Late Khan Bahadur Nawabzada Sherif Mohammed Khan in favour of M/s.Maaran Builders Private Limited regarding the properties in 192/2 (1 acre 20 cents), S.No.193/1 (70 cents), S.No.193/2 (1 acre 38 cents), S.No.193/3 (33 cents) in Virugambakkam village, Mambalam-Guindy Taluk, Madras at the rate of Rs.5,00,000/- per acre for total consideration of Rs.13,55,000/-.

64. Ex.A-22 is the order made by the Honourable Supreme Court in Civil Appeal Nos.8868-8869 of 2011 between ***Faisal Mohammed Khan and others v. Soorsha Makkan Wakf and another*** wherein it was observed that the Plaintiff/Appellant had filed the suit in Wakf Tribunal for declaration that the suit property is not the Wakf property and for a direction to the Tamil Nadu Wakf Board to de-notify and delete the suit property from the Proforma schedule of properties of Wakf. It was observed that the Plaintiffs produced a family settlement dated 22.12.1985 which at certain stage was marked by the



CRP No. 619 of 2020

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Tamil Nadu Wakf Tribunal as Ex.A-12 thereafter as Ex.A-7. The Defendant No.2, Soorsha Makkan Wakf, filed an application before the Tribunal as I.A.No.14977 of 2010 raising an objection to the mutual family settlement dated 22.12.1985 marked as Ex.A-7 stating that the document was inadmissible. The Tribunal accepted the objection and passed an order dated 12.11.2010 and held that Ex.A-7, the family settlement, was inadmissible in evidence.

65. The Plaintiffs/Appellants filed a revision before this Court in CRP (PD).No.4172/2010 and by the order dated 14.03.2011, this Court dismissed the revision and sustained the order of the Tribunal. The Plaintiffs/Appellants then filed Review Application No.50/2011 and by the order dated 24.03.2011 this Court dismissed the review. Aggrieved, the Plaintiff approached the Honourable Supreme Court, The Honourable Supreme Court had observed as follows:-

“We are of the considered opinion that the family settlement which was marked as Ex.A-7 and has been held inadmissible by the Tribunal as well as by the High Court, is not at all relevant for a decision of the suit pending before the Tribunal. As we have noted, the Plaintiffs appellants want a declaration from the Tribunal that the suit property is not the property of the Wakf and be deleted from the list of Wakf properties notified. From the written statement of the Wakf we find that its case is that the suit property was purchased by the Wakf by document No.2336 of 1913 from one Jamal syed Ahmed Hussain out of the amounts awarded for the land acquired by the Government in 1913. Hence, the Tribunal will have to decide whether the suit property purchased by the Wakf was owned by Jamal Syed Ahmed



hussain or any of the predecessor of the Plaintiffs/Appellants prior to the purchase of the Wakf. The decision of the Tribunal on this issue will therefore not depend upon the family settlement which has been held to be inadmissible. The family settlement held inadmissible in evidence is not at all material for grant of or withholding of the reliefs sought for in the Plaint before the Tribunal. Hence, the finding of the Tribunal as well as the High Court on the admissibility of the family settlement was not at all relevant to the issues raised before the Tribunal.

For the foregoing reasons, we set aside the impugned orders of the High Court as well as of the Tribunal on the admissibility of the said document and hold that the document will not be relied upon by the Plaintiffs for a decision in the suit. We, however, make it clear that the Plaintiffs/Appellants will not be non-suited only because we have held that they will not rely on the family settlement.

66. Thus it is found that the Honourable Supreme Court dismissed the Civil Appeal Nos. 8868-8869 of 2011. Therefore, based on the said direction only the suit was disposed of by the Wakf Board Tribunal. Aggrieved, this Civil Revision Petition is filed by the Plaintiffs.

67. On perusal of Ex.B-1, sale deed relied by the Defendant-2 it is a registered sale deed. The recitals are as follows:

“This indenture is made this the 3rd day of October 1913 between the Syed Ahmed Hussain Sahib S/o. Abdul Gany Sahib, a Paish Imam of the Mosque residing in the village of Virugambakkam of Saidapet Taluk herein after called Vendor in which expression includes his heirs, executors and Administrators successors and assigns wherever the context admits of the one part and Mohammed Hussain Ali Shah Muttawalli, trustee of Surshah Makkan, a Mohammedan Charitable Endowment in Krishnampet Madras herein after called the purchaser which term includes his successors and assigns wherever the context so admits of the other part. Whereas the said Soorsha Makkan, the Mohammedan Charitable endowment, Krishnampet Madras was absolutely entitled and was possessed of immovable properties situated



