

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated:25.03.2015

Coram

THE HONOURABLE Mr. JUSTICE SATISH K.AGNIHOTRI
AND
THE HONOURABLE Mr. JUSTICE M.VENUGOPAL

W.A.No.369 of 2015 and
M.P.No.1 of 2015

G.R.Engg. Works,
by its Prop. T.Gajaraj,
16, Gandhi Street,
Kilakattalai, Chennai - 600 117. Appellant/Petitioner

V.

1. The Member Secretary,
Chennai Metropolitan Development Authority,
Chennai - 8.
2. The Commissioner,
Pallavaram Municipality, Chennai - 43.
3. G.Vijayalakshmi
4. G.Sayee @ G.Chandru
5. Mrs.K.Nandhini @ G.Saisuguna
6. M/s.Annai Builders Real Estate (Private) Ltd.,
No.150 and 151, North Usman Road 4th Floor,
T.Nagar, Chennai - 17.
7. P.Virendramal Jain सत्यमेव जयते
8. D.Mahavir
9. The Tahsildar Alandur, Chennai - 16.
- 10.The Collector/Kancheepuram District,
Kancheepuram, Tamil Nadu State.
- 11.The Sub Registrar, SRO, Pallavaram, Chennai.

12.The Sub Registrar, Alandur, Chennai.

13.The Chief Manager,
The State Bank of India,
Guindy, Chennai - 32.

... Respondents

Prayer: Writ Appeal filed under Clause 15 of the Letters Patent Act, against the order dated 27.07.2011 made in W.P.No.2840 of 2011.

Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Mandamus, directing the respondents 1 and 2 not to approve any building plan for construction of house flats bearing S.No.286/4 and 286/5A1 totalling 156 cents to 6th respondent, Annai Builders Real Estate Pvt. Ltd., Chennai - 17.

For Appellant : Mr.T.Gajaraj - Party in person

For Respondents 9 to 11 : Mr.N.Sakthivel
Government Advocate

JUDGMENT

(Judgment of the Court was delivered by M.VENUGOPAL, J.)

The Appellant/Petitioner has focussed the instant intra-Court Writ Appeal as against the order dated 27.07.2011 in W.P.No.2840 of 2011 passed by the Writ Court.

2.The Writ Court, while passing the impugned order on 27.07.2011 in W.P.No.2840 of 2011 (filed by the Appellant/Petitioner), in paragraph 10, had observed the following:

"10.Therefore, it is made clear that the petitioner is disputing the title to respondents 3 to 5 on the basis of the succession and settlement deed. It is well settled that the dispute regarding title can be raised only before the competent civil Court. Equally, it is needless to state that the disputed facts cannot be gone into, by invoking the writ jurisdiction of this Court. In view of the same, this Court has no other alternative, except to dismiss the writ petition as not maintainable. Hence, the writ petition is dismissed. However, it is open to the petitioner to raise his points before the competent civil Court etc."

3.The Appellant appearing in person submits that the Writ Court ought not to have dismissed W.P.No.2840 of 2011, by means of an order dated 27.07.2011, on the ground that the disputed facts could not be gone into, by invoking the writ jurisdiction of this Court.

4.The Appellant (in person) urges before this Court that he established a factory, registered under the Small Scale Industry on 01.03.1979 and that the 3rd Respondent, his wife, who obtained the property from her mother Pushpavathy Ammal, in Survey Nos.286/2 and 286/4. Further, his wife had inherited the property in Survey No.286/5A1, from her father as per Sale Deed dated 22.09.1964. As a matter of fact, his wife's father viz., the father-in-law died intestate on 06.01.1979. It comes to be known that the Appellant started industry in the aforesaid survey numbers, by obtaining industrial licence from the 2nd Respondent/Pallavaram Municipality.

5.The stand of the Appellant is that with a view to save the lands from Urban Land Ceiling Act, 1976, the identity of the agricultural lands were changed into industrial land, by means of resolution of the 2nd Respondent/Municipality dated 30.09.1974.

6.It is the version of the Appellant that he had given evidence of statutory notice under Section 7(2) of the Urban Land Tax Act, 1978 for previous possession and factory lands in respect of S.No.286/4, 286/5A1 and further, the 6th Respondent had dispossessed him on 30.07.2008.

