



S.A.No.356 of 2017

WEB COPY IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.12.2023

CORAM

THE HONOURABLE MR. JUSTICE S.SOUNTHAR

S.A.No. 356 of 2017and
C.M.P.No.8288 of 2017

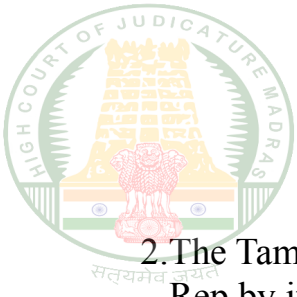
- 1.Muhebur Rahman (died)
- 2.Abdul Rahman
- 3.Mohamed Azam
- 4.Ghouse Mohideen
- 5.Khaja Mohideen
- 6.Humera Begum
- 7.Maimuna Begum
- 8.Mustarii Begum
- 9.Matheen Ahmed
- 10.Mustaq Ahmed

(Appellants 8 to 10 brought on record as
LR's of the deceased 1st appellant vide order
dated 28.04.2022 made in CMP.No.7546,
7549, 7567/2017 in S.A.No.356 of 2017

...Appellants

Vs.

- 1.Masjid-E-Osmania Mosque Committee,
Chintadripet, Madras, rep by its
Secretary, Noorullah
No.82, Ayya Mudali Street,
Chintadripet
Chennai-600 002.
(President of R1 Mosque is substituted by
Secretary, Noorullah vide Court order dated 02.11.2023
made in CMP.No.22390/2023 in S.A.No.356 /2017)



S.A.No.356 of 2017

2.The Tamil Nadu Wakf Board
Rep by its Secretary
No.1, Jaffar Sarang Street
Chennai-600 002.

K.Ramu(Died)

3.Abid Ali
M/s.Babiji Stores
No.4,Agraharam Street
Chintadripet, Chennai-600 002.

4. Rita Stores
Prop.Amalraj
No.4,Agraharam Street
Chintadripet, Chennai-600 002.

5.M.S.Abdul Rahman
Prop.M.S.Fancy Stores
No.103, Ayya Mudali Street,
Chintadripet, Chennai-600 002.

6.C.M.Mohamed
Prop.Sofia Stores
No.103, Ayya Mudali Street,
Chintadripet, Chennai-600 002.

7. Senthamarai

8. Syed Rahmath
Prop.Chand Cycle Shop
No.5, Agraharam Street,
Chintadripet, Chennai-600 002.

9.Syed Khaleel
Charcoal Business
No.5, Agraharam Street,
Chintadripet, Chennai-600 002.



S.A.No.356 of 2017

- 10.Ramesh
11.Chand Basha
12.Mallika Begum
13.Abida Begum
14.Pyari Begum
15.Ryhana
16.Wahita
17.Noorulla Basha
18.Senbagam
19.R.Kishore Kumar
20.J.Jamuna Rani
21.R.Sathish Kumar
(respondents 18 to 21 are widow and
children of 3rd respondent, K.Ramu)

...Respondents

PRAYER: Second Appeal filed under Section 100 of the Civil Procedure Code, to set aside the judgment and decree passed in A.S.No.321 of 2014 dated 08.11.2016 on the file of the learned XVIII Additional Judge, City Civil Court, Madras reversing the judgment and decree passed in O.S.No.15014 of 1996 dated 16.04.2014 on the file of learned I Assistant Judge, (Wakf Tribunal), City Civil Court, Madras.

For Appellants : M/s.S.Sadasharam
For Respondent 1 : Mr.A. Abdul Ravoof
For Respondent 2 : M/s.C.Sankar
Standing Counsel for Wakf Board
For respondents 3 to 21 : Batta due



S.A.No.356 of 2017

WEB COPY

JUDGEMENT

The legal representatives of deceased defendants 1 and 5 are the appellants. The 1st respondent herein filed a suit seeking declaration of title and recovery of possession against appellants' predecessor and other respondents. The suit was dismissed by the Trial Court. The appeal filed by the 1st respondent was allowed and the suit was decreed as prayed for. Aggrieved by the same, the 1st defendant and legal representatives of 5th defendant have filed the second appeal. Pending the second appeal, the 1st defendant died and his legal representatives were brought on record as appellants 8 to 10. The 1st respondent/plaintiff is the contesting party in this second appeal. The respondents 3 to 21, who are not served are only Co-defendants and hence notice to them is not necessary.

