

(2009) 03 MAD CK 0083

In the Madras High Court

Case No : C.R.P. (PD) No's. 2940 to 2943 of 2008 and M.P. No. 1 of 2008

Puducherry State Wakf Board, Chief Executive Officer,
Puducherry State Wakf Board and President, Muthawallies
Mohideen Abdul Kader Jeelani Aandagai Pallivasal T.R.
Pattinam

APPELLANT

Vs

Rajiya Nachial and Sulltan Ahamed Kabeer

RESPONDENT

Date of Decision : 05-03-2009

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 2 Rule 2, Order 7 Rule 11, 80
Evidence Act, 1872 — Section 81, 82, 83, 84
Waqf Act, 1954 — Section 56
Waqf Act, 1995 — Section 40, 5, 5(1), 5(2), 55(2)

Citation : (2009) 03 MAD CK 0083

Hon'ble Judges : M. Venugopal, J

Bench : Single Bench

Advocate : N. Mala, for the Appellant; S.V. Jayaraman for T. Susindran, for 1st Respondent, for the Respondent

Final Decision : Allowed

Judgement

M. Venugopal, J.—These civil revision petitions have been preferred by the revision petitioners/respondents/defendants 1 to 3 as against the

order dated 30.04.2008 in I.A. Nos. 40, 76, 77 and 104 of 2008 in W.T.O.S. No. 1 of 2008 passed by the Additional District Judge,

Puducherry Wakf Tribunal, Karaikal in allowing the I.A. No. 40 of 2008, in dismissing the I.A. Nos. 76 and 77 of 2008 and in allowing the I.A.

No. 104 of 2008.

C.R.P. No. 2940 of 2008 (I.A. No. 40 of 2008)

2. The first respondent/petitioner/plaintiff has filed I.A. No. 40 of 2008 inter alia averring that she has filed the suit W.T.O.S. No. 1 of 2008

praying for the relief of declaration that she is the owner of the suit properties and for injunction against the three revision petitioners/

respondents/defendants along with another and that the revision petitioners/ respondents 1 to 3 are not to interfere with her peaceful possession and

presently she is enjoying the suit properties as per release deed dated 19.12.1973 executed by her mother and as per Kalyana Kaditham dated

08.9.1982 in regard to some of the properties and that the second revision petitioner/second respondent summoned her to T.R. Pattinam Periya

Pallivasal premises and obtained the signatures in various papers under compelling circumstances and being a Pardanishi, she signed the said

papers without reading the contents of the same and that copies of the said papers have been given to her and since the second revision

petitioner/second respondent has acted against the statutory provisions of Wakf Act, his action is without legal significance and she never intended

to hand over possession to the second revision petitioner or to anyone and she asserts that she is the owner of the suit properties and has been in

possession of the same and therefore, has prayed for the relief of ad-interim injunction.

3. The revision petitioners 1 and 2 have filed a counter among other things observing that the application properties of Melapalli Dargha at T.R.

Pattinam belong to Wakf Mohaideen Abdul Kader Jeelani Andagai Pallivasal, as per records, dated back to nearly a century preserved by the

Committee of Management of the Pallivasal and the Pallivasal records dated 8.9.1913 contained a list of both movable and immovable properties

belonging to Pallivasal numbering 201, which have been under the possession, control, management and administration of the Committee of

Management of the Pallivasal and Serial Nos. 35 to 39 are the properties described in the application which belonged to and owned by the

