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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 16.06.2025
Pronounced on : 25.07.2025

CORAM:

THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN

A.No. 378 of 2025
IN
C.S.No. 574 of 2010

M/s. S.R.P.Enterprises
Rep. by its Partner
No.6 (Old No. 37), Arcot Road
Vadapalani,
Chennai – 600 026.

... Applicant/27th Defendant

Vs

M/s. Doshi Constructions
A partnership firm registered under the Indian Partnership Act,
Represented by its Partner, Mr.Mehul H. Doshi
Having registered office at
No.3H, Century Plaza,
No.560, Teynampet
Chennai – 600 018
(Amended as per order dated 31.08.2018 in
Appln.No. 4812 of 2018)

... Respondent/Plaintiff

PRAYER: Application filed under Order VII Rule 11(d) of CPC read



with Order XIV Rule 8 of OS Rules seeking to reject the plaint filed by the plaintiff in C.S.No. 574 of 2010.

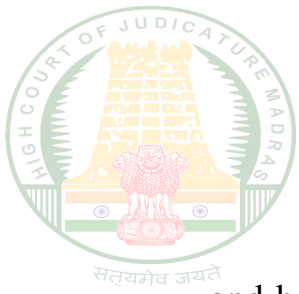
For Applicant : Mr.S.R.Rajagopal
Senior Counsel
for Mr. Aditya Sarangarajan

For Respondent : Mr. R.Parthasarathy
Senior Counsel
for Mr.Rahul Balaji &
Ms.Akshaya Ramadurai

ORDER

This Application has been taken out by the 27th defendant M/s. S.R.P. Enterprises under Order VII Rule 11(d) of the Code of Civil Procedure to reject the plaint filed by the plaintiff in C.S.No. 574 of 2010.

2. C.S.No. 574 of 2010 had been filed by the plaintiff M/s. Doshi Constructions, a partnership firm against 63 defendants. The plaintiff has asserted title over the suit property comprised of the building, superstructure and land measuring 7 acres and 58 cents and land and building comprised of 5 acres and 71 cents in S.No. 186/1 (part) and land

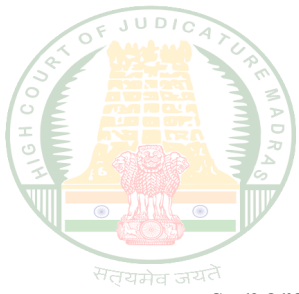


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and building comprised of 1 acre and 87 cents in S.No. 187/1 (part) out of a larger area of 8 acres and 84 cents at No.6, Old No. 37, Arcot Road, Saligramam, Chennai – 600 026. The plaintiff had purchased the same under a deed of sale dated 22.12.2006 registered as Document No. 402 of 2007 in the Office of the Sub Registrar, Virugambakkam from the 34th defendant.

3. The 34th defendant M/s. SMS Bucary Wakf Al Aulad Estate represented by its Muthavalli was the beneficiary of a Dedication on 28.05.1957 by Mr. SMS Bucary. He was the owner of the land and superstructure and had initially leased the same to M/s. Ponnaluri Brothers Private Limited in the year 1957 by way of two lease deeds dated 05.01.1957 and 24.04.1957. There has been various transactions/ litigations surrounding the property and finally, the 34th defendant became the owner of the superstructure of the suit property. The first defendant requested attornment of tenancy and a lease agreement was entered into between the 34th defendant and the first defendant on 26.02.2000. The plaintiff has claimed that the said lease was sham, nominal and unenforceable.

4. The first defendant also claims that they had put up



superstructure over the property. The plaintiff had questioned a statement in the lease out dated 26.02.2000 that the first defendant was the owner of the entire superstructure including the factory shops.

5. It had been stated in the plaint that the lease deed had not been signed by all the legal heirs of the beneficiaries of the 34th defendant. There were also surrender of possession by various subtenants. The first defendant had sublet the suit property to the 2nd to 33rd defendants and was collecting the rent. Subsequently, the sub-tenants changed and further sub-tenants were inducted and in this manner, the list of the defendants only grew and as on date, there are 63 defendants. The plaintiff had issued notice to the first defendant demanding rents to be paid to the plaintiff which notice was replied by the first respondent questioning the right of the plaintiff and refusing attornment of tenancy in favour of the plaintiff.

