
(2009) 09 MAD CK 0308

In the Madras High Court

Case No : Writ Petition No. 18113 of 2009 and M.P. No. 1 of 2009

Mohammed Siddique

APPELLANT

Vs

The President, M. Agaram Panchayat

RESPONDENT

Date of Decision : 29-09-2009

Acts Referred:

Constitution of India, 1950 — Article 226
Waqf Act, 1995 — Section 87

Citation : (2009) 09 MAD CK 0308

Hon'ble Judges : K. Venkataraman, J

Bench : Single Bench

Advocate : R. Gururaj, for the Appellant; V. Anand, for the Respondent

Final Decision : Dismissed

Judgement

K. Venkataraman, J.—The petitioner has come forward with the present writ petition for mandamus forbearing the respondent or any person claimed under it from interfering with his right and possession of the property bearing G.N.S. No. 111/2 measuring 3000 square feet in M. Agaram Village, Vridhachalam Taluk, Cuddalore District, except by due process of law.

2.The case of the petitioner in nutshell is set out hereunder:

2.1 The petitioner is the Muthavalli of Jamia Mosque and Madrasa, M. Agaram Village. He has filed the present writ petition on behalf of the mosque. An extent of 3000 sq. ft. in Gramanatham S. No. 111/2 measuring east to west 30 feet and north to south 100 feet belongs to the mosque by virtue of purchase made under a registered sale deed dated 10.11.1953. Ever since then, the property is in the possession of the mosque till date. There was a building in a portion of the property which was damaged by a fire a few years back. Only portions of the destroyed wall remained.

2.2. On 8.8.2009 at about 2.00 p.m. the respondent and few persons accompanying him, came to the property and demolished the walls of the

building high-handedly and unauthorisedly. No prior notice was issued to the petitioner. No acquisition proceeding was taken and no compensation was paid. The property cannot be acquired since it belongs to a mosque and is wakf property. The sanction of the Wakf Board is necessary for taking any action. A notice dated 9.8.2009 was sent to the respondent by the petitioner and a reply dated 18.8.2009 was received by him. In view of the above stated position, the petitioner has approached this Court for the relief set out in the writ petition.

3. The learned Counsel for the petitioner submitted that the property belongs to a mosque by way of purchase under a registered sale deed dated 10.11.1953. Further, the property is in the possession of the mosque from 1953. In view of the above stated position, the respondent cannot interfere with the possession and enjoyment of the property which is held by the mosque in question. Further, he contended that before eviction, prior notice was not given to the petitioner and hence, the entire action taken by the respondent is illegal.

4. Counter Affidavit was filed on behalf of the respondent wherein the following facts have been set out:

4.1. The petitioner did not mention the location of the property over which he claims title for and on behalf of the mosque, since the said survey number consists of 30 sub-divisions. Further, the petitioner has filed the writ petition on behalf of an unregistered wakf.

4.2. It is also the contention of the respondent that the writ petition itself is not maintainable as there is no valid dedication to wakf as contemplated under the Wakf Act, 1995. Further, the District Collector and the Block Development Officer (Village Panchayat) who are the actual authorities performing the project have not been made parties to this writ petition. It is the further contention of the respondent that the property chosen for the construction of library belongs to the Government and the said fact has been suppressed by the petitioner. It is also contended that the petitioner filed a suit in O.S. No. 85 of 2002 on the file of the Subordinate Judge, Cuddalore and the same was dismissed by the said learned Sub Judge on 23.4.2007. The parties, property, title and cause of action are all the same. The petitioner instead of preferring an appeal against the said judgement of the Civil Court, had approached this Court by way of the present writ petition and the same is not sustainable.

5. The learned Counsel for the respondent mainly contended that the petitioner is laying his claim as Muthavalli of Jamia Mosque and Madrasa, M. Agaram Village. He has claimed it as a right over the property in question alleging that the mosque has purchased the property in question under a registered sale deed dated 10.11.1953. According to the learned Counsel for the respondent Section 87 of the Wakf Act 1995 bars filing of a suit, appeal or other legal proceedings for enforcement of any right on behalf of any wakf which has not been registered in accordance with of the said Act. Hence, the writ petition is not maintainable as per Section 87 of the said Act. Thus, he prays for dismissal of the writ petition.

6. I have considered the submissions made by the learned Counsel for the petitioner as well as the learned Counsel for the respondent.

7.1. It is the case of the petitioner that he is the Muthavalli of Jamia Mosque and Madrasa, M. Agaram Village. An extent of 3000 sq.ft in Gramanatham S. No. 111/2 measuring east to west 30 feet and north to south 100 feet belongs to the mosque by virtue of purchase made under a registered sale deed dated 10.11.1953. Ever since the purchase, the property is in possession of the mosque till date. While so, the respondent and his men came to the property and demolished the walls of the building high-handedly and unauthorisedly. The petitioner had filed the sale deed dated 10.11.1953 which shows that the property in question was purchased by the petitioner in his individual capacity and not as a Muthavalli of Jamia Mosque and Madrasa, M. Agaram Village. Though the petitioner claims that the property belongs to the mosque by virtue of the sale deed, I am unable to accept the said contention of the learned Counsel appearing for the petitioner since as stated already the document recites that the property in question was purchased by the petitioner in his individual capacity and not otherwise.

