

C.R.P.(MD).Nos.2139, 2140 and 2141 of 2010

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT  
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RESERVED ON: 11.08.2023

DELIVERED ON: 25.08.2023

CORAM

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

C.R.P.(MD).Nos.2139 to 2141 of 2010

CRP(MD).No.2139 of 2010

Puraiyur Muslim Munnetra Sabai  
A1-Masjithul Mahmoor  
Rep.by its President  
T.N.Ithris Shafi

....Petitioner

Vs

1.Antony Francis alias Mookkan(died)

2.Tamil Nadu Wakf Board  
Through its Chief Executive Officer  
D.No.7/4, 9<sup>th</sup> Cross Street  
Indira Nagar, Adayar  
Chennai -20

3.A.Ladislav

4.A.Jerold

5.A.Jansi

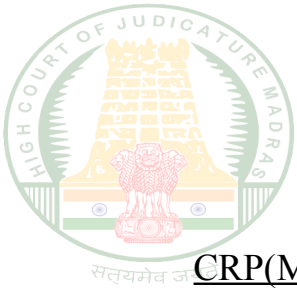
6.A.Trancy

7.A.Julian

(Respondents 3 to 7 are brought on record as  
legal heirs of deceased 1<sup>st</sup> respondent vide Court  
order dated 31.01.2020)

....Respondents

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Puraiyur Muslim Munnetra Sabai  
A1-Masjithul Mahmood  
Rep.by its President  
T.N.Ithris Shafi

....Petitioner

Vs

1.Pakkil Fernando alias Thommai Inyas Fernando (died)

2.Tamil Nadu Wakf Board  
Through its Chief Executive Officer  
D.No.7/4, 9<sup>th</sup> Cross Street  
Indira Nagar, Adayar  
Chennai -20

3.Jeromans(died)

4.Rajareeham

5.Antony Francis Virgin

6.Vennitta

....Respondents

(Respondents 3 to 6 are brought on record as legal heirs of the deceased 1<sup>st</sup> respondent vide Court order dated 31.01.2020)

(Memo is USR.No.3356/2021 is recorded as R3 is died and Respondents 4 to 6 who are already on record are recorded as legal heirs of the deceased R3 vide Court order dated 10.02.2021)

CRP(MD).No.2141 of 2010

Puraiyur Muslim Munnetra Sabai  
A1-Masjithul Mahmood  
Rep.by its President  
T.N.Ithris Shafi

....Petitioner

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Vs

1.Maria alias Mariammal (died)

2.Tamil Nadu Wakf Board  
Through its Chief Executive Officer  
D.No.7/4, 9<sup>th</sup> Cross Street  
Indira Nagar, Adayar  
Chennai -20

3.Eugene

4.R.Devi

5.Theresal

....Respondents

(Respondents 3 to 5 are brought on record as legal heirs of the deceased 1<sup>st</sup> respondent vide Court order dated 31.01.2020)

**PRAYER in CRP(MD).No.2139 of 2010:** Civil Revision Petition filed under Section 83(9) Proviso of Wakf Act, 1995, to set aside the judgement and decree order dated 22.02.2010 made in O.S.No.144 of 2003 on the file of the Wakf Tribunal, Sub Court, Tuticorin to decree the same.

**PRAYER in CRP(MD).No.2140 of 2010:** Civil Revision Petition filed under Section 83(9) Proviso of Wakf Act, 1995, to set aside the judgement and decree order dated 22.02.2010 made in O.S.No.145 of 2003 on the file of the Wakf Tribunal, Sub Court, Tuticorin to decree the same.

**PRAYER in CRP(MD).No.2141 of 2010:** Civil Revision Petition filed under Section 83(9) Proviso of Wakf Act, 1995, to set aside the judgement and decree order dated 22.02.2010 made in O.S.No.147 of 2003 on the file of the Wakf Tribunal, Sub Court, Tuticorin to decree the same.

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For Petitioners : Mr.Mohammed Ibrahim Saibu  
for Mr.A.Arumugam in all the revisions

For Respondents : Mr.S.A.Ajmal Khan  
For R2 in all the revisions

: Mr.S.Selva Aditya  
For Mr.G.Prabhu Rajadurai  
For R3 to R7 in CRP.No.2139 of 2010  
For R4 to R6 in CRP.No.2140 of 2010  
& For R3 to R5 in CRP.No.2141 of 2010

### **COMMON ORDER**

All the three revision petitions have been filed by the plaintiff in O.S.Nos.144, 145 and 147 of 2003 on the file of the Wakf Tribunal (Principal Subordinate Court), Thoothukudi challenging the dismissal of the suits filed for declaration of title, recovery of possession and damages for use and occupation of the schedule mentioned properties.

2.It is the contentions of the plaintiff in all the three suits that the suit schedule properties belong to Kothuba Pallivasal Wakf Puraiyur. The said Wakf is a public religious Wakf and it has been surveyed and registered. According to the plaintiff pallivasal, patta for the schedule mentioned lands stands in the name of Wakf.



