

(2013) 01 MAD CK 0116

In the Madras High Court

Case No : C.R.P. (PD) (MD) No. 1785 of 2011 and M.P (MD) No. 1 of 2011

Asraf Nisha and N. Jagir Hussain

APPELLANT

Vs

Meer Hasanullaha Shaki Durga Satho Shaheethan Ka Makkan
and V.M. Hameedha Banu

RESPONDENT

Date of Decision : 02-01-2013

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 151
Waqf Act, 1995 — Section 27, 4, 40, 5, 5(2)

Citation : (2013) 01 MAD CK 0116

Hon'ble Judges : G. Rajasuria, J

Bench : Single Bench

Advocate : J. Maria Roseline, for the Appellant; K.S. Sankhar Murali for R.1 and
No appearance for R.2, for the Respondent

Judgement

G. Rajasuria, J.—This Civil Revision Petition is focussed to get set aside the fair and decreetal order dated 18.07.2011 made in I.A. No.

520 of 2011 in O.S. No. 1230 of 2003 on the file of the Court of II Additional Subordinate Judge, Tiruchirappalli. The epitome and the long and

short of the relevant facts absolutely necessary and germane for the disposal of this Civil Revision Petition, would run thus:

(i) The first respondent herein filed the suit as against the defendants, seeking the following reliefs:

(a) For delivery of possession of the B schedule property from the 3rd defendant to the plaintiff.

(b) For delivery of possession of C schedule property from the defendant 1 and 2 to the plaintiff.

(c) Awarding damages of Rs. 100/- per month from the date plaint till date of delivery.

(ii) The second defendant filed the written statement which was adopted by the first defendant as submitted by the learned Counsel for the revision

petitioners. Based on that, issues were framed and the trial got commenced. The third defendant did not file any written statement. Subsequently, at

that stage, the defendants 1 and 2 filed an application u/s 151 of the Code of Civil Procedure, seeking permission of the Court to file an additional

written statement. Whereupon, the plaintiff resisted the same. Ultimately, the trial Court dismissed the said application.

2. Challenging and impugning the order of the trial Court, this Civil Revision Petition has been filed on various grounds.

3. The learned Counsel for the revision petitioner inviting the attention of this Court to the records available, would implore and entreat that due

opportunity was not given by the trial Court in favour of the defendants 1 and 2 to file an additional written statement; at the time of filing the

written statement, they were kept in the dark by the plaintiff and in reality, they were not aware of the fact that they were also having right over the

suit property and hence, earlier they simply denied the landlord-tenant relationship between the plaintiff and the defendants 1 and 2 and during the

pendency of the suit, they came to know about the previous litigation relating to the same property and also touching upon the status of the self-

styled Syed Jamal that he was not the Muthavalli.

4. The learned Counsel for the revision petitioners would further submit that in the previous proceedings, the predecessors-in-title of the defendants

1 and 2 participated in the proceedings and got favourable adjudication to the effect that they were having the right over the suit property and that

the defendants 1 and 2 happened to be the descendants of those persons; all these facts have not been set out in the written statement filed earlier;

only during the trial, in this case, the actual right of the defendants 1 and 2 over the suit property, came to the knowledge of the defendants 1 and 2

and therefore, they wanted to file the additional written statement, which the trial Court could have very well allowed it to be filed, however, the

trial Court simply dismissed it without any valid reason, warranting interference in revision.

5. The learned Counsel for the revision petitioners would also submit that without proper pleadings, evidence cannot be adduced and if done so,

that would amount to violating the well settled principles of law that any amount of evidence without the back-up pleadings should be eshewed and

accordingly, she would pray for allowing this Civil Revision Petition.

6. Per contra, the learned Counsel for the first respondent would try to torpedo and pulverise the arguments on the side of the revision petitioners

by advancing his arguments thus:

It is the admitted fact by the defendants 1 and 2 that they happened to be the tenants under the plaintiff and they cannot take a quite antithetical

stand by filing the additional written statement. There is W.O.P., pending in the Wakf Tribunal, wherein the revision petitioners herein got

themselves impleaded as respondents therein. The scope of the proceedings before the Wakf Tribunal, is for getting declared the nature of the suit

property, but that is having nothing to do with the eviction proceedings against the defendants, because, here, before the civil Court, the plaintiff

wants to evict the defendants only on the ground that the defendants 1 and 2 happened to be the tenants under the plaintiff. Over and above that,

the evidence relating to the previous litigation as alleged by the defendants 1 and 2, was adduced, by the plaintiff and the documents were also

marked and the plaintiff would be having no objection for the defendants 1 and 2 to produce documentary evidence or any other evidence as

against the plaintiff during the trial, but the defendants 1 and 2 cannot simply by filing the application seeking permission of the Court to file

additional written statement, drag on the proceedings. Accordingly, he would pray for the dismissal of this Civil Revision Petition.