Pallivasal etc. and further that the first respondent/plaintiff is not the owner of the properties mentioned in the application and that the documents

dated 19.12.1973 etc. are created with a view to grab the properties and the properties mentioned in items 4 to 6 are the properties of Pallivasal

and that the 4th defendant is a henchman and staunch supporter of the first respondent/plaintiff and that he is not the tenant of the application

mentioned properties and in fact, the Assistant Survey Commissioner (Wakf), a Statutory Authority under the Wakf Act, has after investigation in

an enquiry has found that the properties belonged to Wakf Act T.R. Pattinam and moreover, the first respondent/plaintiff and her authorised

persons have not established before the Survey Commissioner of Tribunal (Wakf), Karaikal that they are the owner of the application mentioned

properties and in his report dated 19.12.2006, the Assistant Survey Commissioner (wakf) has mentioned that the application mentioned properties

belonged to Wakf T.R. Pattinam etc. and that the suit properties have already been handed over to the Wakf T.R. Pattinam which is the owner as

per records and the first respondent/plaintiff on her own will, has volunteered to hand over the possession of the properties and that the Civil Court

has no jurisdiction to try the case of wakf properties, since the competent forum is the Wakf Tribunal and therefore, prays for dismissal of the

application.

4. In the counter filed by the third revision petitioner/third defendant, it is mentioned that the first respondent/plaintiff has made the second revision

petitioner/second respondent in the mosque and handed over the possession of the suit properties on 12.09.2007 in the presence of elders of the

Muslim community of T.R. Pattinam and that she has voluntarily signed the papers evidencing handing over possession of the properties and as per

Section 5(2) of the Wakf Act, it has been notified in the Extraordinary Gazette dated 30.01.2008 and therefore, the application may be dismissed.

C.R.P. Nos. 2941 and 2942/2008 (I.A. Nos. 76 and 77 of 2008:

5. The revision petitioners/defendants 1 to 3 have filed I.A. Nos. 76 and 77 of 2008 inter alia mentioning that the suit properties are the wakf

properties and that the third revision petitioner has been appointed by the Wakf Board and that the present suit has been filed by the first

respondent /plaintiff without issuance of notice u/s 89 of the Wakf Act, which is a mandatory one etc. and further that without statutory notice,

there is no cause of action for the filing of the suit and therefore, pray for rejection of plaint under Order VII Rule 11(a) of Civil Procedure Code.

6. In the counter in I.A. No. 76 of 2008 filed by the first respondent, it is inter alia mentioned that no Wakf Board has been in existence for the

Puducherry State on the date of filing of the suit and therefore, the question of issuing pre-suit notice does not arise and further that suit has been

filed against the unauthorised action taken by the second revision petitioner/

second defendant and that the suit is to ascertain the private right of the respondent and has prayed for dismissal of the application.

C.R.P. No. 2943 of 2008 (I.A. No. 104 of 2008):

7. The first respondent/plaintiff in I.A. No. 104 of 2008 has inter alia averred that to decide a petition under Order VII Rule 11 of CPC pleas

mentioned in the written statement should not be taken into consideration and the plaint averment alone can be taken into consideration and

therefore, has prayed for dismissal of I.A. Nos. 76 and 77 of 2008.

8. In the counter filed by the revision petitioners/ respondents 1 and 2, it is mentioned that the petition is not maintainable either in law or on facts

and that the applicant has no locus standi to give direction to the Court to pass any orders. According to the learned Counsel for the revision

petitioners/defendants 1 to 3, the issue of Court Fees should have been viewed seriously as it is a matter affecting the Revenue of the State and

further that the Tribunal ought to have gone into the issue of maintainability of the suit for want of notice as per Sections 89 and 90 of the Wakf

Act, 1995, as a preliminary issue and further, the reasoning of the Tribunal in rejecting the plea of the revision petitioners in regard to want of notice

as per Sections 89 and 90 of the Wakf Act is perverse and unsustainable in law and moreover, the Tribunal has not considered the fact that suit

O.S. No. 399 of 2007 on the file of Principal District Munsif at Karaikal filed by the first respondent herein has been dismissed as per order dated

09.01.2008 in I.A. No. 791 of 2007 in terms of Section 85 of the Wakf Act and therefore, the notice under Sections 89 and 90 of the Wakf Act

is an indispensable one and the fact is that patta No. 54 stands in the name of third revision petitioner and besides this, the Tribunal has not

appreciated the fact that the suit properties have been in possession and enjoyment of the revision petitioners as per Gazette Notification dated

30.01.2008 and other revenue records and even as per the endorsement made by the first respondent/plaintiff dated 12.09.2007 in regard to the

delivery of the suit properties and even as per the antecedent documents of 08.09.1913, the revision petitioners are the absolute owner of the suit

properties and in reality the first respondent/plaintiff has not proved her title or possession of the suit properties and no specific finding on the issue

of actual possession of the suit properties has been rendered by the Tribunal and

that the suit is barred as per Order II Rule 2 and Order VII Rule

11 of CPC and also under Sections 89 and 90 of the Wakf Act and therefore, prays for allowing the civil revision petitions in the interest of justice.