6. It is the further case of the plaintiff that after termination of the lease of the first defendant by the plaintiff, the first defendant has no right to put up any construction over the suit property and also no right to



continue to sublet portions to various entities.

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7. It was contended that any order obtained against the first defendant would bind all the subtenants / sublessees. It was under those circumstances that the suit had been filed seeking a direction against the 1st to 33rd defendants to vacate and handover vacant possession of the suit property barring the area which was already in possession of the plaintiff and described in schedule-B to the plaint and directing the first defendant to pay a sum of Rs.11,55,000/- towards rental arrears and for a further direction against the first defendant to pay a sum of Rs.6,29,86,064/- towards damages for unlawful occupation of the suit property from 01.10.2008 till 15.12.2008 and thereafter, at the rate of Rs.8,28,764/- per day from the date of filing of the plaint till the date on which vacant possession is handed over and for permanent injunction restraining the first defendant from dealing with the suit 'A' schedule property either by putting up new constructions or by inducting new sub-tenants and from interfering with the peaceful possession of the plaintiff in the 'B' schedule property and also for costs of the suit.



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8. As stated, the first defendant however continued to sublease the portions to whoever was willing to take up such portions on sublease.

9. This application has been taken out by the 27th defendant seeking to reject the plaint under Order VII Rule 11(d) of CPC.

10. Even before examining the grounds under which rejection is sought, it would only be appropriate that reference is immediately made to Order VII Rule 11(d) of the CPC:-

“11. Rejection of plaint.- The plaint shall be rejected in the following cases:-

(a)

.....

(d) where the suit appears from the statement in the plaint to be barred by any law.”

11. In ***Kamala and others Vs. K.T. Eshwara SA and others***, reported in ***(2008) 12 SCC 661***, the Hon'ble Supreme Court had laid down the guideline and scope of Order VII Rule 11(d) CPC as follows:-

“19. Order 7 Rule 11 of the Code provides for



rejection of plaint, clause (d) whereof specifies “where the suit appears from the statement in the plaint to be barred by any law”.

21. *Order 7 Rule 11(d) of the Code has limited application. It must be shown that the suit is barred under any law. Such a conclusion must be drawn from the averments made in the plaint. Different clauses in Order 7 Rule 11, in our opinion, should not be mixed up. Whereas in a given case, an application for rejection of the plaint may be filed on more than one ground specified in various sub-clauses thereof, a clear finding to that effect must be arrived at. What would be relevant for invoking clause (d) of Order 7 Rule 11 of the Code are the averments made in the plaint. For that purpose, there cannot be any addition or subtraction. Absence of jurisdiction on the part of a court can be invoked at different stages and under different provisions of the Code. Order 7 Rule 11 of the Code is one, Order 14 Rule 2 is another.*

22. *For the purpose of invoking Order 7 Rule 11(d) of the Code, no amount of evidence can be looked into. The issues on merit of the matter which may arise between the parties would not be within the realm of the court at that stage. All issues shall*



not be the subject-matter of an order under the said provision.

23.The question involving a mixed question of law and fact which may require not only examination of the plaint but also other evidence and the order passed in the earlier suit may be taken up either as a preliminary issue or at the final hearing, but, the said question cannot be determined at that stage.

24.

25.But, then the broad principle which can be culled out therefrom is that the court at that stage would not consider any evidence or enter into a disputed question of fact or law. In the event, the jurisdiction of the court is found to be barred by any law, meaning thereby, the subject-matter thereof, the application for rejection of plaint should be entertained. ”

12. The present application having been filed under Order VII Rule 11(d) CPC, the aforementioned guidelines will have to be kept in mind.

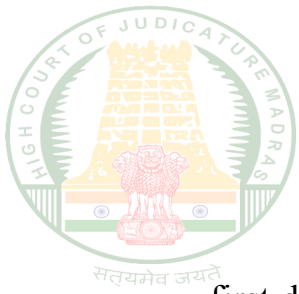
13. In the affidavit filed in support of the Judges Summons, the



applicant / 27th defendant had extracted the facts which according to them are required and germane to decide the issues in the plaint.

