IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 17.3.2015.

CORAM

THE HON'BLE MR.JUSTICE S.VAIDYANATHAN

W.P.No.2597 of 2015
and
M.P.No.2 of 2015

Malliswari ...Petitioner

vs.

1 The Commissioner
Tirutani Municipality Thirutani

2 V.Balaiah ...Respondents

Writ Petition filed under Article 226 of the Constitution of India seeking issuance of a writ of certiorari calling for the records relating to the order dated 20.1.2015 made in Proceeding No.Pa.Ko.51/Pe.Ma.M.No.838/2014/A1 relating to property tax assessment Nos. 10390 to 10394 on the file of 1st respondent and quash the same.

For Petitioner : Mr.S.Vinothkumar

For R1 : Ms.K.Kavitha

For R2 : Ms.T.Aswini

ORDER

Petitioner has come forward with the aforesaid prayer.

2. The case of the petitioner is that the second respondent is the brother of the petitioner and he has given power of attorney to her apart from executing a registered Will on 1.3.1999. Due to family dispute, the second respondent has cancelled the power of attorney and the Will. According to the petitioner, there was a sale agreement to sell the property to one V.Ramachandraiah, who is her

husband, on 27.2.2007 and a sum of Rs.15,00,000/= was received out of the sale consideration of Rs.34,00,000/=. Thereafter, the remaining amount was received in various stages totalling to Rs.29,00,000/= and the same was received by the second respondent viz., V.Balaiah. According to the petitioner, after getting the money, the second respondent, with a view to defeat the sale and also to cheat the petitioner, has cancelled the power of attorney and the Will on 13.8.2007 and 14.8.2007 respectively. The petitioner is also aware of cancellation of the power of attorney. According to her, it was not informed before the cancellation. Believing the act of the second respondent, the petitioner started constructing the house and started paying property tax and other dues to the Government. After a long time, the second respondent gave representation to the first respondent stating that he is the owner of the land and requesting that his name should be there in the records. Even though the petitioner and her husband objected for such transfer, considering the same, the first respondent after obtaining opinion from Government Pleader, advised the petitioner and the second respondent will have to approach the civil court. Accordingly, the petitioner filed O.S.No.11 of 2005 before the District Munsif, Thirutani restraining the defendants, their men and agents in any manner to change the property tax assessment number 10390 to 10394 to third parties. According to the petitioner, when the matter was subjudice on 20.1.2015, the first respondent had taken a different stand and passed the impugned order. The petitioner had stated that when the property tax was in the name of the petitioner, the action of the first respondent in assessing property tax in the name of the second respondent is illegal and that without considering the objection raised by the petitioner, the first respondent ought not to have changed the tax assessment in the name of the second respondent.

3. Both the respondents have filed counter affidavits. Heard the learned counsel for either side.

4. The first respondent has stated that based on the documents available on record, the petitioner was the owner of the property earlier and from 20.1.2015, it is in the name of Balaiah. The second respondent submitted that it is his absolute property and at no point of time, he had consented for sale and the allegations made by the petitioner are not correct.

5. When there is no registered sale and the power of attorney has been cancelled and that the Will also has been revoked, the petitioner cannot claim right over the property and moreso, when those documents do not confer title to the property. It is not in

dispute that the petitioner is the sister of the second respondent. There was a power of attorney duly and a Will executed by the second respondent and both were cancelled by the second respondent. The petitioner proceeds on the basis that she is the owner of the property on the ground that out of Rs.34,00,000/=, Rs.29,00,000/= has been paid to the second respondent. The contention of the petitioner that there is a sale agreement and hence, it gives right for her to use the property and that there is nothing wrong in claiming ownership cannot be accepted by this court.

6. The second respondent disputes the act of receipt of money. When the facts are in dispute, this court cannot go into the same. That apart, admittedly, the parent document is in the name of the second respondent. When it is the admitted case that the second respondent has executed a power of attorney and Will, there is ample proof that the second respondent is the owner of the property. If there was a sale agreement and if any amount is parted with by the petitioner to the second respondent, those are all the points to be agitated before the civil forum and the petitioner has already filed civil suit which is pending before the District Munsif, Thirutani. Till such time the issue is decided, the petitioner cannot claim ownership over the property. Hence, I do not find any reason to grant the relief sought for by the petitioner. The authority was right in making such an entry and depending upon the outcome of the suit, necessary amendments can be made in the records.

7. In the result, the writ petition is dismissed. No costs. The connected miscellaneous petition is also dismissed.

Sd/-
Assistant Registrar(CS-IV)

//True Copy//

Sub Assistant Registrar

ssk

To

The Commissioner
Tirutani Municipality
Thirutani

1 CC to Mr.S.Vinothkumar, Advocate SR.No. 15446

1 CC to Ms.K.Kavitha, Advocate SR.No. 14971

1 CC to Ms.T.Aswini, Advocate SR.No. 14972

W.P.No.2597 of 2015

MP (CO)
PSI (08.04.2015)