
(2011) 02 MAD CK 0288

In the Madras High Court

Case No : Writ Petition No. 24531 of 2010 and M.P. No's. 1 to 4 of 2010

Dharmapuri Mel Their Masjid Sunnath Jamath

APPELLANT

Vs

The District Registrar and Others

RESPONDENT

Date of Decision : 02-02-2011

Acts Referred:

Constitution of India, 1950 — Article 226
Penal Code, 1860 (IPC) — Section 379, 427, 448, 506(1)
Waqf Act, 1995 — Section 51

Citation : (2011) 02 MAD CK 0288

Hon'ble Judges : S. Manikumar, J

Bench : Single Bench

Advocate : P.R. Balasubramanian, for the Appellant; Lita Srinivasan, Government Advocate for Respondents 1 to 6 and A. Thiagarajan, for Arun kumar Rajan, for Respondent 7, for the Respondent

Final Decision : Dismissed

Judgement

S. Manikumar, J.—Dharmapuri Mel Their Masjid Sunnath Jamath, represented by its Secretary, has sought for a Writ of Mandamus, forbearing respondents 1 to 3 from accepting any registration in respect of property situated in Survey Nos.110 and 110/2 of Vellaigoundenpalayam Village, Dharmapuri.

2. On the basis of the averments made in the Writ Petition, Mr. P.R. Balasubramanian, learned counsel for the petitioner submitted that as per the Town Survey Register Extract, the property in Survey No. 110, measuring to an extent of 0.035.5 Sq.Mts., stands in the name of Muthavalli, Mel Theru Mosque Sunnath Jamath. According to him, the property was acquired by the Jamad on 7th July 1936 under registered Settlement Deed, dated 05.07.1936 in Document No. 2100/1936 and ever since the date of acquisition, the Jamad is in possession and enjoyment of the property. Patta in respect of above property stands in the name of Muthavalli.

3. Learned counsel for the petitioner further submitted that Mrs. Rashida Begam,

7th respondent herein, without the knowledge of the petitioner, has obtained patta for 535 Sq.ft., without any title over the property. Being aggrieved by the same, the petitioner filed an appeal and consequently, the patta, which stood in the name of the 7th respondent, has been cancelled. He further submitted that husband of the 7th respondent filed W.O.S. No. 4 of 2000 on the file of the Principal Subordinate Judge, Krishnagiri for permanent injunction and that the said suit has been dismissed.

4. Learned counsel for the petitioner further submitted that suppressing the dismissal of the suit and all of the above said facts that the patta has already been cancelled by the Revenue Authority, as early as on 15.09.2005 itself, the 7th respondent is attempting to alienate the property to a third party. The petitioner also filed a suit in W.O.S. No. 98 of 2001 and that the same has been dismissed, as no appeal is provided under the Wakf Act.

5. Learned counsel for the petitioner further submitted that the property is a wakf property. Sub-division No. 110/2 made by the revenue authorities on the basis of settlement deed, executed by one Mr. Yusuf, to and in favour of his wife, the 7th respondent, has already been cancelled by an order, dated 15.09.2002 by the District Revenue Officer. He further submitted that the above said persons were never in possession and enjoyment of the property as tenants or owner at any point of time. In these circumstances, the petitioner-Jamad has sent representations to the Registration Authorities, respondents 1 to 3, not to register any document in respect of Survey Nos. 110 and 110/2 of Vellaigoundenpalayam Village, Dharmapuri. As no reply was forthcoming, the petitioner has come forward with the present Writ Petition for the relief, as stated supra.

6. Pending disposal of this Writ Petition, this Court, by an order, dated 29.10.2010, has granted interim injunction, restraining respondents 1 to 3 from accepting the documents from the 7th respondent in respect of the above said property for registration and also restrained the 7th respondent from interfering in the civil right affairs of the petitioner-Jamad, in respect of protecting the above said property, belonging to Wakf.

7. Seeking vacation of the interim order and on the basis of counter affidavit filed by the 7th respondent, Mr. A. Thiagarajan, learned Senior Counsel submitted that the prayer sought for in this Writ Petition is wholly misconceived for the reason that no statutory authority can be restrained from discharging their functions and therefore, prayed for dismissal of the Writ Petition in limini.

8. Inviting the attention of this Court and the patta pass book filed in the typed set of papers, Learned Senior Counsel for the 7th respondent submitted that only one survey number, i.e., Survey No. 110, has been mentioned in the said book and that Survey No. 110/2 has not been referred to any of the documents filed by the writ petitioner, including the Encumbrance Certificate. He further submitted that by referring to Survey, Re-Survey and Sub-Division of the

property, the petitioner has misled this Court and obtained an order of interim injunction.

