

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 14.08.2015

Delivered on : 19.08.2015

CORAM:

THE HON'BLE MR. JUSTICE M.SATHYANARAYANAN

W.P.No.34572 of 2013

and

M.P.Nos.1 to 4 of 2013

Dr.Louis Cannaiya

... Petitioner

Vs.

1. The Additional Secretary (Home)
Home Department, Puducherry.
2. The District Collector,
Department of Revenue and
Disaster Management,
Government of Puducherry,
Puducherry.
3. The Tahsildar,
Taluk Office, Oulgaret,
Puducherry.
4. The Senior Superintendent of Police (L&O),
Puducherry.
5. The Station House Officer,
Lawspet Police Station,
Karavadakuppam,
Oulgaret, Puducherry.

6. V.Vengadasalam

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus calling for the records relating to the order No.11024/REV/B2G dated 10.12.2013 passed by the second respondent and quash the same and consequently direct the respondents 1 to 5 to remove the wall put up by the 6th respondent in R.S.152/4, Karuvadikuppam Revenue Village, Oulgaret, Pondicherry so as to enable the petitioner to take the possession of the same.

For Petitioner : Mr.R.G.Narendhiran

For Respondents : Mr.A.Tamilvanan,
Government Advocate (Pondicherry)
for R1 to R5

Mr.S.Sethuraman for R6

O R D E R

By consent, this writ petition is taken up for final disposal.

2. The petitioner, in the affidavit filed in support of this petition, would aver that he hails from a family which had 400 years history and he and his brother, namely Louis Sinnaiya Arokiyasamy and his sister Rathinamary were jointly owning landed properties to an extent of 1.25 Hectares (2 Kanis 33 Kuzhis and 0.9 Veesams) of dry land comprised in cadastre No.491 Bis and 492 Bis R.S.No.152/2 in Karuvadikuppam Revenue Village, Oulgaret Sub Registration District, Puducherry. According to the petitioner, the said properties originally belong to the petitioner's great grandfather, late Louis Arokiasamy Mudaliar and the petitioner along with his brother and sister inherited the same with absolute rights. The petitioner would further state that on 09.01.1978, he and his brother entered into an agreement of sale with the sixth respondent herein in respect of 1.25 Hectares (2 Kanis 33 Kuzhis 0.9 Veesams) comprised in cadastre (Survey) No.492, R.S.No.152/5, Karuvadikuppam Revenue Village, Oulgaret Municipality and due to personal constraints, they were unable to perform their part of the agreement. Hence the sixth respondent filed a suit in O.S.No.168/1979 on the file of the Additional Sub-Judge Puducherry for specific performance of the Agreement of Sale dated 09.01.1978 and the said Suit was decreed on 19.09.1980. The respondents levied execution and got the sale deed executed through II Additional Sub-Judge Puducherry, in respect of the land admeasuring to an extent of 1.25 Hectares comprised in cadastre No.492, R.S.No.152/5, however, a mistake has crept in while mentioning the extent of lands.

3. It is the specific case of the petitioner that the lands in cadastre No.491 Bis and 492 Bis, R.S.No.152/4, are not form part of the above said sale deed except the land in cadastre No.492, R.S.No.152/5 and it is also not the subject matter of O.S.No.168/79, filed by the sixth respondent for specific performance. The petitioner would further state that his sister Rathinamary, being the co-owner, had 1/6th share of the land in

R.S.152/5 and since her share was also conveyed to the sixth respondent, she has executed a Release Deed dated 09.07.1983 registered in Doc.No.1919/83 releasing her 1/6th share in the land, which was conveyed through the above said sale deed and according to the petitioner, the said land is in cadastre No.492, R.S.No.152/5 and the sister of the petitioner has also received consideration of Rs.7,900/- from the sixth respondent for executing the said release deed. It is further stated by the petitioner that the sixth respondent somehow manipulated the records with malafide intention by including both R.S.Nos.152/4 and 152/5 in the Schedule of the Release Deed dated 09.07.1983. Subsequently, the petitioner along with his brother and sister sold a major portion of the land of 1.31 hectares comprised in R.S.No.152/4 (cadastre No.491 Bis and 492 Bis) retaining 12000 sq.ft (21 kuzhis) in 492 Bis and the purchaser had developed the same into housing plots and the remaining extent of land was in possession of the legal heirs of late Gundu Govindan, who was a cultivating tenant.