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3.The plaintiff had contended that the defendants in each one of the suits have taken lease of the vacant site and they are enjoying the same as lessee by putting up superstructure over the same and they have no manner of title over the property except the lease hold right. The tenants had paid vacant site rent up to July 2001 and thereafter, they have not chosen to pay rent. A notice was issued to the tenants under Section 106 of Transfer of Property Act terminating the tenancy of the defendants w.e.f. 31<sup>st</sup> of October 2002 and claiming arrears of rent. The defendants have sent a reply denying title of the plaintiff pallivasal and claiming title upon them.

4.The plaintiff had further contended that the defendants' father were the tenants of the properties and after his demise, the defendants had also paid rent accepting the title of the pallivasal and therefore, they are estopped from disputing the title on the Wakf. In view of the denial of title in the reply notice, the plaintiff pallivasal had filed the present suit for declaration of title, recovery of possession and for payment of damages.

5.The defendants had filed a written statement contending that the schedule mentioned property do not belong to the plaintiff pallivasal. The schedule mentioned property is not a vacant site as contended by the



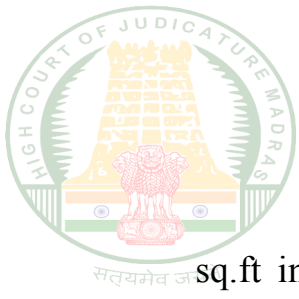
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plaintiff, but the defendants have put up residential houses over the same and they are paying house tax. The defendants had further contended that Patta alleged to have been granted in favour of the pallivasal is not a genuine one. At no point of time, the defendants or their ancestor were tenants of the pallivasal and they have never paid rent to the pallivasal. The defendants had further contended that the measurement and the boundaries incorporated in the plaint schedule properties are not correct.

6.The defendants had further contended that they are in possession of the property on their own for more than 60 years and they have acquired title by adverse possession. In view of the fact that they have never been tenants of the plaintiff pallivasal, the question of cancelling the tenancy would not arise.

7.The plaintiff had filed Exhibits A1 to A15 documents and examined PW1 of on their side. The defendants have filed Exhibits A1 to A8 documents and examined DW1 on their side.

8.The Wakf Tribunal while interpreting the proforma report of the Wakf Board, found that Survey No.52 belongs to the plaintiff pallivasal and it is Wakf property. However, the total extent of Survey No.52 is 1.25 acres, but the plaintiffs had sought for a decree only with regard to 437



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sq.ft in O.S.No.144 of 2003, 528 sq.ft in O.S.No.145 of 2003 and 567 sq.ft. In O.S.No.147 of 2003. Therefore, the plaintiff had not properly located the suit property within Survey No.52.

9.The Tribunal further found that the plaintiff had not filed any document to establish the extent of vacant land that was leased out to the ancestor of the defendants. The Tribunal further found that the plaintiff pallivasal had not established the landlord tenant relationship with the defendants and rejected the patta filed by the plaintiff pallivasal on the ground that it will not confer any title to the property. The plaintiff having failed to establish their title, is not entitled to any relief and all the three suits were dismissed by the Wakf Tribunal. Challenging the same, the present revision petitions have been filed by the plaintiff pallivasal.

10.The learned counsel for the revision petitioners had contended that the proforma which has been prepared by the Wakf Board officials has been marked as one of the documents in all the three suits. The proforma would clearly indicate that Survey No.52 belongs to the plaintiff pallivasal. As far as Survey No.52 is concerned, patta also stands in the name of the plaintiff pallivasal. In each one of the suits, specific extent and boundaries have been shown in the plaint schedule property in



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order to properly identify and locate the suit schedule properties.

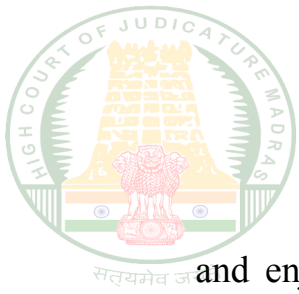
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Therefore, the Tribunal was not right in holding that the plaintiff had not established the lie and location of the properties. He had further contended that the defendants have merely relied upon the house tax receipts that would not confer any title upon them. Even assuming that the plaintiff pallivasal had not established the landlord-tenant relationship, having established the title over the property, the plaintiff is entitled to a decree for declaration of title and recovery of possession. Hence, he prayed for reversing the order passed by the Wakf Tribunal and to decree the suits as prayed for.

11.Per contra, the learned counsel for the respondents/tenants had contended that though the proforma of the Wakf Board reveals that Survey No.52 belongs to pallivasal, no previous documents has been filed to establish how originally the pallivasal became the owner of the suit properties.

12.The learned counsel for the respondents had further contended that the parent document of the said survey number had not been produced. The defendants have put up construction over the suit schedule properties from the year 1952 onwards and they are in possession





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and enjoyment of the same for over 60 years. The defendants had filed property tax receipts right from 1952 onwards to establish their possession over the property. Even assuming that the pallivasal is the owner of the property, title has been lost by pallivasal due to the fact that the defendants have acquired title by adverse possession.