9. Learned Senior Counsel for the 7th respondent further submitted that all the averments raised by the writ petitioner are of civil nature and having lost in the suit in W.O.S. No. 98 of 2001, filed for a declaration of title and recovery of possession, the petitioner has approached this Court to prevent the lawful owner from exercising her right over the property. He further submitted that the 7th respondent is the absolute owner of the property in Survey No. 110/2 bearing Door No. 3/2, Rangavilas Street, Dharmapuri Taluk and District and the said property belonged to her Mother-in-law, Mrs. Fathima Beevi and after her demise, the same devolved upon her husband, Mr. Yousuf. He also submitted that her husband had executed a deed in her favour and therefore, she has become the absolute owner of the property.

10. Learned Senior Counsel for the 7th respondent further submitted that once the claim of the petitioner-Jamad in W.O.S. No. 98 of 2001, regarding the ownership of the property in Survey No. 110/2 has already been dismissed on 13.11.2006, by the learned Principal District Judge, Krishnagiri, the petitioner has no right to interfere with the peaceful possession and enjoyment of the property.

11. He also drew the attention of this Court to an incident said to have been occurred on 07.10.2010 that in the absence of the 7th respondent and their family members, the members of the petitioner-Jamad have ransacked their house and also demolished a portion of the house. Immediately thereafter, a police complaint has been lodged and that the same has been acknowledged by the police in C.S.R. No. 469 of 2010 and on investigation, an FIR has been registered in Cr. No. 1759 of 2010 for the offences under Sections 448, 427, 506(1) and 379 IPC.

12. Learned Senior Counsel for the petitioner further submitted that though the Police has given protection and when the re-construction process was started, again the members of the petitioner-Jamad created problems and the re-construction process and for better solution, they met the Superintendent of Police of the District and gave a complaint to take suitable action. The Superintendent of Police has also called upon the members of the petitioner and arranged for a Peace Committee Meeting, wherein, no settlement was arrived at, but the members of the petitioner-Jamad were warned that the Police would be constrained to initiate action, if illegal activities continued.

13. Learned Senior Counsel for the 7th respondent further submitted that the 7th respondent is a poor woman and that her husband is a local caterer and they reside in a property in Survey No. 110/2, ad-measuring about 45 Sq.Mts. According to the 7th respondent, armed with large number of members, the petitioner-Jamad, is trying to bring pressure and harass the family of the 7th respondent. In the above factual background, he submitted that when the

competent civil Court has held that the petitioner is not entitled to the property in Survey No. 110/2 and declined to grant injunction, the attempt of the petitioner by filing the present Writ Petition is purely an abuse of process of law.

14. Referring to the order of dismissal made in W.P.No.11693 of 2009, dated 16.07.2009, filed by the very same writ petitioner for a Mandamus against the Commissioner, Dharmapuri Municipality, with regard to the above said property, learned Senior Counsel for the 7th respondent submitted that when the above said Writ Petition has been dismissed for non-prosecution, it is not open to the writ petitioner to file another Writ Petition, for the very same cause of action.

15. Placing reliance on a decision of this Court in *Epsiba Selva Kumari v. The Home Secretary, Government of Tamil Nadu* reported in 2010 (6) CTC 113 Learned Senior Counsel for the 7th respondent submitted that when serious disputes are raised between the parties, as regards possession and title, the Writ Petition, is per se, not maintainable. For the above said reasons, he prayed for dismissal of the Writ Petition.

16. By way of reply, Mr. P.R. Balasubramanian, learned counsel for the petitioner further submitted that the documents created by the 7th respondent are self-serving documents and there is no patta in the name of the 7th respondent. Referring to Section 51 of the Wakf Act, he submitted that alienation of Wakf property without any sanction of the Board, is void and therefore, the respondents 1 to 3 should be restrained from registering any document. He further submitted that as the property belongs to the petitioner, the Wakf Board is one of the necessary parties before this proceedings.