7.Also that, it is the plea of the Appellant that the 3rd Respondent who is the wife and the 4th Respondent is his son filed suit against him in respect of factory lands in S.Nos.286/2, 286/4 and 286/5A1 at Thillai Ganga Nagar, alleging that he had forged a signature at State Bank of India, Guindy, Chennai - 32 to obtain loan in C.S.No.282 of 1994 on 02.03.1994 and obtained an order of injunction against him on 08.03.1994 in Original Application No.221 of 1994 and the same was vacated by this Court in A.No.3076 of 1994 on 07.06.2014.

8.At this stage, the Appellant brings it to the notice of this Court that C.S.No.282 of 1994 on the file of this Court was transferred to the City Civil Court during 2nd week of June, 1994 on account of pecuniary jurisdiction and the said suit was renumbered as O.S.No.1989 of 1996 and the same was disposed as settled out of Court on 16.04.2000.

9.Added further, the Appellant draws the attention of this Court that the Respondents 3 & 4 projected O.S.No.561 of 2001 on the file

of the Learned District Munsif cum Judicial Magistrate, Alandur as regards as the property in S.No.286/4 and 286/5A1 and obtained an Ex parte Decree dated 02.05.2002 and as against the said Decree, the Appellant filed an Appeal in C.M.A.No.39 of 2002 (preferred against the order dated 02.05.2002 in I.A.No.2462 of 2001 in O.S.No.561 of 2001 passed by the District Munsif cum Judicial Magistrate, Alandur). In fact, C.M.A.No.39 of 2002 was dismissed by the Learned Principal Sub Judge, Chengalpattu on 18.07.2005.

10.The grievance of the Appellant is that the Writ Court had not considered the dismissal of the suit in O.S.No.561 of 2001 for default on 15.02.2010. Further, the Ex parte Decree in O.S.No.2020 of 1997 dated 09.08.2002 was also not taken into account by the Writ Court. As a matter of fact, the Respondents 3 & 4 filed I.A.No.1731 of 2002 in O.S.No.2020 of 1997 on the file of the Learned District Munsif cum Judicial Magistrate, Alandur to set aside the Ex parte Decree and the same was allowed on 01.11.2002. As against the order passed to set aside the Ex parte Decree, he preferred C.M.A.No.1 of 2003 on the file of the Learned Principal Subordinate Judge, Chengalpattu and the same was dismissed on 30.08.2005. Further, he preferred Civil Revision Petition against the Judgment passed in C.M.A.No.1 of 2003.

11.The Principal plea taken on behalf of the Appellant is that the suit properties are not the absolute properties belonging to the 3rd Respondent as per the Hindu Succession Act, 1956. However, the 3rd Respondent registered her 1/3rd share in his favour bearing Document No.1464/21.5.01. Also, it is his plea that the 3rd Respondent was never in possession of suit properties as an heir to her parents as regards the claim of properties. Moreover, the Respondents 4 & 5 had sold the suit properties to the 6th Respondent without legal necessity, without possession or absolute title. That apart, the 3rd Respondent made a Sale Agreement with one Munisamy to sell the factory land in S.No.286/4 alleging as tenant. As such, he filed suit in O.S.No.2020 of 1997 (Originally suit in O.S.No.391 of 1995 dated 02.06.1995).

12.Yet another submission of the Appellant is that the 3rd Respondent made settlement of suit properties in favour of her children as per Settlement Deed dated 25.04.2006 without she being the absolute owner of entire properties and as such, the Sale Agreement dated 22.01.2007 is invalid. Continuing further, the Respondents 3 to 5, without registering the Sale Agreement, have no possession of the suit properties and the Respondents 4 & 5 had sold the properties to the 6th Respondent without any title and possession. Moreover, they have to prove possession through documentary evidence.

13.At this stage, one cannot ignore an important fact that in A.S.No.36 of 2010 filed by the Appellant (as against the Judgment and Decree dated 11.03.2010 in O.S.No.2020 of 1997 passed by the Learned District Munsif, Alandur), the Appellate Court on 04.07.2012 had allowed the Appeal, by setting aside the Judgment and Decree of the trial Court dated 11.03.2010 in O.S.No.2020 of 1997 and remanded the case back to the file of the trial Court for fresh adjudication providing fair chances to both parties etc. Indeed, the Appellate Court, in its Judgment, had observed that 'Till the suit is restored back to file before the Lower Court both parties are directed to maintain status quo of the suit properties'.

