

(2015) 10 MAD CK 0028

In the Madras High Court

Case No : C.R.P. (PD) No. 3377 of 2015 & MP. No 1 of 2015

R. Periyasamy

APPELLANT

Vs

Nawab Khairunnissa

RESPONDENT

Date of Decision : 26-10-2015

Acts Referred:

Citation : (2016) 1 MadWN(Civil) 32

Hon'ble Judges : D. Haripnranthaman, J.

Bench : Single Bench

Advocate : R. Sathiyakumar, Advocate, for the Petitioner; T. Velumani, Advocate, for the Respondent No. 1; V. Lakshminarayanan, Advocate, for the Respondent No. 2

Final Decision : Disposed Off

Judgement

D. Haripnranthaman, J.—The Revision Petitioners are Defendants 1 & 2 in O.S. No. 4833 of 2010 on the file of Wakf Tribunal at Chennai.

2. The First Respondent herein filed the aforesaid Suit in O.S. No. 4833 of 2010 seeking the following reliefs before the Wakf Tribunal.

"(i) directing the Defendants 1 & 2 herein to vacate and deliver vacant possession of the Suit property belonging to the Plaintiff-Wakf to the Plaintiff within a period as may be fixed by this Hon"ble Court.

(ii) for a Permanent Injunction restraining the Defendants herein, their men, agents or servants from putting up any superstructure or construction on the Suit property viz., the land belonging to the Plaintiff-Wakf without obtaining any tenancy right and permission to put up such construction.

(iii) To pay damages at Rs. 2,500 from January 2010 to April 2010 totalling at Rs. 10,000 and future damages at Rs. 5,000 to the Plaintiff."

3. The Wakf Tribunal decreed the Suit in O.S. No. 4833 of 2010 on 31.01.2013.

4. The Revision Petitioners filed A.S. No. 171 of 2013 before the 19th Additional Judge, City Civil Court against the aforesaid Judgment and Decree dated 31.1.2013.

5. The Appellate Court, by its Judgment and Decree dated 24.1.2014 in A.S. No. 171 of 2013 set aside the Judgment and Decree dated 31.1.2013 made in O.S. No. 4833 of 2010 and remanded to the Trial Court to consider the matter afresh.

6. While so, the Revision Petitioners filed I.A. No. 4213 of 2015 in O.S. No. 4833 of 2010 seeking to file additional Written Statement under Order 8, Rule 9, C.P.C. The same was rejected by the Trial Court by an Order dated 22.7.2015. This Revision Petition is against the aforesaid Order dated 22.7.2015 made in I.A. No. 4213 of 2015 in O.S. No. 4833 of 2010.

7. When the matter came up for admission, this Court ordered Notice of Motion and granted Interim Stay till 18.9.2015.

8. On Notice, the Respondents entered appearance.

9. Heard both sides. I have also perused the Written Arguments filed by the learned Counsel for the Petitioners.

10. The Revision Petitioners filed Written Statement in O.S. No. 4833 of 2010 admitting the title over the Suit Schedule property of the Plaintiffs in O.S. No. 4833 of 2010.

11. It is useful to extract the following passages in Paragraphs 8 & 9 of the Written Statement:

"8. The First & Second Defendants further state that they are the Owners of the Leasehold rights in respect of the land measuring about 280 sq.ft. under Lease and Licence of the Wakf and the Defendants are the absolute Owners of the buildings thereon which was constructed long back with the permission of the Wakf and the Mutavalli the Plaintiff. At present development was necessitated to accommodate themselves adequately for convenience. They construct some necessary constructions with the permission of the Wakf Board as well as from the Plaintiff also.

9. The Defendants 1 & 2 also deny all the allegations and averments stated in Para 9 of the Plaint that, being a absolute Owner of the leasehold right over the property. The First & Second Defendants construct some necessary accommodation for the present way of life. For that also they sought permission from the Wakf Board and the Plaintiff and both of them first gave permission, afterwards, they send Notice to stop the construction, while the construction works are full swing vigorously.

12. While so, after remand, Revision Petitioners filed I.A. No. 4213 of 2015 in O.S. No. 4833 of 2010 seeking to file Additional Written Statement. In the Affidavit filed in support of the Application, particularly, in Paragraph 4, the Petitioners disputed the title of the Plaintiff. It is useful to extract Paragraph 4 of

the Affidavit in I.A. No 4213 of 2015:

"4. I submit that the Plaintiff has filed Ex. A1 to Ex. A9 which does not confer any title regarding the Suit Schedule property. The Land comprised in Survey No. 1055/1 measuring 1933 square feet stands in the name of (1) Mrs. Mahajabeen alias Jabeer Ahamed (2) B. Masudha Taj Minor (3) B. Wasim Ahamed Minor classified as House. The Land comprised in Survey No. 1055/2 measuring 5 cawnies 1 ground and 854 square feet stands in the name of Janab Md. Fiaz Hussain Muthavalli of the burial ground and classified as Burial Ground, House site as per the Permanent Land Register maintained by the Mylapore Triplicane Taluk, Chennai - 600 028, while so the question of claiming right over the private lands belongs to some other third parties by the Plaintiff Wakf does not arise at all.

13. In these circumstances, the Trial Court passed an Order dated 22.7.2015 rejecting I.A. No. 4213 of 2015 in O.S.No. 4833 of 2010. It is useful to extract Paragraphs 7 & 8 of the Order, that is questioned in this Petition.

"7. Now the Petitioner/Defendant seek permission of this Court to file Additional Written Statement denying the Plaintiffs title to the Suit property and also claim adverse title. No, doubt the Appellate Court has remanded the Suit for fresh trial in accordance with law with direction to give opportunity to both the parties to lead evidence. But the Defendant cannot take advantage of the same and put forth a plea which is altogether different and contradictory to the earlier plea raised in the Written Statement already filed. The Defendant can be granted permission to file Additional Written Statement provided the averment in the Additional Written Statement are explanatory of the earlier Written Statement filed and also in consonance with the earlier Written Statement and not otherwise.

8. Here in the present case the Defendant is taking a new plea of denial of title of the Plaintiff over the Suit land. This will cause prejudice to the Plaintiff as the Plaintiff was made to believe the averment in the Written Statement already filed and lead evidence based on the Written Statement. Even after the remand the Plaintiff did not lead any further evidence and made an endorsement to close the Plaintiffs side evidence. It is the Defendant who recalled PW1 and cross-examined further and the Suit is now posted for Defendant's side evidence. At this stage, the Petitioner/Defendant has come forward with the present Application to receive Additional Written Statement. The Defendant cannot be permitted to approbate and reprobate at the same time. Therefore, there are no merits in the present Application and the same deserves to be dismissed."

14. I am in agreement with the Order passed by the Trial Court. The Revision Petitioners now cannot take a stand contrary to their pleadings in Paragraphs 8 & 9 of the Written Statement, extracted above. Therefore, the Trial Court thought fit to reject the Application giving reasons as found in Paragraphs 7 & 8 of the Order extracted above. I do not find any infirmity in the Order passed by the Trial

Court.

15. The Civil Revision Petition fails and accordingly, the same stands dismissed. Since the matter is remitted back, the Trial Court is directed to dispose of the Suit in O.S. No.4833 of 2010, within a period of six months from the date of receipt of a copy of this Order. No costs. Consequently, connected Miscellaneous Petition is closed.