17. Heard the learned counsel for the parties and perused the materials available on record.

18. Admittedly, the suits have been filed by the writ petitioner and the husband of the 7th respondent in W.O.S. No. 98 of 2001 and 4 of 2000, on the file of the Principal Subordinate Judge, Krishnagiri. The relief sought for in W.O.S. No. 98 of 2001 is for a judgment and decree against the defendants therein, to vacate the suit schedule premises and to pay arrears of rent. Mr. Yusuf, husband of the 7th respondent, has been arrayed as 8th defendant in the suit and he is stated to be a tenant, willful defaulter of the rent and failure to handover the suit property, is the cause for the suit. Mr. Yusuf has filed W.O.S. No. 4 of 2000, impleading the writ petitioner herein as second defendant in the suit filed by him. The suit is for injunction against the Tamil Nadu Wakf Board, Chennai and the petitioner herein, not to disturb his peaceful possession and enjoyment of the suit property.

19. In the above suits, it was the case of the writ petitioner, the property belong to Majeeth and that it was rented out to the defendants therein, including 7th respondent's husband. Whereas, it is case of the 7th respondent that the suit property is a Battai Poromboke and belonged to her in-laws. She has further contended that the petitioner is not the owner of the property. On the basis of the pleadings in W.O.S.Nos.98 of 2001 and 4 of 2000, the learned Principal

District Judge, Krishnagiri, has framed following issues for consideration in W.O.S. No. 98 of 2001,

- (1) Whether the suit schedule house property belongs to plaintiff Majeeth?
- (2) Whether the construction found in the suit schedule property belongs to the defendants?
- (3) Whether the defendants residing in the suit schedule property has a tenant?
- (4) Whether the defendants are entitled to a relief of city tenant protection act?
- (5) Whether the suit has been property valued?
- (6) Whether the Tamilnadu Wakf Board is a necessary party to the suit and the suit is bad for non-joinder of necessary party?
- (7) Whether the plaintiff is entitled a declaration of title and for permanent injunction as prayed for?
- (8) Whether the plaintiff is entitled an arrears of rent from the defendant as prayed for?
- (9) To what relief the plaintiff is entitled?

In W.O.S. No. 4 of 2000, he has framed the following issues for consideration,

- (1) Whether the plaintiff is entitled a permanent injunction as prayed for?
- (2) Whether the defendants 3 and 4 are unnecessary party in this suit?
- (3) Whether there is no cause of action for the suit?
- (4) To what relief the plaintiff is entitled?

20. After considering the issues framed in both the suits, with reference to the evidence let in by the parties, the learned Principal District Judge, Krishnagiri, has held that since the plaintiffs (petitioners herein) have not proved that the suit schedule property belonged to their Majeeth, they were not entitled to the relief of declaration of title and recovery of possession. On the issue as to whether there was any threat or tress-pass made by the plaintiffs (petitioner herein) and having regard to their statement before the lower Court, that "they would not interfere", the suit filed by the husband of the 7th respondent, Mr. Yusif, has also been dismissed.

21. Thus, it could be seen from the common judgment that the petitioner herein, has not proved title to the subject property, which is under dispute. Photographs and other materials enclosed in the typed set of papers, filed by the 7th respondent, indicate that there is demolishing of the house. It is also to be noted that FIR has been registered against the petitioner in Cr. No. 1759 of 2010 for the offences under Sections 448, 427, 506(1) and 379 IPC.

22. Though rival parties have placed materials, contending inter alia that they

are the owners of the property in dispute, this Court, sitting under Article 226 of the Constitution of India, cannot go into the disputed questions of facts and record any finding, contrary to the one, which has been already rendered in the common judgment and decree made in W.O.S.Nos.98 of 2001 and 4 of 2000, on the file of the learned Principal District Judge, Krishnagiri. It is not in dispute that the decision made in W.O.S. No. 4 of 2000 is put to challenge in C.R.P. No. 2859 of 2009.

23. It is a settled legal position that the disputed questions of fact cannot be gone into by the Court under Article 226 of the Constitution of India, and re-appreciate the evidence let in before the disciplinary authorities is not permissible. Useful reference can be made to few decisions.

(a) In *Arya Vyasa Sabha and Others Vs. The Commissioner of Hindu Charitable and Religious Institutions and Endowments, Hyderabad and Others*, the view taken by the High Court that disputed questions of fact are to be left open to be decided before the Civil Court was upheld by the Supreme Court.

(b) In the decision reported in *Rourkela Shramik Sangh Vs. Steel Authority of India Ltd. and Another*, it is held that the disputed questions of fact could not be entertained in the writ proceedings. In paragraph 19, the Supreme Court held as follows:

19. The question as to whether the workmen concerned had been continuously working for a period of ten years so as to enable them to derive benefit of the judgment of this Court in *R.K. Panda and Others Vs. Steel Authority of India and Others*, was essentially a question of fact....