9. In the plaint filed by the first respondent/plaintiff, it is among other things mentioned that the action taken by the second defendant on

12.09.2007 is null and void and without legal sanction for the reasons that the suit properties were not notified in the Government Gazette as wakf

properties u/s 5 of the Wakf Act and till such notification, even if the Wakf Board has any claim which is not admitted by the plaintiff, neither the

Wakf Board nor the second defendant has jurisdiction to taken any action over the suit properties and the action taken by the second defendant on

12.09.2007 is beyond his official capacity and is out of the jurisdiction of the Chief Executive Officer and therefore, the possession could not be

claimed by the second and third defendants and moreover, the suit has been filed to protect the first respondent/plaintiff's possessory right and as

such, the Court has jurisdiction to entertain the suit and further that the plaintiff is still having possession over the suit properties and that the cause

of action has arisen when the third defendant and their men made an attempt to interfere with the first respondent/plaintiff's possession of the suit

properties and on the subsequent days when the threat is continuing etc.

10. A perusal of the relief portion of the plaint indicates that the first respondent/plaintiff has sought a relief of declaration that she is the absolute

owner of the suit properties and also claimed the relief of permanent injunction.

11. It is noted that in I.A. No. 791 of 2007 in O.S. No. 399 of 2007, the learned Principal District Munsif, Karaikal on 09.01.2008 has inter alia

held that the respondent/plaintiff has not filed any petition before the Wakf Tribunal against the decision taken by the Wakf Board u/s 40 of the

Act, even after intimation to her and the petitioner side document No. 10 dated 22.08.2007 filed by the first defendant and moreover, in this case,

there is a serious title dispute between both parties and therefore, this Court comes to the conclusion that the dispute is relating to the property of

the Wakf and hence, as per Section 85 of the Act, this Court has no jurisdiction to try the case and resultantly, allowed the application without

costs.

12. The learned Counsel for the revision petitioners urges before this Court that

the Tribunal in the course of its common order dated 30.04.2008

in I.A. Nos. 76, 77, 103, 104 and 40 of 2008 in W.T.O.S. No. 1 of 2008 has not referred to any of the documents referred by the revision

petitioners and that the first respondent/plaintiff has voluntarily handed over the possession of the suit properties and there has been no compulsion

or coercion and that the suit is not maintainable as per Order VII Rule 11 of CPC and also as per Section 89 of the Wakf Act, for non-issuance of

notice and that patta has been issued in favour of the Wakf Board, which has not been taken note of by the Tribunal and therefore, prays for

allowing the civil revision petitions.

13. In support of the contention that Section 89 of the Wakf Act is mandatory in regard to the issuance of notice before filing of any suit against the

Wakf Board, the learned Counsel for the revision petitioners cites the decision in M.S. Abdul Hameed Vs. S.M. Sheik Mohammed, H. Ahmed

Thambi, M.G.M. Abdul Rahaman, J.M. Sultan and S. Mohamed Basheer, wherein this Court has held as follows:

Section 89 of the Act is mandatory. The tenor and temper of the language employed in the section leaves no room for any mis-interpretation to the

effect of dispensing with the notice u/s 89 and therefore so far as the warranting Section 89 is concerned, the only conclusion that the Court could

arrive at is that no suit shall lie without compliance of Section 89. Therefore, the suit for declaring the order passed by the Wakf Board as null and

void, instituted without complying provision of Section 89 of the Act is not maintainable.

