

(2003) 10 MAD CK 0001

In the Madras High Court

Case No : Civil Revision Petition No. 2113 of 2002

Sheik Mohammed and Another

APPELLANT

Vs

Shah Abdul Aul Aulad Family Charitable Trust and Others

RESPONDENT

Date of Decision : 07-10-2003

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 14 Rule 1, 9

Citation : AIR 2004 Mad 287 : (2004) 2 LW 97 : (2004) 1 MLJ 477

Hon'ble Judges : V. Kanagaraj, J

Bench : Single Bench

Advocate : V. Kathiravan, for the Appellant;

Final Decision : Allowed

Judgement

V. Kanagaraj, J.—The above Civil Revision Petition has been filed under Article 227 of the Constitution of India praying to set aside the

order dated 25-9-2000 made in O.S. No. 372 of 1999 by the Court of District Munsif, Mannargudi and to direct the said Court to proceed

further in the said suit in accordance with law.

2. On a perusal of the materials placed on record and upon hearing the learned counsel for the petitioner, in the absence of any representation

made on the part of the respondents, in spite of their names having been printed in the list, what comes to be known is that the petitioners herein

had filed the said suit in O.S. No. 372 of 1998 as against the respondents herein for rendition of accounts regarding the first respondent Trust and

for other consequential reliefs on 25-9-2000 since the Counsel for the plaintiffs represented and made endorsement to the effect that the Civil

Court has no jurisdiction to try the said suit, the learned Magistrate, by his order dated 25-9-2000, has returned the plaint to the

petitioners/plaintiffs further directing them to present the same before the Wakf Tribunal. It further comes to be known that when the petitioners have presented the plaint before the Wakf Tribunal, substituted by the Subordinate Judge, Nagapattinam, the said Tribunal rejected the complaint on ground that the Civil Court is having jurisdiction to try the suit since the property in question is not wakf property and only the property of the private trust viz. the first respondent/first defendant. In this backdrop, the petitioners/ plaintiffs have come forward to file the above civil revision petition.

3. During arguments, the learned counsel for the petitioners would submit that the learned counsel appearing for the plaintiffs before the Court below with a bona fide intention, made an endorsement to the effect that the civil Court has no jurisdiction to try the suit and would pray to allow the above civil revision petition so that the suit could be taken on file, renumbered and proceeded with in accordance with law. The learned counsel would also pray to issue a direction to the trial Court to conduct the case in a time bound manner.

4. In consideration of the facts pleaded, having regard to the materials placed on record and upon hearing the learned counsel for the petitioners, the dispute involved in the proceeding initiated before the Court of District Munsif, Mammannargudi, numbered as O.S. No. 372 of 1998 is whether the suit property is a property belonging to the Wakf Board so as to be tried by the Tribunal constituted for deciding such cases or whether the property is one belonging to a private Trust as it has been decided by the Wakf Tribunal?"

5. Since the Court of District Munsif, Mannargudi having original jurisdiction to entertain a suit of such nature, was left with no option but to decide in the manner that it has rejected the plaint thereby referring the matter to the Wakf Tribunal since the counsel for the plaintiffs had endorsed to the effect that it was a "trust property".

6. However, before the Wakf Tribunal, with same lawyer had represented to the effect that it was not a Wakf property but a property belonging to a private Trust as a result of which the Wakf Tribunal has again passed orders requiring the parties to go before the Court of original civil jurisdiction opining that only that Court is having the jurisdiction to entertain the

suits of such nature.

7. Be that as it may. Now the only point for consideration is which is the jurisdictional Court before which the suit in hand shall lie?"

8. In such circumstances, the Court having civil jurisdiction must entertain the suit and prior to settling all other issues involved in the suit, based on

the facts and circumstances, shall frame the legal issue regarding maintainability of the suit as a preliminary issue and allowing parties to place

evidence on record in the manner required under law, shall decide that issue, which will resolve the question of maintainability and shall proceed

according to the result arrived at for the said issue and hence the following order :

In result,

(i) the above civil revision petition is allowed.

(ii) The order dated 25-9-2000 made in O.S. No. 372 of 1998 by the Court of District Munsif, Mannargudi is hereby set aside.

(iii) The petitioners are directed to present the plaint in the above suit before the Court of District Munsif, Mannargudi within thirty days from the

date on which this order copy is made ready.

(iv) The Court of District Munsif, Mannargudi, shall entertain the suit, in the event of petitioners presenting the same as mentioned in clause No. (ii)

above, if it is otherwise in order, and decide the question of maintainability framing the preliminary issue, as aforementioned and act in accordance

with the decision arrived at for that issue and in accordance with law.

(v) Since already a period of five years has lapsed in the exercise of jurisdiction, it has become necessary on the part of this Court to issue yet

another direction to the trial Court to entertain and number the suit out of turn and order the trial and conducting the proceedings as expeditiously

as possible, shall deliver the judgment within one year from the date of presentment of the plaint.

However, in the circumstances of the case, there shall be no order as to costs.