In paragraph 22, the Honourable Supreme Court further held as follows:

22. ...a disputed question of fact normally would not be entertained in a writ proceeding. This aspect of the matter has also been considered by a Constitution Bench of this Court in *Steel Authority of India Ltd. and Others etc. etc. Vs. National Union Water Front Workers and Others etc. etc.,*

(c) In *Himmat Singh Vs. State of Haryana and Others*, , the Honourable Supreme Court held that

the statement of the appellant or the 5th respondent was correct or not could not ordinarily be tested in writ proceedings and it is well known that in writ petition ordinarily such a disputed question of fact could not be entertained.

(d) In yet another decision reported in (2007) 7 MLJ 687 (*Food Corporation of India v. Harmesh Chand*), the Supreme Court held as follows:

Since the facts were seriously disputed by the appellant and no factual finding could be recorded without consideration of evidence adduced by the parties, it was not an appropriate case in which the High Court ought to have exercised its writ jurisdiction. The parties could have approached a civil court of competent jurisdiction to adjudicate the matter.

24. In *Epsiba Selva Kumari v. The Home Secretary, Government of Tamil Nadu* reported in 2010 (6) CTC 113, there were serious disputes, relating to title and possession of the property. A mandamus was sought for against the Home Secretary, Government of Tamil Nadu, 1st respondent therein, The Director General of Police, Chennai, second respondent herein and The Commissioner of Police, Greater Chennai, Chennai, third respondent therein, to take action against the fifth respondent therein, who was alleged to have forcibly entered into petitioner's flat in Chennai. There were civil suits pending between the parties in the City Civil Court, Chennai for declaration and injunction. Considering the inter se disputes between the parties over the property, relating to the title and property, viz., flat in question, a learned single Judge, declined to grant the Mandamus, sought for. Testing the correctness of the said order, the Division Bench, at Paragraphs 7, 8 and 9, held as follows:

7. ...It is also not in dispute that the above mentioned two Suits are pending before the Civil Court where the parties seriously disputed the title and possession in respect of the flat in question. In the aforesaid premises the learned Single Judge has rightly held that the Writ Court in exercise of its power under Article 226 of the Constitution of India cannot decide the dispute which is sub-judge before a Civil Court. We fully agree with the view taken by the learned Single Judge.

8. So far as the grievance of the petitioner/appellant with respect to her alleged complaint lodged with the 4th respondent against the 5th respondent for forcibly evicting her from the flat in question concerned, in the counter affidavit filed by the fourth respondent it is stated that on 13.01.2010 one Mr.J.A. Inbanathan came to the Police Station and lodged a Complaint against Mr. Chandrasekaran, stating that he has sent henchmen and entered into the house at Flat No. 3, Tiruveedian Street, Gopalapuram and threw away all the things out of the house and assaulted him and his sister. The said complaint was immediately taken on file. Thereafter, on the same day, one Mrs. Kaliasammal, W/o. Mr. Chandrasekaran gave a complaint against Arumainathan, Inbanathan, Kamia Selvakumari, Epsiba Selvakumari, Marthal Selvakumari and Paulraj stating that they are trying to disturb her peaceful possession. The said complaint was also taken on file. Both the parties were called to produce relevant records relating to their respective claims, and thereafter, an opinion was obtained from the Assistant Public Prosecutor, Saidapet. On enquiry, it was found that Mrs. Kaliasammal was in possession of the property in question by virtue of a valid sale deed executed in her favour and when her possession was sought to be disturbed she moved the Civil Court and obtained an order of interim injunction.

9. Considering the entire facts of the case and the rival submissions made by the parties over the flat in question, it would be most appropriate for them to get their title and possession decided by the Civil Court in the pending Suits filed by the respective parties.

25. The above said judgment squarely applies to the facts of this case and

therefore, this Court is not inclined to assess the materials placed. On the face of it, the relief sought for in the Writ Petition, cannot be granted, as it would be amounting to restraining the statutory authorities from exercising their functions. It is settled law that no mandamus can be issued, restraining the statutory authorities from exercising the duties and functions. The contention that the Wakf Board has to be impleaded as a party respondent, is negated as the Board has not come forward with any application for impleading.

26. Therefore, in the light of the above decisions, this Court is of the considered view that the relief sought for is wholly misconceived. The interim orders passed by this Court are vacated. The Writ Petition is dismissed. No costs. Consequently, connected Miscellaneous Petitions are closed.