14. At this stage, this Court points out the decision Shamsuddin and Others Vs. Tuticorin Jamia Masjid, Tuticorin and Others, wherein this Court

has held that as per Section 55(2) of the Wakf Act, the consent of the Board has not been obtained and hence, the suit is not maintainable for want

of consent.

15. Further, this Court recalls the observation made in Madras State Wakf Board Vs. B.A. Jamal Muhammed and Others, wherein it is held as

follows:

The provisions of Section 56 of the Wakf Act relating to notice before the institution of any suit is analagous to Section 80 of the Civil Procedure

Code. It lays down an absolute bar to the institution of any suit against the Wakf

Board in respect of any act purporting to be done by it in pursuance of the Act or the Rules framed thereunder unless the requisite notice is served on the Board before the Institution of the suit. The Section would apply not only common law suits but also to statutory suits. It is no doubt true that u/s 6 of the Act certain suits instituted by the Wakf Board may not attract the provisions of Section 56 of the Act relating to notice. But that is no reason why the provisions of Section 56 could not apply in cases of suits against the Board. The Section is couched in general terms and it covers all suits which question any act of the Board, whether they be voluntary or involuntary. The Section imposes a statutory and unqualified obligation upon the Courts to dismiss a suit for non-compliance with its provisions.

16. Moreover, in *Rahmath Bi and Another Vs. State Wakf Board*, , it is held by this Court that "the Court cannot make exceptions or qualifications to the explicit terms of Section 56 of the Wakf Act (1955) on account of consideration of hardship and absence of prejudice or detriment." Suffice it to say of this Court that the non-issuance of notice as per Section 89 of the Wakf Act goes to the very root of the claim projected by a party by way of plaint in the suit.

17. Be that as it may, this Court pertinently points out that a Court of law is to decide all the disputes involved in the suit completely to prevent rem and plurality of suit. As a matter of fact, the Court is supposed to deal with the facts in a given case as it finds. In short, the order passed by the Court must discuss about the documents and should state about the evidence adduced by parties and how it helps one or the other party.

18. It is to be pointed out that Section 90 of the Wakf Act, 1995 speaks of "notice of suits etc. by Courts."

19. In Ex.P. 7 the Gazette of Puducherry dated 30.01.2008 wherein the Chief Executive Officer of Puducherry State Wakf Board has issued notification, the introduction of it goes on to add that the Survey Commissioner of Wakfs, Puducherry has communicated the approval of the Government of Puducherry to the Wakf Board in terms of Section 5(1) of Wakf Act, 1995 that the properties located at R.S. No. 72/2B, 71/2, 71/5, 72/2A and 72/2C in T.R. Pattinam Revenue Village are belonging to Wakf-Mohideen Abdul Kadir Jeelani Andagai Pallivasal, T.R. Pattinam

and that the same be published in the official gazette as contemplated u/s 5(2) of the Wakf Act, 1995.

20. In regard to the Gazette Publication, the presumption u/s 81 of the Indian Evidence Act is of genuineness and need not be proved formally and

further that a statement in a Gazette can be relied on to consider whether math is Public or Private. However, Reports and Gazettes are not the

evidence of truth of all the statements contained therein as per decision G. Das v. Manindra 44 CWN 876. In fact, the rationale of Sections 81 -

84 of the Indian Evidence Act is the principle that official acts are presumed to be performed regularly and this is the common thread connecting

them, in the considered opinion of this Court.

21. In the endorsement dated 12.09.2007 the first respondent/plaintiff and the second revision petitioner/second defendant have signed in the said

letter, written in Tamil, it is inter alia mentioned that as per Patta copy dated 14.11.2006 and as per letter dated 19.12.2006 of the Revenue

Department, the aforesaid properties are that of the wakf properties and that as per Wakf Board Secretary's letter dated 22.08.2007 and as per

letter 08.09.2007 she has handed over the wakf properties (kept under her care) to the Wakf Board Secretary and that she has no right over the

aforesaid properties etc.

