



C.R.P.(PD)No.813 of 2023

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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 31.07.2024

CORAM

THE HONOURABLE MR.JUSTICE V.LAKSHMINARAYANAN

C.R.P.(PD)No.813 of 2023

and

C.M.P.No.6212 of 2023

1.LalkhanPallivasal

2.Mohammed Jiyaudeen

3.M.Mohammed Hussain

4.E.S.Mohammed Ali

5.I.Jawahar

6.K.Jamal Hussain

7.M.Jahir Hussain

.. Petitioners

Vs.

Shahinsha Khaja Mainudeen

.. Respondent

Prayer : The Civil Revision Petition is filed under Article 227 of Constitution of India, to set aside the fair and decretal order, dated 15.11.2022, passed in I.A.No.101 of 2022 in O.S.No.404 of 2021 on the file



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of the learned II Additional District Judge at Chidambaram.

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For Petitioners : Mr.S.A.Sayed Shuhaibb

For Respondent : Mr.A.Muthukumar

ORDER

The present Civil Revision Petition arises against an order passed by the learned II Additional District Judge at Chidambaram in I.A.No.101 of 2022 in O.S.No.404 of 2021 dated 15.11.2022.

2. For the sake of convenience, the parties will be referred to as per their rank in the suit.

3. I.A.No.101 of 2022 was filed invoking the Order VII Rule 11 of the Code of Civil Procedure and Order VII Rule 10(A) of the Code of Civil Procedure pleading that the civil Court does not have jurisdiction to deal with the issues raised in the suit, and it should be appropriately dealt with only by the Wakf Tribunal created under Section 83(1) of the Wakf Act.



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4. The plaintiff presented a suit in O.S.No.404 of 2021 pleading that he had been in possession of the property even during the Inam settlement proceeding, and that after the Tamil Nadu Minor Inams (Abolition and Conversion into Ryotwari) Act, 1963 [Tamil Nadu Act 30 of 1963], the Government had taken over the estate, and directed an enquiry to be conducted. He would plead that in terms of Section 13 of the said Act, Patta that was originally refused by the settlement officer, had been granted by the Inam Tribunal - cum - learned Subordinate Judge at Cuddalore on 30.06.1983. He would also state that he had constructed a building and was running a school therein.

5. The original grantee, namely one M.A.Khader, passed away and his legal representatives are the plaintiff and defendant Nos.4 to 6. The plaintiff filed an application for grant of Patta in terms of the order passed by the Inam Tribunal on 30.06.1983, and since that was not considered, he filed a suit for mandatory injunction and another suit for declaration that they are entitled for the occupancy right in terms of Tamil Nadu Act 26 of 1963. He would plead that pending these two proceedings, the civil revision



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petitioners/defendants took possession of the property in a manner not accordance with law. His specific pleading is that the defendants had demolished the superstructure raised by the plaintiff and took possession of the property. Hence, he invoked the provision of Section 6 of the Specific Relief Act, and presented the suit. This suit was taken on file as O.S.No.404 of 2021 by the learned Principal District Judge at Cuddalore. It is now pending before the learned II Additional District Judge at Chidambaram.

6. On service of summons, the defendants entered appearance and took out an application for return of the plaint. This application was numbered as I.A.No.101 of 2022.

7. Their simple plea is that the civil Court is not conferred with the jurisdiction under Section 6 of the Specific Relief Act, and it is the Wakf Tribunal constituted under the Wakf Act, 1995 which has the jurisdiction to deal with the issue.

8. The learned Judge ordered notice in the application and received a counter.



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WEB COPY 9. *Inter alia*, the counter pleaded that the suit under Section 6 of the Specific Relief Act deals with the power of the Court to direct the restoration of the possession when a person is dispossessed not in a manner accordance with law. It would further state, the purpose for which the Wakf Act, 1995 had been enacted was to confer jurisdiction on the Wakf Tribunal to deal with any dispute, question or other matters relating to Wakf or Wakf property, and also to verify whether the property is Wakf property or not. It is not conferred with the powers to deal with situations of forcible dispossession.