2. According to the 1st respondent/plaintiff, the suit property belonged to 1st respondent Wakf. The predecessor in interest of deceased defendants in the suit O.C.Mohamed Hashim filed a suit in O.S.No.1360 of 1960 on the file of City Civil Court, Madras praying for declaration that present suit properties were



S.A.No.356 of 2017

properties of the private Wakf and for other reliefs. Later on, he issued a letter admitting the title of the 1st respondent Wakf and agreed to act as trustee of the Wakf. The 2nd respondent Wakf Board sent a reply letter stating that once properties were declared as wakf properties, the other consequences would automatically follow. It was also stated that declaration of O.C.Mohamed Hashim as hereditary trustee of the wakf would be outside the scope of that suit. Recording these letters namely letter by plaintiff and letter by O.C.Mohamed Hashim, plaintiff in the earlier suit and the letter by counsel for the Wakf Board, the suit was dismissed as withdrawn. Therefore, the title of the 1st respondent over the present suit properties were conferred as early as 1960 with the dismissal of the suit. The predecessor of the appellants and respondents 3 to 21 illegally occupied the suit properties and therefore, the notice was issued by the 1st respondent/plaintiff calling upon them to surrender the possession. Since the contesting respondents failed to act upon the notice dated 15.04.1987, the 1st respondent was constrained to file a suit for declaration of title and recovery of possession.

3. The appellants and other respondents 3 to 21 resisted the suit by denying the title of the 1st respondent over the suit property. It was also

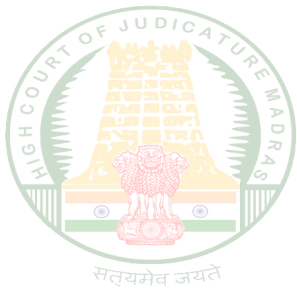


S.A.No.356 of 2017

contended by them that 1st defendant had been collecting rent from the other defendants in his capacity as beneficiary under Wakf-alal-aulad. Therefore, when 1st respondent Wakf had no title over the suit property, the present suit filed seeking declaration of title and recovery of possession was not maintainable.

4. The Trial Court, on consideration of oral and documentary evidence available on record, came to the conclusion that 1st respondent failed to prove its title over the suit property and consequently not entitled to relief sought for in the suit. Aggrieved by the said judgment and decree, the 1st respondent preferred an appeal in A.S.No.321 of 2014 on the file of learned XVIII Additional Judge, City Civil Court, Chennai. The First Appellate Court, on re-appreciation of evidence available on record, came to the conclusion that 1st respondent proved its title over the suit property and consequently granted decree for declaration and recovery of possession. Aggrieved by the said judgment, the appellants have come by way of second appeal.

5. This Court at the time of admission formulated following substantial questions of law vide order dated 23.11.2023 and the same reads as follows:-



S.A.No.356 of 2017

WEB COPY

“1) Whether the First Appellate Court is justified in granting a relief of declaration without giving positive findings based on the Exhibits marked on the side of the plaintiff?

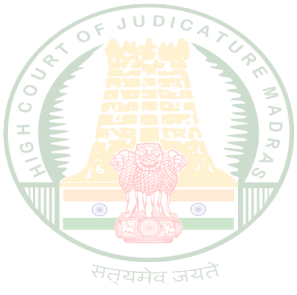
2)Whether the judgment of the First Appellate Court is vitiated by it's failure to follow mandate under Order 41 Rule 31 of CPC?”

6. After hearing submissions of learned counsel for either side and on perusal of records, this Court formulated following additional substantial question of law.

“3. Whether first appellate Court is justified in relying on revenue documents/patta namely Town Survey Registers not marked before it and arrived at a finding?”

The counsel for both the side are heard on 3rd question of law also.

7. The learned counsel for the appellants raised the following points during his arguments.



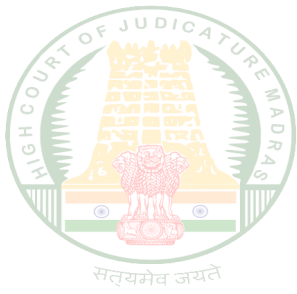
S.A.No.356 of 2017

WEB COPY

i) the 1st respondent failed to file any title document to prove its title over the suit property. The proforma report of the Wakf Board marked as Ex.A13 clearly mentioned that 1st respondent had no title deed. In such circumstances, the First Appellate Court ought not to have declared the title in favour of 1st respondent.

ii) The learned counsel further submitted that even assuming the suit properties were mentioned as properties of 1st respondent Wakf in the notification issued after the survey as contemplated under Wakf Act, any suit challenging the correctness of the same shall be filed within one year under Section 6(1) of Wakf Act, 1954 and the present suit filed by the 1st respondent after several years is time barred.

iii) The appellants filed tax receipts for the building in the suit property in the name of their predecessor. When the building is assessed in the name of appellants' predecessor, the 1st respondent is not entitled to claim ownership over the suit property.