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in Madras and whereas a portion of the suit properties was acquired by the Government under the Land Acquisition Act and whereas the sum of Rs.5,168/- being the value paid by the Government for the properties thus acquired was ordered by the Chief Judge of the Court of Small Causes and land Acquisition Judge by order dated 17.07.1911 in land acquisition cases Nos.7 of 1908 and 46 of 1909 to be deposited in Government promissory notes until the purchaser herein as trustee of the said Endowment to find suitable properties for investment of the said sums in land and whereas the portion of that amount as already been invested in the purchase of immovable properties and whereas the said purchaser Syed Ahamed Hussain as Muttavalli has now obtained permission of the said Court for the purchase of the house and garden belonging to the vendor herein more particularly described in the schedule hereunder to which the Vendor herein has agreed to sell and the purchaser has agreed to purchase as such Muttavalli for Rs.1,250/- out of the balance amount now in Court belonging to said Endowment and whereas the Vendor herein has to pay a sum of Rs.676.80/- or thereabout towards the mortgage decree in O.S. 327 of 2012 in the District Munsif's Court, Poonamallee in which one Nawab Sahib has obtained a mortgage decree against the properties agreed to be sold thereby and whereas the Vendor herein has consented to have the amount of the said decree paid into the Court and then received the balance of Rs.573.80/ or thereabout himself and whereas the Vendor herein has further agreed to shift the satisfaction of the decree is ended up in the District Munsif Court, Poonamallee. Now this indenture witness that in consideration of the said agreement and the said sum of Rs.1250/- receipt were of the Vendor herein doth hereby acknowledge the said vendor doth hereby sell and convey all the piece and parcel of dry land comprise in Patta No.88 bearing Revision Survey No.192/2, 193/2, 193, 193/1 corresponding respectively to old Survey No.192B, 193B, 193A and 193C/1 measuring respectively. One acre 32 cents, 4 acre 91 cents and 72 cents total extent amounting to 3 acres 36 cents and 72 cents more particularly shown in the schedule herein attached situated in the village of Virugambakkam, Saidapet Taluk, Chengalpet District within the Registration Sub District of Saidapet together with house built thereon and the Well and garden and the fruit bearing trees and boundary walls together with all trees had ditches, ways, waters and water courses. The particular privileges, easements and appurtenances whatsoever to the said piece or parcel of land belonging or in any raise appertaining to or usually held or occupied herewith or reported to belong or be appurtenant to the said piece of land and estate right and title interest claim demanded whatsoever of the said vendor in and to the said premises or in any part thereof to have and to hold the said



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piece in the parcel of land together with household and garden compound walls well and trees etc unto and to the use of the said purchaser in his capacity as such trustee to the Soorsha Makhan of the said religious endowment and vendor doth hereby for himself or his heirs executors, administrators and assigns covenant with the said purchase that he has full power sole and absolute right and to assign the said property in a manner aforesaid and said purchaser shall hereafter peaceably hold dues and enjoy the ssame in his capacity as such Muthavali and as trustee to the said Mohammedan religious endowment at Krishnampet, as aforesaid absolute property the said Soorsha Makhan without any hindrance interceptions claims or demand whatsoever by or from the said vendor from any other person whomsoever and the vendor doth hereby undertake to indemnify the purchaser as trustee of the said Soorsha Makhan against all losses, damages, expenses, claims, liabilities whatsoever in any place the said vendor or trustee of the said endowment may sustain incur and put to by reason or in respect of the purchase here of.

Annexure for Column 22:-

The Muslim religious endowment named Soorshah Makkan situated at Krishnampet, Barbers Bridge Road, Mylapore was created in 1772 by then Nawab of the Carnatic. According to Wakfnamah dated 02.01.1908 written by Sardar Surguru Khurshid Ali the whole property bearing R.S.No.825/1, 2 and 829 etc measuring about 5¼ cawnies dedicated for religious and charitavle purposes. It is stated in the above Wakfnamah that the Trustee to take at the rate of Rs.15/- per month for his food and clothes from the income of the cocoanut garden, Rs.8/- to be paid to Fathima Bi for her maintenance as long as she was alive and the balance of the amount to be applied to conduct charitable service according to custom to the sacred priest coming once in a year to Khader Owliah Jhanda, Mahbub Subhani Jhanda as usual to other charitable purposes.

