

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 16.02.2015

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

WP.No.31850 of 2013
and MP.Nos.1 and 2 of 2013

1. Mrs.Lakshmi
2. N.Parameshwari
3. N.Somakumari
4. N. Uma Kumari
5. N.Radhamani
6. N.Sivakumar
7. N.Murugan

... Petitioners

Versus

1. The District Revenue Officer
Coimbatore
2. The Assistant Commissioner
Revenue Court, Trichy
3. The Tahsildar
Coimbatore North Taluk/Tamil Nadu
Record of Cultivating Tenancy Officer
Coimbatore
4. K.Kuppuraj
5. K.Chandrakhan
6. K.Anandkumar
7. B.Santha
8. C.K.Somalatha
9. Vimala
10. C.N.Usha
11. J.Ramachandran

.. Respondents

Writ petition filed under Article 226 of the Constitution of India praying for a writ of certiorari calling for the entire records relating to the impugned order passed by the first respondent in his proceedings Na.Ka.No.28903/2012/E1 dated 06.9.2013 and quash the same.

For Petitioners: Mr.C.Prakasam

For R1 to R3 : Mr. R.Vijayakumar
Additional Government Pleader

For R4, R6 : Mr. A.Rajeshkhanna

For R7, R8
and R11 : Mr. Vijaya Narayanan
Senior Counsel
for Mr. S.Kumaresan

For R9 : Mr.Rajakalifullah
Senior Counsel
for Mrs. R.Thenmozhi

ORDER

The petitioners seek for issuance of a writ of certiorarified mandamus to quash the order dated 06.9.2013 passed by the first respondent. The said order is an order passed in a Revision Petition filed by the petitioner as against the order passed by the second respondent confirming the order of the third respondent.

2. The petitioners are the legal heirs of one Nagappa Gounder. The petitioners would state that their grand father and thereafter, their forefathers were allotted the lands of the father of the respondents 4 to 11 in the presence of Panchayatdars and they were doing cultivation. It is submitted that among the lands owners, the suit for partition was filed in O.S.No.236 of 2004 on the file of the Additional District Munsif-cum -Fast Track Court III, Coimbatore, for partition and separate possession and preliminary decree was passed in the said suit on 29.7.2005. It is stated that based on the preliminary decree, the petitioners' possession is said to have been disturbed and, therefore, Nagappa Gounder filed O.S.No.289 281 of 2009 before the District Munsif, Coimbatore and obtained an order of interim injunction in I.A.No.327 of 2009. Thereafter, the said Nagappa Gounder has filed an application in I.A.No.327 of 2009 in O.S.No.236 of 2004 to implead him in the said partition suit. The said application was dismissed by the trial Court holding that the preliminary decree was passed on 29.7.2005 and final decree application was filed on 13.4.2006. Commissioner has filed his report on 28.5.2008 and matter has been posted for orders and at this juncture, Nagappa Gounder has filed third party petition claiming himself as cultivating tenant seeking to implead him as respondent in the final decree. Therefore, the Court held that Nagappa Gounder has locus standi to file the petition and the petition is mala fide one and rejected the same. Thereafter, Nagappa Gounder has invoked the provisions of Tamil Nadu Agricultural Lands Record of Tenancy Right Act and filed application in A.P.No.4 of 2012. This application was considered and it was rejected by the Tahsildar by order dated 14.5.2012. As against which, Nagappa Gounder preferred a Revision stating that the order passed by the Tahsildar was ex parte order and sufficient opportunity was not granted. The appellate authority, namely, the second respondent, after taking into

consideration the submissions made by Nagappa Gounder and after hearing the land owners, held that there was no document produced by Nagappa Gounder to establish that he has been cultivating in the said land. Subsequently, Nagappa Gounder died on 04.4.2013 and his legal representatives, who are the writ petitioners, filed Revision Petition before the first respondent. The Revisional Authority concurred with the orders passed by the Tahsildar and second respondent and rejected the Revision Petition by order dated 06.9.2013, which is impugned in this writ petition.