7. The point for consideration is as to whether there is any perversity or illegality in the order dismissing I.A. No. 520 of 2011 in O.S. No. 1230 of

2003, filed u/s 151 of the Code of Civil Procedure? The Point:

8. At the outset itself, I would like to explain and expound the scope of the suit pending before the civil Court. In this connection, my mind is

reminiscent and redolent of the following decisions of the Honourable Apex Court:

(i) Ramesh Gobindram (dead) through Lrs. Vs. Sugra Humayun Mirza Wakf, . An excerpt from it, would run thus:

35. In the cases at hand, the Act does not provide for any proceedings before the Tribunal for determination of a dispute concerning the eviction of

a tenant in occupation of a wakf property or the rights and obligations of the

lessor and the lessees of such property. A suit seeking eviction of the tenants from what is admittedly wakf property could, therefore, be filed only before the civil court and not before the Tribunal.

(ii) Tamil Nadu Wakf Board Vs. Hathija Ammal (Dead) by Lrs. etc. etc., . Certain excerpts from it, would run thus:

5. Let us now examine the provisions of the Act. u/s 5(2) of the Act, after a property is notified to be wakf property, a determination is made by a

Civil Court whenever any dispute arises after the notification is published by the Wakf Board as to whether a particular property specified as wakf

property in a list published is a wakf property or not. Section 6 further provides that the Civil Court shall not entertain any such suit after the expiry

of one year after the date of publication of the list by the Board. Such a suit cannot be at the instance of the Wakf Board. Again, the Board may

itself collect information regarding any property as provided u/s 27 of the Act and decide whether a particular property is wakf property or not and

that decision is final unless it is revoked or modified by a civil court.

6. In the event, any property has been omitted by inadvertence or otherwise, then it is for the Wakf Board to take action as provided u/s 27 of the

Act. If the Wakf Board has reason to believe that a particular property is a wakf property then it can itself collect information and if any, question

arises whether a particular property is a wakf property or not it may, after making such enquiry as it may deem fit decide the question and such

decision of the Wakf board shall be final unless revoked or modified by a civil court. Such action has not been taken by the Wakf Board in this

case.

7. The High Court is justified in holding that the Wakf Board had no right to institute suit for declaration that any property is a wakf property as the

scheme of the Act clearly indicates. The High Court further found that as far as the appellant is concerned with regard to title of any property, it

must comply with the requirements of Sections 4, 5 and 6 or 27 of the Act, which means that if any property is not published as wakf property as

required u/s 5(2) of the Act or the Board has not invoked the special power u/s 27, the Wakf Board cannot file a suit for declaration and

possession and on that basis upheld the order made by the Trial Court as affirmed by the First Appellate Court.

9. A mere running of the eye over the aforesaid precedents would demonstrate and display that if organisation like the plaintiff herein, wants to

evict its tenant, then the proper forum would be the civil Court and not the Tribunal and for that matter, not even the authorities under the special

enactment namely, the Wakf Act, 1995 could be approached.

10. Further, I would also like to refer to the decision of this Court in Ahale Sunnathwal Jamath Jogi Madam and Durga v. Haji Syed Irfan Hussai

Sahib reported in 2010 (2) MWN (Civil) 655. An excerpt from it, would run thus:

10. The perusal of the judgment of the Honourable Apex Court reported in Tamil Nadu Wakf Board Vs. Hathija Ammal (Dead) by Lrs. etc. etc.,

, leaves no doubt that Sections 4, 5, 6 and 27 of the Wakf Act 1954 (which are in pari materia with Sections 4, 5, 6 and 40 of the Wakf Act,

1995) should necessarily be adhered to before filing a Suit for recovery of possession of the Wakf property. It is beyond doubt that the institutions

like the Plaintiff could file a Suit for possession of the Wakf property, but before filing such Suit necessarily the said institution should comply with

the aforesaid provisions of law as per the mandate of the Honourable Apex Court.