4. The petitioner came across a public notice in 'Dinamalar' news daily dated 16.05.2012 issued by the sixth respondent and to his shock and surprise, the sixth respondent claimed that the land in R.S.Nos.152/4 and 152/5 were purchased by him from the petitioner, his brother and sister. The said notice would also disclose that the Suit in O.S.No.460/1982 was filed against the persons, who were in possession of the properties, to declare the title in respect of tiled houses in Schedule A, B and C and the Suit was decreed and challenge made before the Hon'ble Supreme Court of India has also ended in dismissal and the sixth respondent filed E.P.No.185/2000 on the file of the II Additional District Munsif Court at Puducherry to execute the decree and an Advocate Commissioner was appointed and he has noted that the alleged Schedule A comes under cadastre No.492 Bis i.e., R.S.No.152/4. One of the legal heirs of late Gundu Govindan also filed E.A.No.480/2011 in E.P.No.185/2000 under Order 14 Rule 2 C.P.C. to issue summon to the third respondent herein to let in evidence by producing Field Map Book in respect of R.S.Nos.152/5 and 152/4 and it was allowed on 19.11.2011 and challenging the same, the sixth respondent filed C.R.P.Nos.4598 and 4599 of 2011 and they are pending.

5. The petitioner would further state that the sixth respondent, in the interregnum, submitted a petition dated 31.10.2012 before His Excellency Lt.Governor, Puducherry stating about the purchase made by him as well as 1/6th share obtained by him through release deed and made a false claim as if the petitioner has indulged in land grabbing and it was forwarded to the concerned authorities and accordingly, the third respondent has issued a notice dated 19.12.2012 calling upon the petitioner to

appear in person for enquiry along with necessary documents. The petitioner has also filed a detailed response stating among other things that what was sold was only the land in R.S.No.152/5 and not R.S.No.152/4. However, the second respondent did not take into consideration the tenable explanation submitted by the petitioner and passed the impugned order dated 10.12.2013, advising the sixth respondent to approach the Station House Officer of the concerned police station for providing necessary security for taking possession of the said property as there is no stay or injunction from any Court and this writ petition is filed challenging the legality of the said proceedings.

6. Mr.R.G.Narendiran, learned counsel appearing for the petitioner has invited the attention of this Court to the typed set of documents and would submit that admittedly the Sale Deed dated 04.07.1981 executed in favour of the sixth respondent mentions the cadastre No.492 admeasuring an extent of 2 Kanies, 39 Kuzhies and the corresponding re-survey is R.S.No.152/5 only and at the time of execution of the Release Deed by his sister on 09.07.1983, fraud has been played by including R.S.No.152/4 excepting the pathway and taking advantage of the said mistake, the sixth respondent is making a false, untenable and wholly unsustainable claim. It is the further submission of the learned counsel appearing for the petitioner that the petitioner, along with his brother, has also filed a comprehensive suit in O.S.No.404/2013 on the file of the Principal District Munsif at Pondicherry against the sixth respondent and five other private parties and also against the third respondent namely the Tahsildar, Oulgaret, Puducherry and the Chief Secretary, Government of the Union Territory of Puducherry, praying for declaration that they are the absolute owners of the wet land in cadastre No.491 Bis and 492 Bis, R.S.No.152/4 covering a total extent of 0.01 Hectares and 31 ares situated at Karuvadikuppam Revenue Village and the said Suit is pending and de hors the pendency of the Suit, the third respondent has given a positive advise to the sixth respondent, under the guise of passing orders in the enquiry conducted by him, to approach the concerned Station House Officer with a further direction to provide necessary security for taking possession and he has virtually assumed the role of a Civil Court by declaring the title of the sixth respondent to the said property and the third respondent, while marking a copy to the Station House Officer, Lawspet Police Station, has also given a direction to provide necessary protection to the petitioner and register complaints, if any, given by the petitioner and hence, prays for setting aside the impugned proceedings of the third respondent.