3. Heard Mr. C.Prakasam learned counsel for the petitioner, Mr.R.Vijayakumar, learned Additional Government Pleader appearing for respondents 1 to 3, Mr. A.RajeshKhanna, learned counsel for respondents 4 and 6, Mr. R.Vijay Naraynan, learned senior counsel for respondents 7, 8 and 11 and Mr.Rajakalifullah, learned Senior Counsel for the ninth respondent and perused the records placed before this Court including the counter affidavit filed by the private respondents.

4. The learned counsel for the petitioners submitted that the reason assigned in the impugned order stating that since the application in I.A.No.506 of 2006 filed by Nagappa Gounder having been rejected, the rejection of the Revision Petition itself is not tenable. It is submitted that the said application was only for impleadment in the final decree petition and the dismissal of the said petition can have no bearing in the Revision Petition filed by the petitioner before the first respondent. The first respondent ought to have considered the matter on merits after affording an opportunity to the petitioner.

5. The argument of the learned counsel for the petitioner is being controverted by the learned Senior Counsels on behalf of the private respondents contending that the three authorities have factually found that the petitioners have not established the case for recording their name as cultivating tenants and this Court will not re-appreciate the factual position and it is only to examine whether the decision making process was fair and reasonable and whether adequate opportunity was given to the applicants.

6. The learned Additional Government Pleader supports the stand taken in the impugned order.

7. In the impugned order dated 06.9.2013, two reasons have been assigned for rejection. The second of the two reasoning is that the petitioner/ Nagappa Gounder's application in I.A.No.506 of 2006 in O.S.No.326 of 2004 was dismissed and, therefore, he has not made out a case. Though this reasoning may not be fully justified in rejecting the Revision Petition, yet, it is a very relevant factor to examine the conduct of Nagappa Gounder.

8. The suit was filed for partition among the land owners and preliminary decree was passed on 29.7.2005. In the final decree proceedings, a Commissioner was appointed and he submitted a report and at the time of passing orders in the final decree proceedings, Nagappa Gounder attempted to implead himself as party in the said proceedings by filing application. The trial Court held that Nagappa Gounder had no locus standi to file petition and the petition was rejected as mala fide one. To examine the conduct of Nagappa Gounder, the revisional authority was justified in referring to the said order I.A.No.506 of 2006 and other observations made by the first respondent in the impugned order. The first respondent concurred with the finding recorded by the two authorities, namely, the appellate authority as well as the original authority stating that no scrap of paper has been produced to establish the contention of Nagappa Gounder that he is in cultivation of the property for several years. It is to be pointed out that even in the grounds of Revision filed before the first respondent by the present writ petitioners, no documents have been referred to except to refer to certain decision of this Court, no record has been placed to dislodge the factual finding recorded by the original authority, appellate authority as well as the Revisional authority. It may be true that the Tahsildar, while passing order, has not granted an effective opportunity to Nagappa Gounder. Though it was alleged that Nagappa Gounder was unwell and he only sought for an adjournment, yet, the Tahsildar passed the final order. However, in the Appeal before the second respondent, Nagappa Gounder was granted full and effective opportunity and he also participated in the inquiry.

9. Under such circumstances, there is no error in the decision taken by the first respondent. This Court, while exercising jurisdiction under Art.226 of the Constitution of India, cannot be convert itself as a second Appellate Authority or Revisional Authority to reappraise the facts. Hence, no ground is made out to interfere with the impugned order. The writ petition fails and the same is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

1. The District Revenue Officer
Coimbatore

2. The Assistant Commissioner
Revenue Court, Trichy

3. The Tahsildar
Coimbatore North Taluk/Tamil Nadu
Record of Cultivating Tenancy Officer,
Coimbatore

+ 1 cc to Mr.S. Kumaresan, Advocate Sr.8291

+ 1 cc to Mr.J. Raja Kailfulla, Advocate SR.8347

+ 2 ccs to Mr.C.Prakasam, Advocate Sr.8327

+ 1 cc to M/s. V. Balu, Advocate SR.8362

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AD(CO)

Eu 24.02.14



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