10. After receipt of the counter, the learned II Additional District Judge at Chidambaram came to the conclusion that the civil Court has jurisdiction under Section 6 of the Specific Relief Act and it is not the Writ Tribunal which has the jurisdiction, and dismissed the application. Against which, the present revision has been presented before this Court.

11. Heard Mr.S.A.Sayed Shuhaibb, appearing on behalf of the petitioners and Mr.A.Muthukumar, appearing on behalf of the respondent.

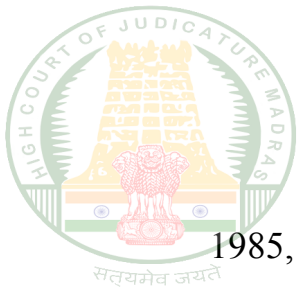


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WEB COPY 12. Mr.S.A.Sayed Shuhaibb would argue that in terms of Section 83(1) read with Section 83(5) of the Wakf Act, the Wakf Tribunal is deemed to be a civil Court and therefore, the suit is not maintainable before the civil Court.

13. He would state that since the jurisdiction of the Tribunal is specific and clear, the civil Court cannot seize jurisdiction over the issue. He would plead that by virtue of an order passed in S.T.A.No.51 of 1988 dated 05.09.1996, the order of the Inam Tribunal in I.A.T.A.No.137 of 1978, dated 30.06.1983, had been set aside by this Court.

14. He would also draw my attention to the suit registered in O.S.No.40 of 1970 in order to plead that the Wakfs/civil revision petitioners obtained the decree for delivery of possession from the predecessor in title, namely M.A.Khader, the person through whom the plaintiff claims the right of possession. He would state that the suit, which had been originally dismissed by the learned trial Judge, was restored in appeal in A.S.No.46 of



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1985, and the second appeal preferred by M.A.Khader in S.A.No.21 of 1988

was also dismissed for default. Therefore, he would plead that the plaintiff has no right in the property and the property belongs to the defendants/Wakfs. Hence, he would plead that the civil Court jurisdiction being ousted, the revision be allowed, and the suit be sent to the file of the Wakf Tribunal at Chennai.

15. Per contra, Mr.A.Muthukumar would submit that this suit does not relate to any dispute relating to the title of the Wakf property. He would point out that the Wakf Tribunal has jurisdiction only with respect to the matters covered under the Wakf Act, and would invite the attention of the Court to various provisions as set forth in Paragraph No.7 of the counter affidavit. He would state that the plaintiff had been forcibly dispossessed and hence, he has invoked the jurisdiction under Section 6 of the Specific Relief Act, and this power is conferred only on the civil Court.

16. I have carefully considered the arguments on either side and I have carefully gone through the records available.



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17. This is a proceeding which arises under Order VII Rule 11 of the Code of Civil Procedure read with Order VII Rule 10(A) of the Code of Civil Procedure. While dealing with an application for rejection of plaint, I am concerned only with the averments made in the plaint and the plaint alone. I am not entitled to look into the defendants' written statement or the documents that had been presented by the defendants for the perusal of the Court. With this legal aspect in mind, I proceed to discuss the merits of the case.

18. A reading of the plaint shows that the plaintiff has specifically pleaded that he had constructed a building over the suit schedule mentioned property. He had been running a School therein. On account of the objection that had been given by the then executive officer of the defendants/Wakf, the school was closed. Thereafter, the plaintiff had presented a suit restraining the defendants not to interfere with his possession. The said suit is still pending.

19. Invoking the liberty granted by the Inam Tribunal - cum - learned Subordinate Judge at Chidambaram, the plaintiff had filed suits seeking



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declaration on the possessory rights in terms of the Tamil Nadu Minor Inams (Abolition and Conversion into Ryotwari) Act, 1963 [Tamil Nadu Act 30 of 1963], and had also sought mandatory injunction directing the Government to grant him a Patta. These two proceedings were in O.S.No.71 of 2014 on the file of the learned District Munsif at Chidambaram and in O.S.No.114 of 2014 on the file of the learned Additional District Munsif at Chidambaram. Therefore, a reading of the plaint shows that atleast till 2014, the plaintiff's possession had not been disturbed by the defendants.