Verification of the record show that the land bearing R.S.No.825 of Mylapore was originally measuring C-0-2-2207 sq.ft. A plot of land measuring C.1-20-602 was acquired by the Government on behalf of the Corporation of Madras for a conservancy cart stand. In land case No.7 of 1908 a sum of Rs.5168/- was awarded towards the value of the land acquired by the Government under Land Acquisition Act. Under order of the Court dated 17-7-1911 a plot of land at Veerambakkam Village Saidapet Taluk bearing R.S.No.192/2, 193/2, 193, 193/1 measuring 3 acres 41 cents was purchased for Rs.1,250/- in document



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No.2326/13 dated 14-10-1913 and added to the corpus of the Wakf, Another plot of land bearing S.No.221 Patta No.81 in Veerambakkam Village, Saidapet Taluk was also purchased for Rs.1025/- in document No.962 of 1913 dated 19-05-1913 and added to the corpus of the Wakf. Out of the balance available with Mohammed Ali Shah, Muthuvalli of the Wakf a plot of land bearing Doc.No.2617/14 dated 3-10-1914 and added to the corpus of the Wakf. The remaining land has been subdivided as follows:

R.S.No.	825/2 of Mylapore	C-04-1891
	825/3 of Mylapore	0-3-1167
	825/4 of Mylapore	0-3-606
	825/5 of Mylapore	0-2-149
	825/6 of Mylapore	0-1-285
	825/8 of Mylapore	3-10-2032
	825/10 of Mylapore	0-0-1397
	825/12 of Mylapore	0-0-580"

68. P.W-1 is the son of the original Plaintiff who died during the pendency of the case. P.W-1, Faizal Mohd Khan is the son of Nawabzada Nawab Ali Khan. The suit in O.S. No. 4555 of 2000 was instituted by Nawabzada Ali Khan as Plaintiff. By the time, the suit was transferred after remand from the Honourable Supreme Court for fresh adjudication, it was posted before the newly constituted Wakf Tribunal and re-numbered as O.S. No. 88 of 2018. By the time the trial commences, the original Complainant, Nawabzada Nawab Ali khan died and therefore, his wife and children were impleaded as Plaintiffs. The Revision Petitioner herein by name Nedumaran was impleaded as 4th Plaintiff who claims to have purchased a plot in the disputed land. The son of the original Plaintiff late Nawabzada Nawab Ali Khan Faisal Mohamed Khan when confronted regarding the details of the

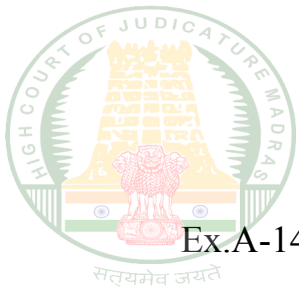


enjoyment of the property and the origin of the dispute, he was unable to

answer cogently, his reply was only his father knew about those details.

Therefore, P.W-1 Faisal Mohamed Khan was unable to prove the claim of the original Plaintiff, Nawabzada Nawab Ali Khan. The claim of the second Defendant Soorsha Makkan Wakf was established through the document Ex.B-1 to Ex.B-13.

69. There was lease agreement between the Soorsha Makkan and its tenants as evidenced by Ex.B-4, Ex.B-5 and Ex.B-6 and as evidence by the documents as Ex.B-7, Ex.B-8 and Ex.B-9. The institution of the suit on behalf of the Wakf to vacate the tenants in O.S.No.3497 and 3496 of 1996 shows the exercise on right of ownership by Muthavalli of the Soorsha Makkan Trust to enter into lease and to evict the tenant after the expiry of the lease whereas the claim of the Plaintiff is based on unregistered document marked as Ex.A-1 to Ex.A-3 which is not reflected in the Revenue records. What was in the Revenue records under Ex.A-8 reflects the name of the person who is alleged to have been Hiba in favour of Fazelethunnissa Begum and it is not reflected in Ex.A-8 and therefore, it is not helpful to the Plaintiff to establish his case. Ex.A-12 to Ex.A-14 encumbrance certificate are not for the period from 1913 or prior to 1913 to establish the claim of the Plaintiff and therefore, Ex.A-12 to



