
(2018) 02 MAD CK 0207

In the Madras High Court

Case No : 4316 of 2013 and M P No 1 of 2013 & CMP No 21151 of 2017

The Tamil Nadu Wakf Board

APPELLANT

Vs

Syed Ahmed

RESPONDENT

Date of Decision : 05-02-2018

Acts Referred:

Citation : (2018) 02 MAD CK 0207

Hon'ble Judges : V.M.Velumani

Bench : Single Bench

Advocate : Mohammed Fayaz Ali, N.A.Nissar Ahmed

Final Decision : Allowed

Judgement

1. This Civil Revision Petition is filed to set aside the order dated 27.09.2013 passed by the Wakf Tribunal (1st Assistant City Civil Court,

Chennai) in O.A.No.9 of 2013.

2. The petitioner is the respondent in O.A N.9 of 2013 on the file of Wakf tribunal (I Asst. Judge, City Civil Court), Chennai. The respondents

filed the said OA against the petitioner for permanent injunction restraining the petitioner from interfering with his right for performance of annual

sandal and urs and turn management entitling them to collect and receive the gifts, offerings and hyundial collection during the period mentioned

therein. According to the respondents, as per the judgment of this Court in C.S. No.116 of 1909 confirmed by the Division Bench of this Court in

OSA No.34 of 1910, they are entitled to perform the religious rights and is entitled to the hyundial collection during that period by turn

management. The period of muthawali appointed by the petitioner by order dated 01.01.1991 expired in the year 1996. Subsequently no

muthawalli was appointed. The respondents sought permission of the petitioner to discharge their duties of mujaavar during their turn period for

which the petitioner, by letter dated 12.09.2012 directed the respondents to send a request through Syed Moinuddin. Therefore, the respondents

filed W.P.No.17054 of 2012 before this Court.

2(a) The petitioner informed before this Court that hyundial collection will be deposited with the Wakf board and subsequent to the decision by

competent court, it will be handed over to the respondents. Recording the same, the writ petition was disposed of and not being satisfied with the

said order, the respondent filed W.A. No.1793 of 2012. By order dated 23.08.2012, the Division Bench of this court dismissed the Writ Appeal

confirming the order of this court made in W.P.No.17054 of 2012. In view of the dismissal of Writ Appeal, the respondents filed OA No.9 of

2013 before the wakf tribunal. The respondents also filed application for interim order. According to the petitioner, they filed counter in the

application and reserved their right to file counter in the main OA stating that O.A is not maintainable. According to the petitioner, under Section

83, an application can be filed only if a party is aggrieved by any of the order passed by the petitioner. In the present case, the respondents are not

challenging any of the order of the petitioner. In view of the same only, the suit is maintainable for the relief of permanent injunction and the OA

filed by the respondent is not maintainable before the Wakf Tribunal.

3. The Wakf Tribunal, considering the rival contentions, documents and judgments relied on by the parties, allowed the OA holding that the

Tribunal has got power of the Civil Court and hence OA No.9 of 2013 is maintainable.

4. Against the said order dated 27.09.2013 made in O.A.No.9 of 2013, the petitioner has filed the present Civil Revision Petition.

5. The learned counsel for the petitioner reiterated the averments made in the petition and contentions raised in the grounds of revision. He further

contended that the petitioner filed counter affidavit only in the IA raising the issue of maintainability. The petitioner has reserved their right to file

counter in the main OA. The Tribunal, while considering the interim application and objection of the petitioner with regard to maintainability,

ordered the OA itself.

6. Per contra, the learned counsel for the respondents contended that the Tribunal has properly appreciated all the materials on record, law and judgments relied on by the respondents and allowed the OA by giving valid reason and prayed for dismissal of the Civil Revision Petition.

7. Heard the learned counsel for the petitioner as well as respondents and perused the materials available on record.

8. From the materials available on record, it is seen that the petitioner has filed counter affidavit in the interim application reserving their right to file counter in the main OA. The learned Judge has failed to consider this aspect. Having held that the OA is maintainable, the learned Judge ought to have given an opportunity to the petitioner to file counter in the main OA and contest the same on merits.

9. In view of the failure to give opportunity to the petitioner to contest the OA on merits, the impugned order of the learned Judge is liable to be set aside and it is hereby set aside. Therefore, OA No.9 of 2013 is remitted back to the Tribunal to decide the same afresh on merits and in accordance with law. The petitioner is directed to file their counter statement within a period of three weeks from the date of receipt of a copy of this order. The Tribunal is directed to dispose of the OA within a period of three months thereafter.

10. In the result, this Civil Revision Petition is allowed. No costs. Consequently, connected Miscellaneous Petitions are closed.