7.2. The learned Counsel appearing for the respondents has drawn my attention to Section 87 of the Wakf Act, 1995 which bars the filing of the suit, appeal or any other legal proceeding for the enforcement of any right on behalf of any wakf which has not been registered in accordance with the provisions of the Act. Admittedly no document is forthcoming to show that the Wakf in question was registered in accordance with the provisions of the Act. Section 87 of the Act is usefully extracted hereunder:

Section 87. Bar to the enforcement of right on behalf of unregistered wakfs

(1) Notwithstanding anything contained in any other law for the time being in force, no suit, appeal or other legal proceeding for the enforcement of any right on behalf of any wakf which has not been registered in accordance with the provisions of this Act, shall be instituted or commenced or heard, tried or decided by any Court after the commencement of this Act, or where any such suit, appeal or other legal proceeding had been instituted or commenced before such commencement, no such suit, appeal or other legal proceeding shall be continued, heard tried or decided by any court after such commencement unless such wakf has been registered, in accordance with the provisions of this Act.

7.3. The said Act not only prohibits filing of a suit, appeal but also prohibits filing of other legal proceedings. The term "other legal proceedings" will also include filing of the writ petition. Hence, I am in full agreement with the learned Counsel appearing for the respondent that the petitioner cannot maintain the present writ petition in view of the bar u/s 87 of the Act.

7.4. The learned Counsel appearing for the petitioner has relied on the decisions in Ramchand (Dead) by Legal Representatives Vs. Thakur Janki Ballabhji Maharaj and Another, ; R. Venugopala Naidu and Others Vs. Venkatarayulu Naidu

Charities and Others, ; Veruareddi Ramaraghava Reddy and Others Vs. Konduru Seshu Reddy and Others, . The question that arose in those decisions was that whether the mismanagement or misappropriation by pujari of a private trust temple can be sued; whether the sale of trust properties can be questioned by the persons interested in the trust in a representative suit and whether the suit filed by the plaintiff worshipper for a declaration that the compromise decree is not binding on the deity is maintainable. I am afraid these judgments may not have any relevance with the present case on hand since those cases deal with a private trust temple coming under the H.R. & C.E Act. The present case on hand, as stated already, does not come any way near to the proposition laid thereunder.

7.5. Yet another decision that was relied on by the learned Counsel appearing for the petitioner is reported in 2008 (4) MLJ 991 (S.M.P.S. Jammath Masjid Committee v. P.A. Kareem). That is a case wherein the dispute has arisen between the tenants and the Jammath Masjid Committee represented by its Muthavalli. This Court in the said judgment has held, in such circumstances, that the Tribunal created under the statute provides a remedial forum only for certain specific matters relating to administration and management of wakf properties, which are regulatory in nature and it does not provide for a forum for adjudicating the common law remedies. Any person who has grievance that he has been wronged and civil right is affected, where no remedial measure is provided under the statute, he can approach the ordinary civil court on the principle of law that where there is a right, there is a remedy.

7.6. In the case on hand, the petitioner had already filed the suit in O.S. No. 85 of 2002 before the Subordinate Judge, Cuddalore against certain individuals as well as the Collector, Cuddalore District, the Tahsildar, Vridhachalam Taluk, Vridachalam, and the Wakf Board, Chennai represented by its Chairman, for declaring his title to the property in question and for restraining the defendants 1 to 5 therein by way of permanent injunction from in any manner interfering with his peaceful possession and enjoyment of the suit property and for directing the defendants 4 and 5 to alter the character of the property from poromboke property to that of patta property of Jamia Mosque and Madrasa of M. Agaram Village. The said suit was dismissed on 23.4.2007 holding that Section 87 is a legal bar for the maintainability of the suit. Further it has been held therein that in the absence of evidence to show it is a registered wakf it is felt, the suit filed by the petitioner herein is not maintainable. Admittedly the petitioner had not preferred any appeal against the said judgment.

7.7. Further more, the petitioner had suppressed the fact of filing of the said suit and the dismissal of the said suit. Having failed in his attempt before the civil court, the petitioner has approached this Court by filing the present writ petition under Article 226 of the Constitution of India. The suppression of filing of the suit itself will disentitle the petitioner from claiming any relief from this Court. Even otherwise, the petitioner having lost before the civil court cannot take shelter before this Court under writ jurisdiction.

7.8. The learned Counsel appearing for the petitioner relied on yet another decision reported in 2008 (4) MLJ 278 (Fuaad Musvee and Anr. v. M. Shuaib Musvee and Ors.). That is a case where appeals have been preferred against the interim orders passed in the suit filed by the beneficiaries to remove the appellant Muthavalli of the Wakf property. It has been held thereunder that private wakf as per the Muslim law is valid. However, in the present case on hand, it is not the case of the petitioner that it is a private wakf. In the affidavit in support of the writ petition, it is claimed that the property belongs to the Mosque by virtue of sale deed dated 10.11.1953. However, as stated already, the said sale deed recites that the property has been purchased by the petitioner in his individual capacity. The judgment cited by the learned Counsel appearing for the petitioner therefore has no relevance to the facts of the case on hand.

7.9. The discussion made above clearly draws the following irresistible conclusions

(i) the property in question was purchased by the petitioner in his individual capacity by virtue of the sale deed dated 10.11.1953 and hence there is no substance in the contention of the learned Counsel appearing for the petitioner that the property in question belongs to mosque.

(ii) Absolutely there is no document to show that the property in question is a wakf property.

(iii) the Wakf has not been registered in accordance with the provisions of the Wakf Act 1995.

(iv) there is a clear bar u/s 87 of the Act to lay a suit, appeal or other legal proceedings for the enforcement of any right on behalf of any wakf, which has not been registered in accordance with the provisions of the Act.

(v) The petitioner having filed the suit in O.S. No. 85 of 2002 before the Subordinate Judge, Cuddalore laying his claim over the suit property in the same manner as made in the present writ petition and having lost before the civil court had suppressed the said fact before this Court and filed the present writ petition which is not sustainable.

8. In view of the above stated position, I am not inclined to grant the relief that has been sought for by the petitioner and hence the writ petition stands dismissed. Consequently, the connected M.P is closed. No costs.