7. The official respondents did not file their counter inspite of the orders passed by this Court on 09.12.2013.

8. The sixth respondent has filed a counter stating among other things that as per the Sale Deed dated 04.07.1981 executed by the Sub-Judge, Pondicherry, land admeasuring an extent of 2 Kanies and 39 Kuzhies except the pathway in cadastre No.492 was conveyed and subsequently the land was converted into residential plots and was sub-divided, which as identified as R.S.No.152/4 cadastre No.492, an extent of 5 acres and R.S.No.152/5, cadastre No.492, an extent of 0.54 acres by the Advocate Commissioner appointed by the Court and the sister of the petitioner while executing the registered Release Deed dated 09.07.1983, has also released her 1/6th share in R.S.Nos.152/4 and 152/5 except the pathway and as such, he is the owner of the property in R.S.No.152/4 also. It is further stated in the counter that he has also filed a Suit in O.S.No.460/1982 on the file of the District Munsif Court, Puducherry for declaration of his title and for recovery of possession and it was decreed on 21.02.1988 and the appeal filed by the defendant in A.S.No.104/1988 on the file of the District Judge, Puducherry was also dismissed on 05.04.1989 and so also the Second Appeal No.1389/1989 by this Court and further challenge in the form of Special Leave Petition was also dismissed by the Hon'ble Supreme Court of India. Thereafter, the sixth respondent filed E.P.No.185/2000 for delivery and vacant possession and the legal heirs of late Gundu Govindan has filed obstruction petition in E.A.No.101/2004 and it was also dismissed, against which the C.R.P.No.1511/2004 was filed and it was also dismissed on 02.09.2005. It is further stated by the sixth respondent that he filed an application for removal of the obstruction, which was allowed on 17.11.2008 and the appeal was also dismissed vide judgment and decree dated 25.10.2011. In spite of very many proceedings, one of the legal heirs of late Gundu Govindan filed E.A.No.273/2011 under Section 47 of the Civil Procedure Code challenging the decree passed in O.S.No.460/1998 and the sixth respondent filed C.R.P.No.753/2012 on the file of this Court to struck down the said application and this Court, vide order dated 08.01.2013, has directed the executing Court to decide about the maintainability of the application filed under Section 47 of C.P.C. within the stipulated time and the said application was also dismissed, after contest.

9. It is further stated by the sixth respondent that he has gone to France for treatment and taking advantage of his absence, the petitioner and two others tried to take possession of the land in R.S.No.152/4 and in this regard, he has submitted a petition dated 31.10.2012 to the respondents 1 and 2 to take action for land grabbing and also issued a notice to the petitioner herein on 29.11.2012 not to indulge in land grabbing and not to meddle with his properties and after receipt of the notice, the petitioner has

alienated a portion of the properties in favour of two persons, vide two registered Sale Deeds dated 30.11.2012 and subsequently, filed O.S.No.404/2013 for declaration and permanent injunction. The petitioner has also filed E.A.No.9/13 in E.P.No.185/2000 in O.S.No.460/1982 on the file of the District Munsif Court, Puducherry to record his objections and one of the purchaser and the petitioner had also filed claim petitions before the Sub-Court and both the applications were pending. Insofar as the impugned communication issued by the third respondent is concerned, the sixth respondent would state that it is only an advise directing him to approach the jurisdictional police and therefore, the petitioner cannot be said to be an aggrieved person and hence, prays for dismissal of this writ petition.

10. Mr.S.Sethuraman, learned counsel appearing for the sixth respondent would contend that the sole intention of the petitioner is to prevent the sixth respondent from realizing the fruits of the decree and he is in the habit of putting obstructions and causing hardship and loss to him and since the several litigations initiated against the cultivating tenant of the property has reached finality, the petitioner is not having any legal or valid tenable claim against him and would further submit that there is no positive direction given to him to act in a particular manner and it is merely an advise given to the sixth respondent and hence, prays for dismissal of this writ petition.