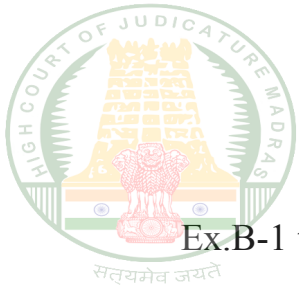
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Ex.A-14 will not help the case of the Plaintiff. Ex.A-15 is proof of the rejection of the claim of the original Plaintiff. Ex.A-16 to Ex.A-19 were obtained after remand from the Honourable Supreme Court. They were not marked in the earlier proceedings in O.S. No. 4555 of 2000 when the case was taken up before the learned I Assistant Judge, City Civil Court. Therefore, there was suggestion on behalf of the Defendants that those documents were obtained illegally though it was denied by P.W-1 Faizal Mohammed Khan. The suggestion that the father of the Plaintiff, the original Plaintiff Nawab Ali Khan had indulged in land grabbing and criminal cases are pending against him was denied by P.W-1 in his cross examination. From the perusal of records, Ex.A-1 to Ex.A-19, the claim of the Plaintiff is not established. Therefore, the learned Wakf Tribunal had rightly dismissed the claim of the Plaintiff except decreeing the suit partially in respect of 0.33 cents of land in S.No.193 which does not find a place in the records filed by the Defendants under Ex.B-1. Such a finding of the Wakf Tribunal is found proper on assessment of the evidence by this Court as Revisional Court under Article 227 of the Constitution of India. Therefore, the claim of the Revision Petitioner, the Plaintiff in O.S.No.4555 of 2000 re-numbered O.S.No.88 of 2018 cannot be accepted. The submissions of the learned Senior Counsel for the Revision Petitioner cannot at all be accepted in the light of the guidelines



issued by the Hon'ble Supreme Court regarding appreciation of evidence by the Trial Court. The Plaintiffs had to stand or fall on the strength of the Plaintiffs evidence and the Plaintiffs cannot seek a decree by picking holes in the case of the Defendants.

70. The property purchased by Muthavalli of Soorsha Makkan Wakf in the year 1930 is through a registered sale deed and it was registered as Wakf property in the proforma of Wakf. The Plaintiffs have not established their title over the Suit properties in S.Nos.192/1, 192/2, 193/1 and 193/2. As far as S.No.193/3 is concerned, it is gifted to Fazilatunisa Begum under Ex.A-2. Ex.B-1 does not contain S.No.193/3 or the extent as 33 cents. Only to such property, the Suit was decreed as per the plaint averments as the extent and survey number for that part of the property was not reflected in Ex.B-1. The said Judgment of the Wakf Tribunal is therefore acceptable and reasonable on perusal of Ex.B-1 and Ex.A-2. Under those circumstances, the Judgment passed by the learned Wakf Tribunal is found well reasoned and it does not warrant any interference by this Court. Therefore, in the light of the above, the submissions of the learned Senior Counsel for the Petitioner is rejected. The submission made on behalf of the second Respondent/Soorsha Makkan Sahib is found acceptable in the light of the documents under Ex.A-1 to Ex.A-19 and



CRP No. 619 of 2020

Ex.B-1 to Ex.B-4.

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71. In the light of the above discussion, Point for Consideration is answered against the Revision Petitioner/4th Plaintiff and in favour of the Respondents/Defendants.

In the result, this ***Civil Revision Petition is dismissed.*** The Judgment of the learned Wakf Tribunal in O.S.No.4555 of 2000 dated 31.12.2019 is confirmed. No costs. Consequently, connected miscellaneous petition is closed.

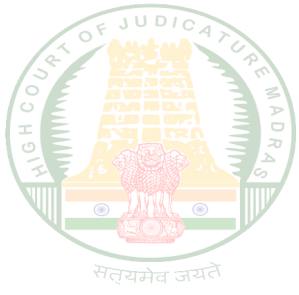
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Index : Yes/No

Internet : Yes/No

Speaking/Non-speaking order

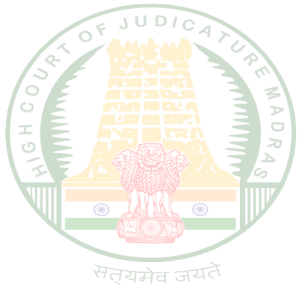


CRP No. 619 of 2020

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To

1. The Presiding Officer,
Tamil Nadu Wakf Tribunal at Chennai.
2. The Section Officer,
V.R. Section,
High Court of Madras – 600 104.



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CRP No. 619 of 2020

SATHI KUMAR SUKUMARA KURUP, J

shl/dh

Order made
in C.R.P.No.619 of 2020

02.06.2025