

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29.6.2007

CORAM

THE HON'BLE MR.JUSTICE S.ASHOK KUMAR

CRP(PD) No. 1250 of 2006
and M.P.Nos. 1 + 1 of 2007

1. Samuthra Vijaya Nainar
2. Baskara Nainar
3. Kamalabai Ammal
4. Vijayabal Nainar
5. Ramesh
6. P.Baskar @ Kuppan ... Petitioner

Vs.

1. Sirukadambur Masjid
rep. By its Muttavallis
1. Syed Basheer
2. Syed Ghouse
3. Syed Jani
4. Syed Shadullah
2. Virushabadoss nainar
3. Anthony
4. Sugantha Bai
5. Valliammal
6. Dhanamathi
7. Mani Megala ... Respondents

Civil Revision Petition is filed against the order of transfer of the suit to the file of the learned Principal District Judge, Villupuram made in Original Suit No: 230 of 1990, dated 15.7.2004 by the learned Additional District Munsif, Gingee.

For Petitioner : Mr.T.R.Rajaraman
For Respondent : Mrs.N.Mala

ORDER

This Civil Revision Petition is filed by the defendants against the order of transfer of the suit No.230 of 1990 to the file of the learned Principal District Judge, Villupuram made by the learned District Munsif, Gingee.

2. The factual matrix of the case is as follows:-

The defendants are the revision petitioners herein. The first respondent/plaintiff filed the suit for declaration and recovery of possession. The defendants contested the same by filing their written statement. The District Munsif Court, Gingee took the suit for trial and framed the issue of jurisdiction of the court as additional issue. After a full-fledged trial, the learned District Munsif, Gingee dismissed the suit on the issue of jurisdiction holding that the properties are Wakf properties and the civil court has no jurisdiction to try the same as per Section 85 of the Wakf Act, 1995, and further directed the parties to the suit to appear before the District Court, Villupuram. However, the District Judge, Villupuram questioned the validity of transfer made by the learned District Munsif, Gingee. On receipt of the query, the learned District Munsif, Gingee answered that after a full-fledged trial, the suit is not found maintainable before the civil court as the properties are Wakf properties and hence the civil court has no jurisdiction and requested the learned District Judge to once again transfer the same to the Tribunal. On receipt of the reply from the learned District Munsif, the learned District Judge, Villupuram transferred the case from his file to the Wakf Tribunal, Villupuram. But, no notice has been issued by the Wakf Tribunal to the defendants and the defendants themselves appeared before the Tribunal through their counsel. The defendants have not even been furnished with the order of transfers passed by the learned Judges even though they have applied for copy applications. Hence the present revision challenging the order of the learned District Judge, in transferring the matter to the Wakf Tribunal.

3. It is not in dispute that the learned Principal District Judge is empowered to transfer any proceeding pending before its subordinate Courts under Section 24 of the Code of Civil Procedure. Admittedly, the present suit was taken on file by the learned District Munsif, Gingee and after a full-fledged trial, dismissed the suit holding that civil court has no jurisdiction and only a Wakf Tribunal can decide the matter as the properties are Wakf properties. Therefore, even the power of the District Judge vested under Section 24 CPC ceases. However the learned District Munsif, wrongly transferred the suit to the learned District Judge, Villupuram for necessary action. The District Judge, Villupuram also after getting a clarification from the District Munsif, Gingee, transferred the suit to the Wakf Tribunal.

4. But, a reading of Section 7(5) of the Wakf Act, 1995 would establish that the Tribunal shall not have jurisdiction to determine any matter which is the subject matter of any suit or proceeding instituted or commenced in a civil court

under Sub section (1) of Section 6, before the commencement of the said Act or which is the subject matter of any appeal from the decree passed before such commencement in any such suit or proceeding or of any application for revision or review arising out of such suit, proceeding, or appeal, as the case may be. In other words, any matter which is pending before any court of law before the commencement of the Wakf Act, 1995 has to be tried before the same court and the Wakf Tribunal has no jurisdiction to take cognizance of the suit or proceeding instituted before the commencement of the said Act. Admittedly, the suit is of the year 1990 and therefore the Wakf Tribunal has no jurisdiction to entertain the suit as it was instituted prior to the commencement of the Wakf Act, 1995.

5. Similar issue was taken up for consideration by the Hon'ble Supreme Court in *Sardar Khan and others Vs. Syed Najmul Hasan (Seth) and other*, reported in 2007 (2) CTC 508, wherein their Lordships have categorically held that on a reading of Section 7(5) and 83 of the Wakf Act it is seen that Section 85 of the Wakf Act will not be applicable to pending suits or proceeding or revision which have commenced prior to 1.1.1996. The relevant portions are:-

"15. By virtue of Sub-section (5) of Section 7, it clearly transpires that the Tribunal shall not have jurisdiction to determine any matter which has the subject matter of any suit or proceeding instituted or commenced in a civil court under sub section (1) of Section 6, before the commencement of this Act, i.e., if any suit has been instituted in any civil court prior to coming into force of the Wakf Act, 1995, then the Tribunal will have no jurisdiction to decide such matter and it will be continued and concluded as if Act has not come into force.

Xx xx xx xx xx

18. On a conjoint reading of Sub section (5) of Section 7 and Section 85, the result would be that the Act will not be application to the pending suits or proceedings or appeals or revisions which have commenced prior to 1.1.1996 i.e., coming into force of the Wakf Act, 1995. ..."

6. The above judgment of the Hon'ble Apex Court squarely applicable to the facts of the present case in the present case as well, the institution of the suit is in the year 1990 i.e., prior to the commencement of the Wakf Act, 1995. Therefore, it is only the District Musnif Court, Gingee has got the jurisdiction to try the suit and the Wakf Tribunal does not have jurisdiction to try the same.

7. In the result, the order of the learned District Munsif, Gingee dated 15.7.2004 in transfer the suit to the Prl.District Judge, Villupuram and also the order of the learned Principal District Judge, Villupuram, dated 5.8.2005 in transferring the same to the Wakf Tribunal are set aside as the same are erroneous and against law and the Wakf Tribunal is directed to transfer to suit to the file of the learned District Munsif, Gingee for deciding other issues in the suit. It is also made clear that the plaintiff is at liberty to prefer a fresh suit if so advised before the Wakf Tribunal (Sub-Court) Villupuram. CRP is disposed of accordingly. Consequently, connected M.Ps are closed. No costs.

gkv

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

Copy to:

The Wakf Tribunal, Villupuram.

The Addl.District Munsif.
Gingee.

The Prl.District Judge, Villupuram.

+ one cc to Mr. T.R. Rajaraman, Advocate sr no. 39175

+ one cc to M/s. N,. mala, Advocate sr no. 39094

ssv(co)
nm(09.07.07)

CRP(PD)No.1250 of 2006