S.A.No.356 of 2017

WEB COPY

iv) The learned counsel further submitted that First Appellate Court without framing any points for consideration by way of cryptic order came to the conclusion that 1st respondent proved its title over the suit property and decreed the suit and therefore, the said judgment and decree passed by the First Appellate Court is liable to be set aside.

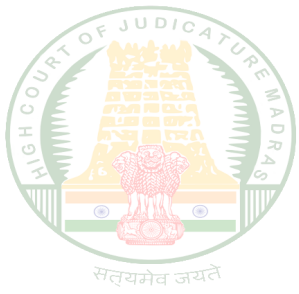
8. The learned counsel for the 1st respondent/plaintiff submitted that the predecessor in interest of appellants namely O.C.Mohamed Hashim filed a suit in O.S.No.1360 of 1960 seeking declaration that present suit properties were private properties of his family subject to the interest of Wakf-alal-aulad and the said suit was dismissed as withdrawn on the basis of the letters circulated by plaintiff therein, admitting the suit properties as properties of 1st respondent Wakf and therefore, the appellants, who are claiming right under said O.C.Mohamed Hashim are not entitled to deny the title of the 1st respondent. The learned counsel further submitted that in order to prove the suit properties belonged to the 1st respondent Wakf, they produced Ex.A13, proforma issued by the 2nd respondent Wakf Board mentioning the suit properties as property of the 1st respondent Wakf. The proforma issued by the 2nd respondent Wakf Board is



S.A.No.356 of 2017

corroborated by revenue documents namely Town Survey Register stands in the name of 1st respondent Wakf under Exhibits which were marked as Ex.A19 to Ex.A23 before the First Appellate Court. Taking into consideration all these documents, the First Appellate Court rightly came to the conclusion that 1st respondent Wakf had proved its title over the suit property and the same requires no interference by this Court.

9. The learned counsel for the 2nd respondent Wakf Board submitted that when suit properties were included in the notification published under Section 4, 5 and 6 of Old Wakf Act and the properties were declared as Wakf properties, the same cannot be disputed by any person aggrieved after expiry of one year period. In the case on hand, the predecessor of appellants filed a suit challenging the notification issued in respect of suit properties in favour of 1st respondent Wakf in the year 1968 itself and the said suit was withdrawn. In these circumstances, the arguments raised by the learned counsel for the appellants disputing the correctness of the notification including the suit properties as Wakf property cannot be accepted.



S.A.No.356 of 2017

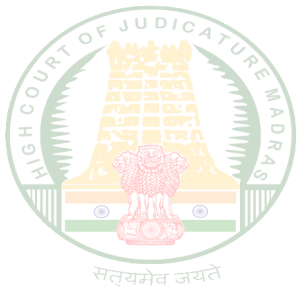
WEB COPY

10. The 1st respondent herein filed a suit seeking declaration of title and for consequential recovery of possession. The suit was mainly contested by the defendants by denying the title of the 1st respondent Wakf. In order to prove the title of the 1st respondent Wakf, the proforma issued by the 2nd respondent Wakf Board was produced as Ex.A13. A perusal of Ex.A13 would suggest that suit properties were shown to be the properties of the 1st respondent Wakf. In addition to Ex.A13, the First Appellate Court also relied on Ex.A19 to Ex.A23 Town Survey Registers in the name of 1st respondent Wakf and came to the conclusion that the suit property is the property of the 1st respondent wakf. However, in Paragraph 9 of its judgment, the First Appellate Court mentioned on behalf of 1st respondent/plaintiff, only 18 documents were marked as Ex.A1 to Ex.A18 and no additional oral and documentary evidence was produced by the parties in first appeal. However, in Paragraph 14 of its judgment, the First Appellate Court relied on revenue documents namely Ex.A19 to Ex.A23. It is not clear that how the First Appellate Court referred to certain documents when only 18 Exhibits were marked on behalf of the 1st respondent/plaintiff before the Trial Court. When this discrepancy was pointed out, the learned counsel for 1st respondent Wakf submitted that 1st respondent filed an application for reception



