
(2005) 07 MAD CK 0150

In the Madras High Court

Case No : Civil Revision Petition (P.D.) No. 3958 of 1999

P.M. Venkatachalapathy and V.S. Senthil Kumar

APPELLANT

Vs

Syed Anwar and Others

RESPONDENT

Date of Decision : 29-07-2005

Acts Referred:

Waqf (Amendment) Act, 1995 — Section 83, 83(1), 85

Citation : (2006) 1 LW 803

Hon'ble Judges : R. Banumathi, J

Bench : Single Bench

Advocate : A. Ilango, for the Appellant; S.B. Fazluddin, for the Respondent

Final Decision : Dismissed

Judgement

R. Banumathi, J.—This revision is directed against the order passed in Preliminary Issue in O.S.No. 485/1996 dated 22.09.1999 on the file of the Sub Court, Hosur, transferring the suit to the Sub Court, Krishnagiri/Wakf Tribunal. Plaintiffs are the Revision Petitioners.

2. O.S.No. 485/1986 :-

Case of the Plaintiff is that the first Plaintiff purchased the first item of the suit property under the registered Sale Deed dated 29.06.1995 from one Khaji Mohammed Gouse and his family members. The second Plaintiff purchased second item of suit property under registered Sale Deed dated 30.06.1995 from Khaji Abdul Shukoor and his wife. The second Plaintiff has also purchased third item of the suit property under the registered Sale Deed on 19.06.1996 from Khaji Abdul Haq and his family members for a valid and binding consideration. The suit schedule properties have been sub-divided and pattas were also granted in favour of the Plaintiffs. The suit schedule properties have been sub divided as S.No. 745/4, 745/5 and 745/6. There was earlier litigation between the purchasers in title and the Plaintiff. In those matters, compromise was effected on the advice of Hosur Jamthdars of Jamia mosque, in the interest of the

community to avoid wasteful litigation. The Defendants are strangers to the suit properties. They have no right, title and interest over the suit schedule properties. Since the Defendants are attempting to trespass into the suit properties, the Plaintiffs have filed the suit for declaration of their right and interest over the suit schedule properties and for permanent injunction.

3. The Defendants have filed Written Statement contending that suit properties have been declared to be Wakf Properties by the Settlement Tahsildar, Salem in S.R.No. 162/1968 under Wakf Act 30/1963. Wakf Properties covered has been surveyed under the Wakf Act 1955 and the same was published as Wakf Properties in the Fort St.George Gazette. The suit properties have never lost their character, being Wakf Properties, at any time. The Revenue and Settlement Records also would show that the suit property is a Wakf Property. Order of the Tahsildar granting patta to the Plaintiff is not binding on the mosque. The Muthavalli has no power to enter into compromise without the consent of the Wakf Board. The suit O.S.No. 228/1992 on the file of Subordinate Judge, Hosur is decreed. The Jamathdhars of Jamiya Masjid have no power to enter into any compromise without the consent of the Wakf Board. Hence the alienation made in favour of the Plaintiffs can have no validity or force. Hence the Plaintiffs are not entitled for the reliefs sought for in the plaint.

4. On the above pleadings, relevant issues were framed. On the issue regarding the maintainability of the suit in the civil Court that issue was taken as the preliminary issue. On behalf of the Plaintiffs, P.W.s 1 and 2 were examined. Inspector of Wakf Board was examined on behalf of the Defendants. Documents have been produced by both parties. Upon consideration of the pleadings and other materials, the learned Subordinate Judge found that the suit properties belong to Jamia Masjid and is a Wakf Property. Referring to Government Order dated 29.04.1959, the learned Subordinate Judge found that the suit property is the Wakf Property meant for the service of Khaji. Finding that the suit properties are the Wakf Properties and the subject matter of the dispute is relating to the Wakf Property and the administration of the property, the dispute arising between the parties falls within the ambit of Tribunal, the learned Subordinate Judge ordered transfer of the suit to Subordinate Court, Krishnagiri which is the Wakf Tribunal for the Krishnagiri District. The lower court was of the view that the dispute relating to the Wakf Properties could be determined only by the Tribunal.

5. Aggrieved over the transfer of the suit O.S.No. 485/ 1996, the Plaintiffs have preferred this revision. The learned counsel for the Plaintiffs contended that he property is the absolute property of the Plaintiffs and that without considering that the dispute is the private dispute between the Plaintiffs and the Defendants, the Court below has erred in ordering transfer of the suit to the Wakf Tribunal. Main contention advanced is that when the Wakf Board has not taken steps to assert its rights, the lower Court was not right in ordering transfer of the suit. It is further submitted that even assuming that the property is Wakf Property, the

Court below ought not to have suo motu transferred the suit to the Subordinate Court, Krishnagiri - Wakf Tribunal.

6. Countering the arguments, the learned counsel for the Respondents/ Defendants has drawn the attention of the Court to the admission of the Plaintiffs wherein they have admitted that the suit properties are the Wakf Properties. Submitting that the order of transfer to the Wakf Tribunal/ Sub Court, Krishnagiri is rightly in accordance with Section 83 of Wakf Act, the learned counsel for the Defendants has submitted that the dispute regarding the Wakf Properties could be determined only by the Wakf Tribunal. Contending that the Plaintiffs' right could be established in the proper forum, the learned counsel has submitted that the impugned order does not suffer from any jurisdictional error or irregularity warranting interference.