14. It had been contended by the applicant that the 34th defendant is a Wakf and permission had not been obtained from the Wakf Board as mandated under Section 51 of the Wakf Act 1995 to convey the property to the plaintiff. It was further contended that it was the case of the plaintiff that they had purchased the suit property from the 34th defendant which is a Wakf and it is therefore contended that owing to absence of permission, the sale itself was void and cannot be considered as lawful. It had been further contended that even if permission had been obtained for sale of the property, the same had not been disclosed in the plaint. It had been further contended that under the Wakf Act 1995, it was the Wakf Tribunal, which had jurisdiction to adjudicate on a dispute whether a particular property was dedicated to the Wakf. It was thus contended that the suit is barred by the provisions of the Wakf Act 1995 and therefore, the plaint should be rejected.

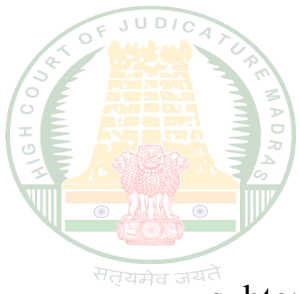
15. A counter affidavit had been filed by the plaintiff contending that the suit had been instituted seeking recovery of possession from the



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first defendant and from the date of institution of the suit, multiple orders had been passed which indicate that the issues involve factual and legal disputes which necessarily have to be adjudicated and therefore, the plaint cannot be summarily rejected. It had been further stated that the contention of the applicant was that the purchase by the plaintiff of the property on 22.12.2006 is void since approval of the Wakf Board had not been obtained. It had been contended that this claim by the applicant is barred by the law of limitation. It had been further contended that by order dated 21.06.2024 in Application No. 3397 of 2021 the first defendant had been directed to deposit the entire rental income which had accrued from various subtenants from January 2022. A direction had been further issued to continue to deposit the rental income to the credit of the suit. This was challenged by the first defendant in O.S.A.No. 146 of 2024. Subsequently, the plaintiff and the first defendant had entered into a Memorandum of Compromise on 09.01.2025 and the first defendant had agreed to handover vacant possession of some portions of the suit schedule property.

16. It had been further contended that the applicant was only a

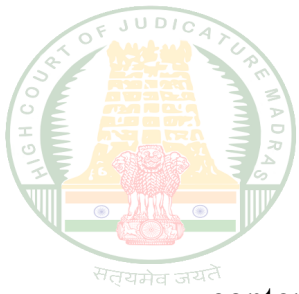


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subtenant under the first defendant and cannot seek to claim a larger right than what had been claimed to have been vested with the first defendant. It had been stated that the applicant has no independent legal standing to resist eviction.

17. With respect to the contention that the Wakf Tribunal alone has exclusive jurisdiction, it had been stated that the 34th defendant, the erstwhile owner of the suit property was a private Wakf duly recognised by Muslim Law. Such private Wakfs had been validated under Section 3 of the Mussalman Wakf Validating Act, 1930 which permitted use of Wakf properties for the maintenance and support of the family of the settlor and their children and their descendants.

18. A private Wakf continued to be recognised under the Wakf Act 1995. It had been contended that a perusal of the deed of Wakf would make it clear that the dedication was in favour of the lineal descendants / heirs and there was no dedication for any religious or charitable purpose. It had thus been contended that a private Wakf like the 34th defendant was outside the purview of the Wakf Act. It had therefore been



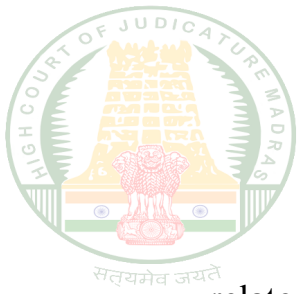
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contended that the Wakf Board has no jurisdiction over the 34th defendant and that this assertion was also confirmed in Judgment and Decree dated 18.10.1996 in O.S.No. 13759 of 1996 by the 4th Additional City Civil Court, Chennai.