20. The plaint concedes that the superstructure which had been put up by the plaintiff came to be demolished by the defendants on 11.01.2021 during the height of Covid-19 pandemic. Therefore, invoking the provision of Section 6 of the Specific Relief Act, the plaintiff has filed a suit stating that he had been forcibly dispossessed.

21. Section 6 of the Specific Relief Act is not concerned with the title of the defendants or the plaintiff. In case, the plaintiff proves that he is in the possession of the property and that he had been dispossessed without his



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consent, otherwise in due course of law, then he is entitled to present the
plaint seeking recovery of possession of the said property. This provision is
not something new to the Specific Relief Act, 1963 but corresponds to
Section 9 of the Specific Relief Act, 1877. It has been the position of law in
this country that no person can take law in his own hand and dispossess the
another, who is in the settled possession of the property, except by taking
recourse to law.

22. Section 6 of the Specific Relief Act merely given a statutory
protection to this position of law. The only condition is that the suit should
be brought within a period of six months from the date of dispossession, and
no such suit shall lie against the Government pleading unlawful
dispossession.

23. It is pertinent to point out that the Specific Relief Act itself under
Section 6(4) excludes the probe of title in such a proceeding. Leaving it
open to the plaintiff, in case, he suffers a decree of dismissal to file a suit for
declaration of his title. Reading Section 6(1) and Section 6(4) of the said
Act together makes it very clear that a person who is forcibly dispossessed



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can always seek the assistance of the Court for recovery of possession of the property from which he has been forcibly dispossessed.

24. Now I turn to the provisions of the Wakf Act, 1995. Section 85 of the Wakf Act makes it clear that the bar of jurisdiction of civil, revenue and other authority to deal with any dispute, question or other matters relating to the Wakf/Wakf property is confined only to a matter that has to be determined by the Wakf Tribunal. If the Wakf Act has created the means of resolution of the dispute through the Wakf Tribunal, then the civil Court or revenue Court or any other authority will not have jurisdiction to deal with the same. The jurisdiction of the Wakf Tribunal is covered under Section 83(1) of the Wakf Act. Under Section 83(1) of the Wakf Act, the Wakf Tribunal possesses the following powers :

(1) Any dispute, question or any other matters relating to the Wakf/Wakf property.

(2) Eviction of a tenant or determination of rights and obligations of lessor and lessee over such property.

25. The power of the Wakf Tribunal is limited, whereas, the



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jurisdiction of the civil Court is plenary. Reference made by the learned counsel to Section 83(5) of the Wakf Act stating that the Wakf Tribunal is also deemed to be a civil Court, and therefore, it possess the power under Section 6 of the Specific Relief Act is unfounded. Section 83(5) of the Wakf Act confers the power of the civil Court on the Wakf Tribunal for the purpose of dealing with the issues on which the jurisdiction has been conferred on it under Section 83(1) of the Wakf Act. Section 83(5) is not a stand alone provision. The Wakf Tribunal cannot be a substitute for a regular civil Court. The power under Section 6 of the Specific Relief Act not having been conferred on the Wakf Tribunal, the submissions of the learned counsel for the civil revision petitioner are misplaced.

26. In the light of the clear and categorical pleading of the plaintiff that he had been forcibly dispossessed during the height of the Covid-19 pandemic, I find that the suit is maintainable before the civil Court. Therefore, I have no other option than to confirm the order passed by the learned II Additional District Judge at Chidambaram in I.A.No.101 of 2022 in O.S.No.404 of 2021 dated 15.11.2022.



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27. In fine, the Civil Revision Petition stands dismissed. No costs.

Consequently, the connected Civil Miscellaneous Petition is closed.

28. The proceeding being summary in nature, the learned II Additional District Judge at Chidambaram is requested to dispose of the suit, subject to the pendency in that Court, within a period of nine months from the date of receipt of a copy of this order.

31.07.2024
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Index:Yes/No
Speaking Order :Yes/No
Neutral Citation:Yes/No

V. LAKSHMINARAYANAN, J.

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To

The learned II Additional District Judge,
Chidambaram



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