7. The main point that arises for consideration is, in the facts and circumstances of the case, and in view of sections 83 and 85 of the Wakf Act 1995, is not the Court below right in ordering transfer of the suit O.S.No. 485/1996 to the Wakf Tribunal/Subordinate Court, Krishnagiri and whether the impugned order suffers from any jurisdictional error warranting interference.

8. To show that the property is their absolute property and not the Wakf Property, on behalf of the Plaintiffs, P.W.s 1 and 2 have been examined who have traced their title to the Sale Deeds. The Inspector of Wakf Board has stated that the suit properties have been declared to be Wakf Property by the Settlement Tahsildar, Salem in S.R.No. 162/1968 under Wakf Act 30/1963. He has further stated that it was published as Wakf Properties in the Fort St.George Gazette dated 29.04.1959. The Inspector of Wakf Board has further stated that the suit properties are Wakf Properties and the Khajis of Jamia Masjid were in possession and enjoyment of the suit properties. On the evidence of DW-1 - Inspector of Wakf Board, the Court below has ordered the transfer of the suit to the Wakf Tribunal.

9. On behalf of the Plaintiffs, the transfer of the suit to Wakf Tribunal is assailed mainly on the ground that the suit properties are private properties belonging to Vendor of the Plaintiffs and that the Plaintiffs have purchased the suit properties for valuable consideration. After scrutinizing the documents, title and the previous litigation, it is the further contention of the Plaintiffs that they are bonafide purchasers for value and that the Defendants are strangers to the suit properties. Earlier, there were a number of litigation relating to the suit properties. When dispute arose between the Khajis of Jamia Masjid, they have filed the suit O.S.No. 32/1971 on the file of District Munsif Court, Hosur. The suit was decreed. In the appeal preferred in A.S.No. 16/1983, the Judgment of the trial court was confirmed. S.A.No. 1856/1986 was compromised between the parties. Thereafter, another suit was filed by Khaji Mohammed Gouse, Khaji Abdul Shukoor in O.S.No. 16/1986 against Khaji Abdul Rahim and Abdul Rashid. The said suit was compromised in I.A.No. 643/1994 on 03.08.1994. As per the terms of the compromise between the parties, 20 cents of land in S.No. 745

Hosur Village was given to the second Defendant Jamia Mosque of Hosur and the remaining extent of lands were allotted to the said Khajis. As per the terms of the compromise, the Defendants have accepted to withdraw the suit filed by them in O.S.No. 371/81, District Munsif Court, Hosur, O.S.No. 228/1992, Sub Court Krishnagiri, O.S.No. 225/ 1985, District Munsif Court, Hosur. It may be that the earlier suit O.S.No. 16/1986 ended in compromise. But the contentious points urged by the parties is to be considered in the light of a number of litigation between the parties and the conclusions thereon.

10. The Plaintiffs are claiming that the suit properties are private properties of their vendors. Per contra, the Defendants are claiming that the suit properties are the Wakf Properties and notified as Wakf Properties in the Government Gazette. Thus a contentious dispute had been raised, whether the suit properties are the Wakf Properties. After coming into force of the Wakf Act 1995 (01.01.1996), all proceeding including the suit relating to an Wakf Property or other matter shall be determined only by the Wakf Tribunal. u/s 85 of the Wakf Act, jurisdiction of the civil Court is barred. Section 85 reads:

85.Bar of jurisdiction of civil Courts:-

No suit or other legal proceeding shall lie in any civil Court in respect of any dispute, question or other matter relating to any wakf, Wakf Property or other matter which is required by or under this Act to be determined by a Tribunal.

Thus the Civil Courts would not have jurisdiction either to entertain the suit or continue the suits if any pending before it and the same shall be deemed to be transferred to the Wakf Tribunal.

11. Section 83 of the Act deals with constitution of the Tribunals. As per Section 83(1) of the Act, only the Tribunal has the jurisdiction to determine any dispute, question or other matter relating to the Wakf of Wakf Property under the Act. For the District of Dharmapuri/ Krishnagiri, Principal Sub Court, Krishnagiri has been constituted as the Wakf Tribunal. Accordingly, Subordinate Judge, Hosur has ordered the transfer of the suit to the Sub Court, Krishnagiri. The impugned order is well in accordance with Section 83 and Section 85 of the Wakf Act.

12. Assailing the order, the learned counsel for the Revision Petitioners/Plaintiffs contended that the Court below was not right in transferring the matter to the Sub Court and that the lower Court has no jurisdiction to suo motu transfer the suit to the Wakf Tribunal. Since the civil Court has no jurisdiction to try the matter, the learned Subordinate Judge has rightly transferred the suit to the Sub Court/Wakf Tribunal. The Revision Petitioners/Plaintiffs are not right in contending that the plaint ought to have been returned to them. When that contention was not raised in the Court below, the impugned order does not suffer from any infirmity warranting interference. This revision has no merits and is bound to fail.

12. For the foregoing reasons the order of the Subordinate Judge, Hosur in

O.S.No. 485/1996 dated 22.09.1999 on the Preliminary Issue ordering transfer of the suit to the Sub Court, Krishnagiri/Wakf Tribunal, Krishnagiri is confirmed and this revision is dismissed. Consequently, C.M.P.No. 22203/1999 is also dismissed. In the circumstances of the case, there is no order as to costs.