



WEB COPY

SA No. 212 of 2



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01-06-2026

CORAM

THE HON'BLE MR.JUSTICE S. SOUNTHAR

SA No. 212 of 2020

Janab.Meer Asgar Ali

..Appellant(s)

Vs

Mrs.Basha Jafi Begum

..Respondent(s)

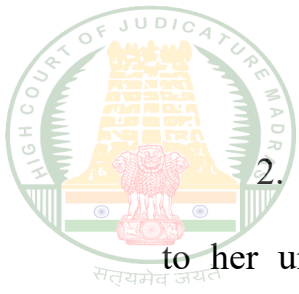
Prayer: Second appeal is filed under Section 100 of Code of Civil Procedure, against the Judgment and decree dated 14.11.2019 made in A.S.No.18/19 on the File of Additional Sub Court,Vellore confirming the Judgment and Decree dated 24.01.2019 made in O.S.No.218/10 on the file of District Munsif Katpadi Vellore District.

For Appellant(s): Mr.N.A.Nissar Ahmed

For Respondent(s): M/s.D.Amsavardhini
for Mr. K.T.S.Sivakumar

JUDGMENT

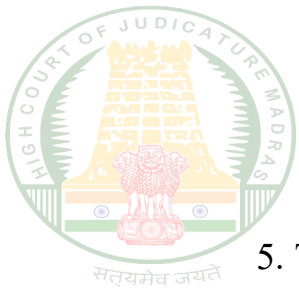
The defendant is the appellant. The respondent herein filed a suit for bare injunction restraining the appellant/defendant from interfering with her possession over the suit property. The suit was decreed by the Trial Court. The findings of the trial court were affirmed by the first appellate court. Challenging the concurrent findings, the defendant has come before this Court by way of second appeal.



2. According to the respondent/plaintiff, the suit properties are belonged to her under registered settlement deed dated 17.05.1972. The title of the plaintiff was declared in the earlier suit filed by her in O.S.No.481 of 1995 on the file of Sub-Court, Vellore. The father of the present defendant was a party to the earlier suit. Notwithstanding the decree obtained by the plaintiff in OS.No.481 of 1995, the present defendant had attempted to interfere with the plaintiff's possession. Hence, the plaintiff was constrained to file a suit for bare injunction.

3. The defendant filed a written statement and denied the title of the plaintiff over the suit property. According to the defendant, the suit property is a wakf property belonged to Shia Ashur Khana, Pasumathur Village, Gudiyatham Taluk, Vellore District. It was also submitted that the earlier decree obtained by plaintiff was not binding on the defendant. It was also pleaded that the plaintiff illegally encroached the schedule mentioned properties and the suit properties was never in possession and enjoyment of the plaintiff. On these pleadings, the defendant sought for dismissal of the suit.

4. Before the Trial Court, the plaintiff was examined as P.W.1 and yet another witness was examined as P.W.2. On behalf of the plaintiff, four documents were marked as Ex.A1 to Ex.A4. The defendant was examined as D.W.1 and VAO of Kavanur Village was examined as D.W.2. On behalf of the defendant, 7 documents were marked as Ex.B1 to Ex.B7. Apart from exhibits on the side of defendant, 8 documents were marked as Ex.X1 to Ex.X8.



5. The Trial Court partly decreed the suit in respect of item Nos. 1 and 2.

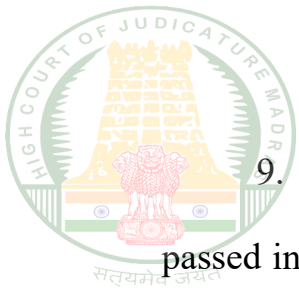
The suit was dismissed in respect of item Nos. 3 to 5. Aggrieved by the said decree, the defendant preferred an appeal in A.S.No.18 of 2019 on the file of Additional Sub-Court, Vellore. The first appellate court confirmed the findings of the trial court. Aggrieved by the same, the defendant has come before this Court.

6. At the time of admitting the second appeal, this Court formulated the following substantial question of law vide order dated 25.02.2020.

Whether the courts below erred in entertaining the suit as the same is barred under Section 85 of the Wakf Act, 1995?

7. The learned counsel for the appellant/defendant submitted that defendant raised a specific plea that suit properties are belonged to Wakf and hence, the present suit filed by the respondent/plaintiff is barred by Section 85 of Wakf Act. The learned counsel further submitted that defendant produced various documents to prove that suit properties are belonged to wakf and the same have been overlooked by the courts below.