13.He had further contended that the mutation effected in the revenue records will not confer any title upon the plaintiff, especially when the schedule mentioned properties are not vacant site, but there are residential houses. When the defendants had established their possession by filing the property tax receipts, the entire burden is upon the plaintiff to establish their title. Though the plaintiff had contended that the defendants' ancestors were the tenants of the properties, except a counterfoil receipt, no records have been filed to establish the landlord tenant relationship. Therefore, the Tribunal was right in dismissing the suit for declaration of title and recovery of possession.

14.I have considered the submissions made on either side in all the revision petitions and perused the material records.

15.The plaintiff pallivasal had filed the suits for declaration of title, recovery of possession and payment of damages as against the



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defendants on the ground that their ancestors were the tenants.

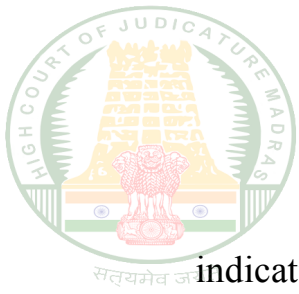
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16. Though the plaintiff had filed a counterfoil of the rent receipt for a particular year, the same does not inspire confidence of this Court to accept the contentions that there was a landlord tenant relationship between the plaintiff pallivasal and the defendants. In fact, the defendants have disputed the said relationship in their reply notice which has forced the plaintiff pallivasal to file the suit for declaration of title and recovery of possession.

17. The plaintiff primarily relied upon Exhibits A1/ A2 proforma of the Wakf Board to establish title over the properties. A perusal of the said document reveals that it was prepared on 30.06.1956 and the suit Survey No.52 is shown as item No.5. The said proforma further reveals that the said survey number belongs to the plaintiff pallivasal. The plaintiff had filed the patta relating to the suit survey number which indicates that the suit survey number belongs to the plaintiff pallivasal.

18. Though the defendants claimed that they are in possession of the properties in their own right for the past 60 years, no records have been filed to establish their source of title. The proforma has been prepared by the statutory authority namely the Wakf Official in the year 1956

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indicating that the suit survey number belongs to the Wakf Board. The defendants have not chosen to file any other contra document which would cause cloud over the proforma filed by the plaintiff pallivasal. Therefore, this Court is of the opinion that the plaintiff had established a better title than the defendants.

19.The defendants had further contended that they are in possession of the property from the year 1952 onwards in their own right and they have acquired title by adverse possession. Section 107 of the Wakf Act is extracted as follows:

*“Section 107. Act 36 of 1963 not to apply for recovery of (wakf) properties. —Nothing contained in the Limitation Act, 1963 (36 of 1963) shall apply to any suit for possession of immovable property comprised in any (wakf) or for possession of any interest in such property.”*

20.In view of the said provision, the Limitation Act shall not apply to any suit for possession of immovable property comprised in any wakf or for possession of any interest in such property. Therefore, even assuming that the defendants are in possession of the property from 1952 onwards, they cannot acquire title by adverse possession, in view of Section 107 of Wakf Act.



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21.The Tribunal had dismissed the suit filed by the pallivasal merely on the ground that the suit survey number is having an extent of 1.25 acres and declaration of title and recovery of possession has been sought by the plaintiff only with regard to few square feet of land without property locating the suit schedule properties.

22.A perusal of the schedule of properties in all three suits would clearly indicate that the extent of properties and the boundaries have been specifically given in each one of the suits. The boundary recitals are to the effect that the suit properties could be specifically identified. Therefore, the findings of the Tribunal that the plaintiff pallivasal had not established the lie and location of the suit properties within 1.25 acres of Survey No.52 is not sustainable. Though a passing reference has been made in the written statement by the defendants questioning the boundary recitals in paragraph No.7 of the written statement, in other paragraphs, the defendants had chosen to claim title and possession only over the plaint schedule properties. Therefore, dismissal of the suits by the Tribunal on the ground that the location of the properties have not been identified by the plaintiff cannot be countenanced.



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23. In view of the above said deliberations, this Court is the view that the plaintiff pallivasal had established their title over the properties and hence, they are entitled to recover possession of the same from the defendants. The judgements and decrees of the trial Court in all the three suits are hereby set aside and are decreed as prayed for. All the Revision Petitions are allowed. The defendants are granted six months time to vacate and hand over vacant possession. No costs.

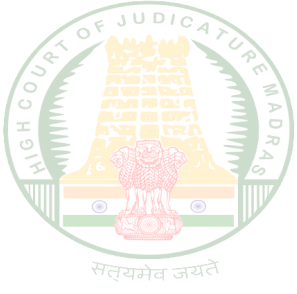
**25.08.2023**

Index : Yes/No  
Internet : Yes/No  
NCC : Yes/No  
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To

1. The Wakf Tribunal,  
/Principal Subordinate Judge, Tuticorin

2. The Record Keeper,  
Vernacular Section,  
Madurai Bench of Madras High Court,  
Madurai.



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**R.VIJAYAKUMAR, J**

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Pre-delivery common order made in  
**C.R.P.(MD).Nos.2139 to 2141 of 2010**

25.08.2023