11. A mere running of the eye over the aforesaid precedents of the Honourable Apex Court as well as this Court, would amply make the point

clear that if at all, a Muthavalli wants to evict a tenant, then the civil Court only has to be approached for such eviction. Relating to other matters

touching upon the Wakf and also the nature of the property are concerned, the civil Court has got no jurisdiction in view of the provisions of the

Wakf Act, 1995. The Honourable Apex Court in the decision cited supra, dealt with all those aspects and clarified the points.

12. Now, the civil Court which is seized of the present suit in O.S. No. 1230 of 2003, is enjoined to get itself satisfied as to whether there is any

proof to show that the defendants 1 and 2 happened to be the tenant or not and whether the plaintiff has got locus standi to evict such a tenant.

Over and above that, the civil Court has got no jurisdiction. The plaintiff would vociferously stress upon the fact that the plaintiff let the property to

the husband of the first defendant on lease basis and since he died, his descendants namely his wife (the first defendant) and his son (the second

defendant) are the occupants. The third defendant is the purchaser from the defendants 1 and 2.

13. The learned Counsel for the revision petitioners would submit that Syed Jamal is a sai dissent (self-styled) Muthavalli and not competent to represent Meer Hasanullaha Shaki Durga Satho Shaheethan Ka Makkan.

14. To the risk of repetition and pleonasm but without being tautologous, I would like to point out that it is for the lower Court to decide that issue

whether the said Meer Hasanullaha Shaki Durga Satho Shaheethan Ka Makkan, is properly represented or not by a competent person.

15. As such, these are the matters which are to be decided by the lower Court in the original suit. In respect of the contentions of the defendants 1

and 2, also they are at liberty to file necessary documentary evidence and adduce oral evidence, relating to which the learned Counsel for the first

respondent has already expressed his consent. In such a case, it is for the revision petitioners to proceed further with the matter.

16. The learned Counsel for the revision petitioners would raise an apprehension that at the time of marking of those documents, the plaintiff might

object the same. Wherefore, I would like to dispel such apprehension by pointing out once again that the revision petitioners are at liberty to

adduce oral evidence and mark documents also as envisaged supra and as such, there is no question of allowing the additional written statement to

be filed at the belated stage of the suit. In this connection, I would like to refer to the following decisions:

(Kailash Vs. Nanhku and Others, .

(ii) Smt. Rani Kusum Vs. Smt. Kanchan Devi and Others,

(iii) Salem Advocate Bar Association, Tamil Nadu Vs. Union of India (UOI), .

(iv) R.N. Jadi and Brothers and Others Vs. Subhashchandra, .

(v) Zolba Vs. Keshao and Others, .

(vi) C.N. Ramappa Gowda Vs. C.C. Chandregowda (Dead) by L.Rs. and Another, .

17. A plain reading of the aforesaid precedents would demonstrate and display that in exceptional circumstances only, the written statement or

additional written statement could be allowed to be filed at the belated stage.

Here, no doubt, the defendants 1 and 2 would come forward with the case that earlier they were not aware of those facts and they only belatedly

came to know of them. However, once they are given opportunity to adduce evidence in support of their pleas, the question of the defendants 1

and 2 trying to convert the civil Court into a Wakf Tribunal would not arise and only for the purpose of torpedoing the plea of the plaintiff and to

buttress and fortify the stand of the defendants 1 and 2, as already found set out in the original written statement, now, this Court has allowed the

defendants 1 and 2 to adduce both oral and documentary evidence and in such a case, the question of entertaining such additional written

statement at the far end, would not arise. Wherefore, the point is answered accordingly.

18. On balance, this Civil Revision Petition is disposed of. Consequently, the connected Miscellaneous Petition is closed. No costs. On hearing the

order pronounced, the learned Counsel for the revision petitioners would pray for fixing a time limit for the disposal of the suit at the earliest point

of time. Wherefore, I would like to give a direction to the lower Court to dispose of the suit within a period of four months from the date of receipt

of a copy of this order as per law, if there is no legal impediment for such disposal.