S.A.No.356 of 2017

of additional evidence and Town Survey Registers were marked as Ex.A19 to Ex.A23 before the First Appellate Court. However, in the impugned judgment passed by the First Appellate Court, there is no reference about the marking of additional evidence before the First Appellate Court. However, in paragraph 9 of judgment it is clearly mentioned by the First Appellate Court that no additional oral and documentary evidence was produced by both the parties in the appeal. In such circumstances, it is not clear how First Appellate Court relied on Ex.A19 to Ex.A23 when only 18 Exhibits were marked on behalf of the 1st respondent. This Court also perused the original records received from the Courts below. In the original records, only Ex.A1 to Ex.18 are available and the alleged Ex.19 to Ex.23 referred to by the First Appellate Court are not available in the original records also. Therefore, the First Appellate Court appeared to have committed an error in relying on certain documents which were not marked either before Trial Court or before it by following procedure under Order 41 Rule 27 of CPC. Therefore, the final conclusion arrived at by the First Appellate Court with regard to the title of the 1st respondent based on Town Survey Registers which were not marked before the Trial Court is liable to be set aside. The third question of law is answered accordingly in favour of appellants.

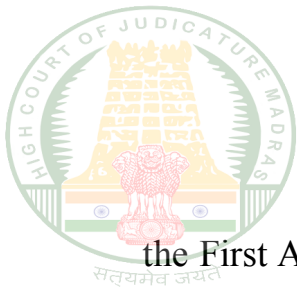


S.A.No.356 of 2017

WEB COPY

11. The first appellate Court as a final court of facts ought to have framed specific points for consideration and ought to have recorded its reasons for conclusion on each of the points. At least it should have considered all the points in respect of which parties are at loggerheads. In the case on hand, the points for consideration framed by first appellate Court is vague and not specific about controversies involved between the parties. The first appellate Court neither framed specific points for consideration nor substantially complied with Order 41 Rule 31 by discussing points of controversies between the parties. Further, documents not marked before Trial Court were taken into consideration. There is no reference about marking of additional documents before First Appellate Court. Hence, the mandate under Order 41 Rule 31 has not been substantially complied with and the first appeal has not been disposed satisfactorily by the final Court of facts. Hence, question of law one and two are also answered accordingly in favour of appellants.

12. In view of the discussions made earlier, there is a lack of clarity in the judgment passed by the First Appellate Court whether any additional evidence was let in by the parties before it or not. The additional documents relied on by



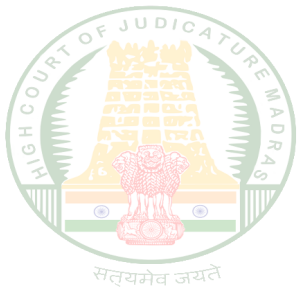
S.A.No.356 of 2017

the First Appellate Court are also not available in the original records forwarded by the Courts below to this Court. In these circumstances, the matter requires re-hearing by the First Appellate Court based on the records available before it. It is not clear whether the application filed by the 1st respondent for reception of additional evidence was considered or not. Whenever petition for reception of additional evidence is filed, it shall be considered along with appeal. In such circumstances, I feel, it would be appropriate to remand the matter to the file of first appellate Court with liberty to both the parties to lead additional evidence in accordance with law.

13. With these observations, the second appeal stands allowed.

a) by setting aside the judgment and decree passed in A.S.No.321 of 2014 dated 08.11.2016 on the file of the learned XVIII Additional Judge, City Civil Court, Madras reversing the judgment and decree passed in O.S.No.15014 of 1996 dated 16.04.2014 on the file of learned I Assistant Judge, (Wakf Tribunal), City Civil Court, Madras.

b) the matter is remanded back to the file of first appellate Court with liberty to both the parties to lead additional evidence in accordance with law.



S.A.No.356 of 2017

WEB COPY

c) The First Appellate Court is directed to dispose of the appeal within a period of six months from the date of receipt of a copy of this order.

d) In the above facts and circumstances of the case, there will be no order as to costs.

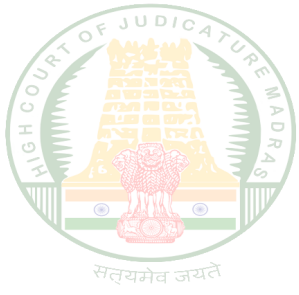
e) Consequently, connected miscellaneous petition is closed.

15.12.2023

Index : Yes/No
Internet : Yes/No
Neutral Citation Case : Yes/No
nr

To

- 1.The learned XVIII Additional Judge, City Civil Court, Chennai
- 2.The learned I Assistant Judge, (Wakf Tribunal), City Civil Court, Chennai.



WEB COPY



S.A.No.356 of 2017

S.SOUNTHAR, J.

nr

S.A.No. 356 of 2017
and
C.M.P.No.8288 of 2017

15.12.2023