11. This Court has carefully considered the rival submissions and also perused the materials placed before it.

12. A perusal of the Sale Deed dated 04.07.1981 executed by the II Additional Sub-Judge, Puducherry in favour of the sixth respondent would disclose the fact that the lands admeasuring to an extent of 2 Kanis and 39 Kuzhis except the pathway in cadastre No.492 has been conveyed, however the Release Deed executed by the sister of the petitioner dated 09.07.1983 contains a Schedule which indicate that 1/6th share in R.S.Nos.152/4 and 152/5 excluding the pathway has been conveyed. It is the stand of the petitioner that the land in R.S.No.152/4 is not the subject matter of Sale Deed dated 04.07.1981 and the sixth respondent has somehow manipulated the Schedule by including both R.S.Nos.152/4 and 152/5 in the Schedule of the Release Deed executed by his sister and he along with his brother has also filed a comprehensive Suit in O.S.No.404/2013 on the file of the Court of Principal District Munsif Court at Puducherry and he has also filed E.A.No.9/2013 in E.P.No.185/2000 in O.S.No.460/1982 to record his objections as obstrucater for delivering the property in question.

13. In the impugned proceedings of the third respondent dated 10.12.2013, the third respondent, after extracting the facts in para 5, has observed as follows:

"5. Therefore, you are hereby advised to approach the Station House Officer of the concerned police station for providing necessary security for taking possession of the property as there is no Stay/Injunction from any Hon'ble Court."

The third respondent, while marking a copy to the fifth respondent, has stated as follows:

"3. The Station House Officer, Lawspet Police Stationwith a direction to provide necessary protection to the petitioner and register complaints, if any, given by the petitioner."

14. It is the submission of the learned counsel appearing for the petitioner that there is a positive direction directing the fifth respondent to act in a particular manner and whereas according to the sixth respondent, it is merely an advice directing him to approach the concerned police station. No doubt, in para 5 of the impugned proceedings, the sixth respondent was advised to approach the Station House Officer of the concerned police station, but while marking a copy to the fifth respondent, the third respondent has made a positive direction to provide necessary protection to the petitioner and register complaints, if any given by the petitioner. In the considered opinion of the Court, while marking a copy to the fifth respondent, the third respondent has given a positive direction. Admittedly, the obstruction petition filed by the petitioner is still pending and so also the Suit in O.S.No.404/2013 on the file of the Court of Principal District Munsif at Puducherry and if at all the sixth respondent requires any police protection, it is always open to him to do so by filing necessary application in E.P.No.185/2000 which is pending on the file of the II Additional District Munsif at Puducherry. It is also pertinent to point out at this juncture that the third respondent has directed the fifth respondent to register complaints, if any, given by the petitioner.

15. Section 154 of the Code of Criminal Procedure, 1873 speaks about information in cognizable cases and the said provision does not take away the right of a competent officer to take preliminary enquiry in a given case to find out as to whether the first information sought to be lodged, is having any substance or not. The Hon'ble Supreme Court of India in the decision in Lalita Kumari vs. Govt. of U.P. & others reported in [(2014) 2 SCC 1] has exhaustively dealt with registration of cases in respect of

cognizable offences and therefore, registration of case falls within the exclusive domain of the fifth respondent and admittedly, the third respondent is not the official superior of the fifth respondent.

16. In the considered opinion of the Court, the third respondent while marking a copy to the fifth respondent, has given a positive direction and to that extent, the said portion of the order warrants interference.

17. In the result, this Writ Petition is partly allowed and the positive direction given by the third respondent to the fifth respondent while marking a copy, in the proceedings in No.11024/REV/B2G dated 10.12.2013 is set aside. No costs. It is made clear that the observations made herein are only for the purpose of disposal of this writ petition and this Court has not touched upon the merits of the case projected by the petitioner as well as by the sixth respondent in the pending legal proceedings and therefore, the concerned Courts need not be influenced by the same and they have to adjudicate the case pending before it on its own merits, depending upon the quality of evidence/materials placed before it. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

jvm

To

1. The Additional Secretary (Home)
Home Department, Puducherry.
2. The District Collector,
Department of Revenue and
Disaster Management,
Government of Puducherry, Puducherry.
3. The Tahsildar,
Taluk Office, Oulgapet,
Puducherry.
4. The Senior Superintendent of Police (L&O),
Puducherry.

5. The Station House Officer,
Lawspet Police Station,
Karavadakuppam,
Oulgapet, Puducherry.

+1cc to Mr.R.G.Narendhiran, Advocate, S.R.No.43748

+1cc to Mr.S.Sethuraman, Advocate, S.R.No.44235

+1cc to the Senior Government Pleader for Puducherry, High Court
Buildings, Madras, S.R.No.44318

W.P.No.34572 of 2013

BVR(CO)
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