19. It had been further contended that in a parallel proceedings in W.P.No. 18450 of 2013, the Tamil Nadu Wakf Board had taken a stand in their counter in the said Writ Petition that the present deed of Wakf relating to the 34th defendant did not fall within the purview of the Board.

20. It was therefore stated that there was no mandate for the 34th defendant to obtain any permission under the Wakf Act for sale of the assests. It had been further contended that the applicant had been in possession for several years under a sub-lease arrangement acknowledging the right and ownership of the plaintiff. It had been stated that therefore the applicant is estopped from disputing the validity of the title of the plaintiff and seek rejection of the plaint.

21. It had been further stated that the primary dispute in the suit



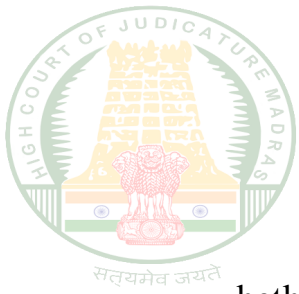
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related to recovery of possession and of arrears of rent which is within the jurisdiction of this Court and that therefore, the application has to be necessarily dismissed.

22. Heard arguments advanced by Mr.S.R.Rajagopal, learned Senior Counsel for the applicant and Mr.R.Parthasarathy, learned Senior Counsel for the respondent.

23. The applicant is the 27th defendant in the suit. The respondent is the plaintiff in the suit.

24. Mr.S.R.Rajagopal, learned Senior Counsel contended that it is the case of the plaintiff that they had purchased the suit property from the 34th defendant M/s. S.M.S. Bucary Wakf Al Aulad Estate. It was contended that therefore permission should have been obtained under Section 51 of the Wakf Act 1995 for the purchase of the property. It was contended that the sale in favour of the plaintiff was void *ab inito* and *non est* in the eyes of law. The learned Senior Counsel further pointed out that jurisdiction are vested only with the Wakf Tribunal to adjudicate

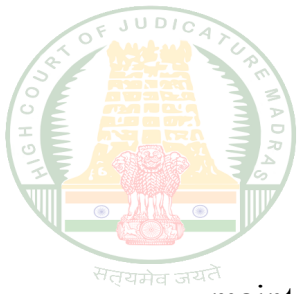


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whether there was a dedication of Wakf and further, the jurisdiction of the Civil Court is ousted to determine issues of this nature.

25. The learned Senior Counsel took the Court through the Deed of Wakf dated 28.05.1957 registered as Document No. 1745 of 1957 and pointed out Clause 15 of the Deed and stated that there was a Dedication for religious and charitable purposes and argued that therefore, the sale in favour of the plaintiff without seeking permission as required under Section 51 of the Wakf Act 1995 rendered the purchase by the plaintiff void.

26. Mr.R.Parthasarathy, learned Senior Counsel for the respondent/plaintiff however disputed such contention. The learned Senior Counsel pointed out that the dedication was primarily to the posterity of the family of S.M.S.Bucary and only should the posterity become extinct, could the income be expended through the good offices of Khilwat Nayagham Takia (Alayath) at Chennai for various religious, charitable and pious purposes including to benefit poor Muslim orphans for their education and helpless Muslim poor widows for their



maintenance.

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27. The learned Senior Counsel was emphatic in his submissions that the dedication was primarily for the benefit of children and descendants of the executant of the wakf and only when that line becomes extinct, could the income from the property be used for religious and charitable purposes. The learned Senior Counsel further pointed out clause No.9, wherein authority was also given to the Muthavalli to dispose the property and purchase another suitable immovable property in the name of Wakf, yielding a decent rent on a resolution in writing passing by majority of the existing beneficiaries. It had thus been pointed out by the learned Senior Counsel that the primary object of the Wakf was to provide for the lineal descendants and only on the posterity being extinct, to expend the income for religious and charitable purposes. The learned Senior Counsel further contended that the lineal descendants were very much alive at the time of the sale and therefore the dedication could not be contended to be exclusively for religious and charitable purposes.