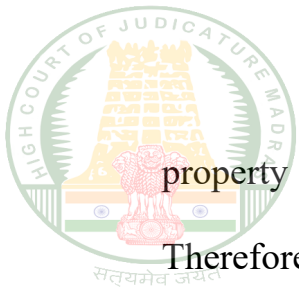
8. The learned counsel for the respondent/plaintiff, by taking this Court to the judgment passed by the courts below, submitted that appellant has not made out any case to interfere with the well considered judgment of the courts below.



9. It is seen from the records that Ex.A1 is the judgment and decree passed in earlier suit filed by the present plaintiff in O.S.No.481 of 1995 on the file of Sub-Court, Vellore. The above said suit was filed against four persons. The father of the present defendant namely Meer Hussain Ali had been arrayed as 3rd defendant in the earlier suit. The said suit was filed seeking declaration of title and permanent injunction. In the above said suit, the defendant raised a plea that suit properties are belonged to Wakf. However, the said plea was negatived. The title and possession of the plaintiff was upheld. Therefore, the suit was decreed by granting declaration and injunction as prayed for. It is also seen from the typed set of papers that Ex.A1, judgment passed in earlier suit, was relating to item 1 and 2 of the suit properties.

10. The learned counsel for the appellant vehemently contended that present defendant was not a party to the earlier suit. Hence, the decree is not binding on him. It is seen that the present defendant is none other than the son of 3rd defendant in the earlier suit in O.S.No.481 of 1995. While describing the present defendant, he had been mentioned as Muthawalli. Therefore, the learned counsel submitted that Wakf was not a party to the earlier suit and hence, the judgment passed in the earlier suit will not be binding on the Wakf.

11. The present suit has been filed only for bare injunction. Therefore, if the plaintiff is able to establish her possession over the suit property, she is entitled to injunction. In the case on hand, in Paragraph No.8 of the written statement, the defendant clearly admitted that plaintiff encroached the suit

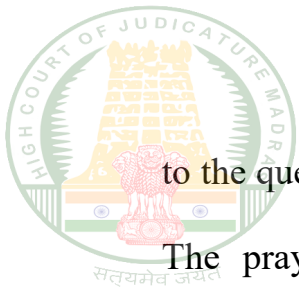


property and obtained wrongful possession and enjoyment of the suit property.

Therefore, even as per the admission in the written statement, the plaintiff is in possession and enjoyment of the suit property. Even though Ex.A1, judgment passed in the earlier suit, will not be binding on the Wakf, the same can always be treated as a piece of evidence as per the law settled by the Hon'ble Apex Court in the case of ***Tirumala Tirupati Devasthanams Vs K.M.Krishnaiah*** reported in ***(1998) 3 SCC 331***.

12. The present defendant's father was party to the earlier suit and the decree for declaration and injunction obtained by the present plaintiff against the father of the defendant is still in operation. In such circumstances, following the law laid down in the above mentioned case law, Ex.A1 can be treated as a piece of evidence to establish the possession of the plaintiff over the suit property on the date of suit. Further, in the written statement, the possession of the plaintiff has been categorically admitted by the defendant. In such circumstances, the plaintiff is entitled to decree for injunction against the defendant.

13. The Hon'ble Apex court in latest judgment in ***Habib Alladin Vs Mohammed Ahmed reported in 2026 INSC 90***, held that a prayer for injunction simpliciter will not fall within the jurisdiction of wakf tribunal. In the present case, plaintiff seeks injunction based on her possession. She relied on earlier decree obtained by her as piece of evidence to prove possession. The possession of plaintiff was also admitted in written statement. The civil court need not go



to the question of character of suit property whether it is a wakf property or not.

The prayer for injunction should be adjudicated by finding out physical possession of the suit property. Merely because the defendant claimed that suit properties are belonged to wakf, the jurisdiction of the Civil Court to entertain the suit for injunction will not be ousted. Therefore, the question of law framed at the time of admission is answered against the appellant and in favour of the respondent. I do not find any perversity in the conclusion reached by the courts below with regard to the possession of plaintiff over the suit property as the same was admitted by the defendant in the written statement. Accordingly, the second appeal stands dismissed by affirming the judgment and decree dated 14.11.2019 passed in A.S.No.18 of 2019 on the file of Additional Sub Court, Vellore confirming the judgment and decree dated 24.01.2019 passed in O.S.No.218 of 2010 on the file of District Munsif Katpadi Vellore District. However, it is made clear that findings in present injunction suit will not come in the way of wakf moving the Tribunal to establish it's alleged right over the suit property. There shall be no order as to costs.

01-06-2026

Index: Yes/No

Speaking/Non-speaking order

Neutral Citation: Yes/No

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To

1. The Additional Sub Court, Vellore
2. The District Munsif, Katpadi, Vellore District.



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S.SOUNTHAR, J.

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