22. It appears that the first respondent/plaintiff has addressed a letter dated 12.09.2007 to the Secretary of the Wakf Board wherein she has

requested for handing over of a room key of the Wakf Board Melapalli Dargha on 01.10.2007 and on the very same day the second revision

petitioner has made an endorsement that "permitted on condition that the key should be handed over on 01.10.2007 or else the possession of the

room will be taken over by the Wakf Institution T.R. Pattinam without further intimation" and duly affixed his signature thereto. In view of the stand

taken by the revision petitioners that the first respondent/ plaintiff has given an endorsement receipt dated 12.09.2007 in regard to the delivery of

wakf properties, it cannot be said that there is no document for possession of the suit properties by the revision petitioners 1 to 3 and therefore, the

observation of the trial Court that there is no document for the possession of the suit property by the revision petitioners is not correct per se,

notwithstanding the fact that the first respondent/plaintiff has mentioned in the

plaint at any point of time she admitted the suit properties as wakf properties and further that she never intended to surrender the possession of the same to any one etc.

23. At this juncture, one cannot loose sight of an important fact that the first respondent/plaintiff has filed the suit before the Wakf Tribunal on the plea that the Tribunal has jurisdiction to entertain the suit and that Civil Court's jurisdiction is ousted only when the suit properties are notified as wakf properties in the Government Gazette as per Section 5 of the Wakf Act and further that the suit has been filed for the relief of declaration of private right of the first respondent/plaintiff over the suit properties and also to protect her possessory right. In short, the categorical stand of the first respondent/plaintiff is that she has not handed over possession of the suit properties to any one and still she is in possession of the same and her possessory title is to be projected from the illegal actions of the second and third revision petitioners/defendants 2 and 3.

24. It transpires that in the main suit, the written statements have been filed by the revision petitioners/defendants 1 to 3 and also that a reply statement has been filed by the first respondent/plaintiff.

25. It is relevant to make a mention that the power to reject the plaint as per Order VII Rule 11 of CPC ought not to be exercised except in a clear-cut case, in the considered opinion of this Court. If there is any serious questions to be decided, then the apt option is to allow the suit to proceed further like filing of written statement, discovery and then determine the matter on preliminary issues. As a matter of fact, a Court of law has to see while exercising its power for rejection of plaint, where the averments in the plaint as they stand, fail to establish the cause of action.

Further, while dealing with the issue whether the plaint discloses any cause of action or not, a Court of Law has to find out from the averments made in the plaint itself and not beyond it as to whether a wholly vexatious or frivolous litigation or a bogus one has been projected by the plaintiff or that the claim of the plaintiff is a legally recognisable one.

26. On going through the common order passed by the trial Court in I.A. Nos. 76, 77, 104 and 40 of 2008, this Court is of the considered view that the trial Court has not dealt with the matter in issues in an appreciable manner as per settled principles of law.

27. On a careful consideration of respective contentions and in view of the averments and counter averments made by the respective parties taking a rival stand which are a mixed question of fact and law to be proved by means of oral and documentary evidence and in view of the fact that even though Ex.P.1 to Ex.P.11 have been marked on the side of first respondent/plaintiff and Ex.R.1 to Ex.R.21 have been marked on the side of revision petitioners/defendants 1 to 3, the Tribunal has only referred to Exs. P.7, P.3, P.2 and P.1 and not the other documents projected by the respective parties, this Court exercising its discretion and without going into the merits of the matter, allow the civil revision petitions to prevent aberration of justice by setting aside the order passed by the Tribunal in I.A. Nos. 40, 76, 77 and 104 of 2008.

28. In the result, these Civil Revision Petitions are allowed, leaving the parties to bear their own costs. Consequently, the order passed by the Tribunal in I.A. Nos. 40, 76, 77 and 104 of 2008 dated 30.04.2008 is set aside and the matter is remitted back to the Tribunal and the Tribunal is directed to dispose of the I.A. Nos. 40, 76, 77 and 104 of 2008 afresh in accordance with law, after giving adequate opportunities to both parties to let in oral and documentary evidence, if they so desired. Connected miscellaneous petition is closed.