28. The learned Senior Counsel also placed reliance on the



Judgment of a Division Bench of this Court reported **92 L.W. 355= AIR 1979 Mad. 231 [The Tamil Nadu Wakf Board, represented by Secretary Vs. M.Ebrahim Musuee Muthavalli, Bayan Bai's Wakf and others]**, to contend that since there was no dedication in the present for religious and charitable purposes, so long as the descendants are alive, the income from the property could only be used for the benefit of the descendants alone and it was only when the entire line becomes extinct could it be used for religious and charitable purposes. Placing his contentions as above, the learned Senior Counsel urged that this Court should dismiss the application.

29. I have carefully considered the arguments and perused the relevant records.

30. The plaintiff has claimed to be the absolute owner of the suit property. To decide the issue raised in this application, the surrounding circumstances under which the plaintiff became the absolute owner of the suit property need not be traversed into. The first defendant does not dispute that the plaintiff is their lessor. The first defendant was the lessee



of the property. The applicant/27th defendant is a sublessee.

31. This application has been filed under Order VII Rule 11(d) of CPC which provides for rejection of a plaint, if on a reading of the plaint, it is evident that the relief claimed is barred by law. In this case, the applicant claims that the relief claimed in the plaint is barred owing to the express provisions of Section 51 of the Wakf Act 1995.

32. Section 51 of the Wakf Act, 1995 is as follows:-

“51. Alienation of waqf property without sanction of Board to be void.—

(1) Notwithstanding anything contained in the waqf deed, any lease of any immovable property which is waqf property, shall be void unless such lease is effected with the prior sanction of the Board:

Provided that no mosque, dargah, khanqah, graveyard, or imambara shall be leased except any unused graveyards in the States of Punjab, Haryana and Himachal Pradesh where such graveyard has been leased out before the date of commencement of the Wakf



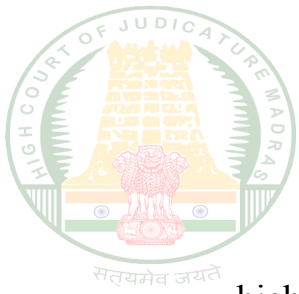
(Amendment) Act, 2013 (27 of 2013).

(1A) Any sale, gift, exchange, mortgage or transfer of waqf property shall be void ab initio:

Provided that in case the Board is satisfied that any waqf property may be developed for the purposes of the Act, it may, after recording reasons in writing, take up the development of such property through such agency and in such manner as the Board may determine and move a resolution containing recommendation of development of such waqf property, which shall be passed by a majority of two-thirds of the total membership of the Board:”

33. It is the case of the applicant that the plaintiff has based title on purchase of the suit property from the 34th defendant / M/s. SMS Bucary Wakf Al Aulad Estate represented by its Muthavalli. The plaintiff had purchased the property by a registered sale deed dated 22.12.2006 registered as Document No. 402 of 2007.

34. The learned Senior Counsel for the applicant placed specific reference to the Deed of Wakf of the 34th defendant dated 28.05.1957



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which was registered as Document No. 1745 of 1957 in the office of the Registrar of Madras – Chengalpattu with specific reference to Clause 15.

35. Clause 15 of the said Deed of Wakf is as follows:-

*“15. The above said income shall be paid until my posterity lasts and **should it become extinct then the income shall be expended for the Khilwat Nayagham Takia (Alayath), No. 166, Pallappan Street, Triplicane, Madras-5, and through its good offices for the various religious, charitable, and pious purposes conducted by the said Takkia, including benefit to poor Muslim Orphans for their education, and the helpless Muslim poor widows and for their maintenance.**”*

[Emphasis Supplied]

36. A careful reading of the afore stated clause reveals that in the Dedication, S.M.S. Bucary had stated that the income from the property shall be paid until his posterity lasts and should it become extinct, then



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the income shall be expended through the good offices of Khilwat Nayagham Takia (Alayath) for various religious, charitable and pious purposes including benefitting poor Muslim orphans and helpless Muslim widows.

37. The crucial interpretation in the Dedication is whether the Dedication for religious and charitable purposes was '*in Presenti*' or '*in futuro*'.