14.It is to be noted that as on date O.S.No.2020 of 1997 is pending on the file of Additional District Munsif Court, Alandur. The Appellant, as Plaintiff in O.S.No.2020 of 1997 on the file of the trial Court, has filed I.A.No.75 of 2013 (impleading petition) and in the said petition, notice was ordered on 23.03.2015.

15.Also, the Appellant informs this Court that he had filed O.S.No.1086 of 2013 as Plaintiff, against the Defendant viz., M/s.Annai Builders Real Estate (Private) Limited, Chennai - 17 seeking a relief of Permanent Injunction and it appears that he had filed an impleading petition to add necessary parties and the same was returned by the trial Court. Further, it comes to be known that an Ex parte evidence taken in the suit is in part heard stage and the next date of hearing is 26.03.2015. Also that, the Appellant (Plaintiff in O.S.No.1086 of 2013 on the file of trial Court) had sought for legal assistance through Legal Aid Counsel.

16.At this juncture, it is to be relevantly pointed out by this Court that the Hon'ble High Court, by means of Official Memorandum in R.O.C.No.1817-A/2015-B2 dated 17.03.2015, has placed the Judicial Magistrate, Alandur in full additional charge of the post of Principal District Munsif, Alandur, until further orders.

17.As far as the present case is concerned, indisputably the Appellant is the husband of the 3rd Respondent and father of Respondents 4 & 5. It is quite evident that the Appellant is assailing the title of the Respondents 3 to 5 based on succession and settlement deed. Viewed in that perspective and also on going through the impugned order dated 27.07.2011 in W.P.No.2840 of 2011, this Court does not find any amiss in the order passed by the Writ Court. Per contra, the same is just, valid and legal one, because of the simple reason that in a summary proceedings of Writ Jurisdiction, a Court of Law cannot go into or investigate into the

disputed/contentious factual questions, which require to be established by means of adducing oral and documentary evidence by the parties concerned. At this stage, this Court aptly points out the decision of the Hon'ble Supreme Court in State of Bihar and others V. Jain Plastics and Chemicals Limited, (2002) 1 Supreme Court Cases 216 at page 217, whereby and whereunder, it is, inter alia, laid down as follows:

"... Whether the alleged non-supply of road permits by the appellants would justify breach of contract by the respondent would depend upon facts and evidence and is not required to be decided or dealt with in a writ petition. Such seriously disputed questions or rival claims of the parties with regard to breach of contract are to be investigated and determined on the basis of evidence which may be led by the parties in a properly instituted civil suit rather than by a Court exercising prerogative of issuing writs."

18. Inasmuch as the Suit O.S.No.2020 of 1997 filed by the Appellant before the trial Court is of the year 1997 and this Court, taking note of the fact that the Appellant had filed I.A.No.75 of 2013 (impleading petition) in which, notice was ordered on 23.03.2015, in the interest of Justice and Fair Play and also based on Equity, Good Conscience and even as a matter of prudence, directs the trial Court viz., the Additional District Munsif, Alandur to dispose of the main Suit O.S.No.2020 1997 within a period of three months from the date of receipt of copy of this Judgment.

19. With the aforesaid observations and directions, the Writ Appeal stands disposed of. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

Sgl

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To

1. The Additional District Munsif, Alandur.
2. The Member Secretary,
Chennai Metropolitan Development Authority,
Chennai - 8.
3. The Commissioner,
Pallavaram Municipality, Chennai - 43.
4. The Tahsildar Alandur, Chennai - 16.
5. The Collector/Kancheepuram District,
Kancheepuram, Tamil Nadu State.
6. The Sub Registrar, SRO, Pallavaram, Chennai - 44.
7. The Sub Registrar, Alandur, Chennai - 61
8. The Sub Assistant Registrar,
Judicial Section, (To Watch and Report)
High Court, Madras.
9. The Judicial Magistrate,
Court, Alandur.
[The Principal District Munsif - Full
additional charge].

+1cc to the Government Pleader, S.R.No.17025

W.A.No.369 of 2015

SSI (CO)
CA(08/04/2015)

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