38. ***Blacks Law Dictionary***, 10th Edition has defined '*in praesenti*' as *at present : right now*. This is in direct contradiction to '*in futuro*' which had been defined as *in the future*.

39. In ***Collins Dictionary***, *in praesenti* is defined as *at the present time* and *in futuro* has been defined as *in the future*.

40. It has thus got to be examined whether the Dedication for religious and charitable purposes was *in existence* or '*in praesenti*' on the date of sale of the property in favour of the plaintiff in the year 2006.



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41. In the sale deed, it had been covenanted that the Wakf had been dedicated for the benefit of the family of S.M.S. Bucary, children and descendants and for religious, pious and charitable purpose as envisaged under the Muslim Law. As a matter of fact, this particular sale was not the only transaction which had occurred over the suit property. There was a registered Lease Deed dated 29.10.1960. There was a Court auction in Company Petition No. 27 of 1961. The successful purchaser of the lease hold rights was also declared by the High Court. There was a sale of the lease hold rights by a registered Sale Deed dated 16.01.1963. There was a registered Deed of Sublease dated 23.09.1963. After the death of S.M.S. Bucary, there was a further registered Deed of Lease dated 31.07.1974. There was an Agreement of Lease dated 26.02.2000 between the vendor and the first defendant and finally there was an Agreement of Sale dated 15.12.2004 by which the 34th defendant had agreed to convey the property to the plaintiff and finally the Sale Deed wherein it had been covenanted as follows:-

“And Whereas the Vendor is a Wakf Al Aulad which does not come under the purview of the Wakf Act 1954 (Central Act 29 of 1954) and does not require

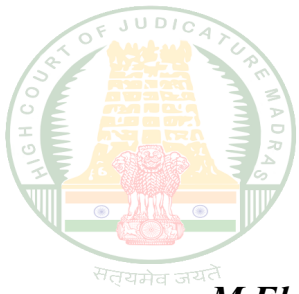


permission for sale of its assets, as laid down in the decision of their Lordship the Hon'ble Mr. Justice Ismail and Mr. Justice Nainar Sundaram as reported in A.I.R. 1979, Madras at page 231 and in the Judgment and Decree dated 18.10.1996 of His Honour the IV Additional Judge, City Civil Court in O.S.No. 13759 of 1996 in a case filed by one of the beneficiaries of the Vendor itself."

42. It is thus seen that there have been successive and several transactions over the suit property, finally culminating in the purchase by the plaintiff. There has been a declaration of every transaction in the Deed of Sale. There was no suppression of any material fact.

43. The applicant herein had been impleaded in the suit as a defendant in the year 2010. They have no independent right of possession. They have been inducted as a sublessee by the first defendant in the suit. The applicant has suddenly woken up to carve out propositions to protract and delay the smooth flow of the case.

44. In the Judgment reported in **92 L.W. 355 = AIR 1979 mad 231**
[The Tamil Nadu Wakf Board, represented by Secretary Vs.



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M.Ebrahim Musuee Muthavalli, Bayan Bai's Wakf and others], the issue was also with respect to a Wakf and a challenge by the Tamil Nadu Wakf Board when the Muthavalli of the Wakf had applied to the Wakf Board to grant permission to sell 17 ½ grounds of land at Periamet, Chennai belonging to the Wakf to construct a building at No.9, Greams Road, Chennai – 600 006. The permission was granted by the Board for sale of the land by resolution dated 30.08.1971 but the Board did not grant permission to utilise the sale proceeds for construction of the building as proposed by the Muthavalli.

45. The Muthavalli then filed C.S.No. 175 of 1973 in the form of a Originating Summons under Order XIII of the Original Side Rules, as it then prevailed, seeking sanction of the Court for selling the property at No.40/1, Malaiyaperumal Street, George Town, Chennai, in favour of the second respondent and for using the sale proceeds for putting up construction over the land at No. 8-A Greams Road, Chennai. It had been contended in that case that all the 19 beneficiaries had agreed to the disposal of the property since it would be for the benefit of the Wakf.



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46. A learned Single Judge had permitted the Muthavalli to sell the property. After this sanction was granted, an application was filed by the Wakf Board to revoke or cancel the order. It was contended that the property was controlled by the Wakf and therefore, the Muthavalli had no right to sell the property. On appeal, in an instructive Judgment, the Division Bench, examined the nature of the dedication and had held that since *in praesenti*, there was no dedication of any part of the property or income for any purpose other to support the members of the family of the Wakf and her descendants, sanction by the Wakf Board was not required.

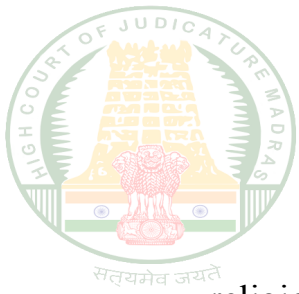
47. Paragraph No.8 of the judgment is as follows:-

“8. In the particular case, we have shewn and there is no dispute that under the terms of the wakf deed, there is no provision for distributing any part of the income in praesenti to any person other than the members of the family, and the poor Muslims come in only in the event of the entire line in the family becoming extinct, and so long as a single member of the family is alive, there is no chance of any poor person coming and



taking the benefit under the wakf deed, and therefore the present wakf is a wakf-alal-aulad simpliciter, and consequently it is outside the scope of the Act, and therefore, S. 36A of the Act has no application. Consequently, the Wakf Board cannot come and complain under S. 57 and seek to revoke the sanction already granted by this Court. This is sufficient for the disposal of the appeal, and the result is that the order passed by this Court already granting permission to sell the property on 22nd August, 1973, cannot be cancelled, with the consequence that the dismissal of Application No. 2831 of 1973 filed by the appellant herein by our learned brother Sethuraman, J. is correct and does not call for any interference. The appeal, therefore, fails and the same is dismissed. There will be no order as to costs. ”

48. Even in the instant case *in praesenti* the Wakf was for posterity or for the lineal descendants of the Wakif S.M.S. Bucary and when that right become extinct, *in futuro*, the income shall be used for



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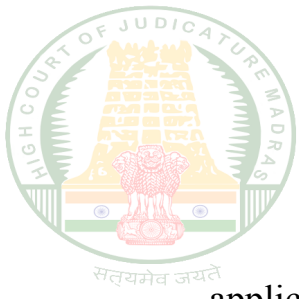
religious and charitable purpose and for poor Muslim students and helpless Muslim widows. Even for the benefit of the posterity of the Wakif, it had been further provided in Clause 9 that the immovable property could be sold on resolution in writing passed by the majority of the beneficiaries.

49. The issue whether the beneficiaries had consented for the sale in favour of the plaintiff could be determined only on trial and by evidence being adduced on that aspect.

50. The interpretation of the covenants of the Wakf Deed dated 28.05.1957 can be effectively done only during the course of trial.

51. Any observation made herein is only for the limited purpose to take a decision whether the relief claimed in the plaint stood barred under law.

52. There are thus triable issues. The plaint can never be summarily rejected and more particularly at the instance of the applicant, who is only a sublessee and who has no right to question the sale in favour of the plaintiff. The applicant was not a beneficiary or a lineal descendant under the Deed of Wakf. There is no pleading in the



application that the beneficiaries, who are living had objected to the sale.

53. It must also be pointed out that with respect to this very Wakf, a Judgment had been passed by the 4th Additional City Civil Court, Chennai in O.S.No. 13759 of 1996 dated 18.10.1998 presenting an opinion that the Wakf can transact its property without obtaining specific permission or sanction from the Wakf Board and that the Civil Court has jurisdiction to examine the issues raised. That opinion is not binding but has attained finality and has force of law.

54. In view of these reasons, I hold that the applicant has not made a case for rejection of the plaint. The issues are triable in nature. It would only be appropriate that opportunity is granted to the plaintiff to tender evidence on the circumstances which surrounded the purchase of the property. This application stands dismissed. No costs.

Vsg

25.07.2025

($\frac{1}{2}$)

Index: Yes/No

Web: Yes/No

Speaking / Non speaking order



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C.V.KARTHIKEYAN, J.

vsg

Pre-Delivery Order made in

A.No. 378 of 2025

IN

C.S.No. 574 of 2010

25.07.2025

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