

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **18.10.2016**

CORAM:

THE HONOURABLE MR.**JUSTICE K.K.SASIDHARAN**

C.R.P.(P.D.) No.2971 of 2015 and
MP.No.1 of 2015

Madhu

...Petitioner

versus

1.A.Jayalakshmi
2.Muthusamy

...Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India, to set aside the order dated 18.06.2015 made in I.A.No.394 of 2015 in O.S.No.167 of 2015 on the file of Principal District Munsif at Tiruchengode.

For Petitioner : Ms.P.T.Asha for
M/s.Sarvabhauman Associates

For Respondents : Mr.N.Manoharan for R1
No appearance for R2

ORDER

The petitioner was the Member of the local Panchayat. His wife was later elected as the President of Panchayat. The petitioner obtained Patta in relation to a Government land. The first respondent made an attempt by filing a reply statement as to how he managed to obtain

Patta. The order receiving reply statement is under challenge in this Civil Revision Petition.

2. The first respondent filed a suit for injunction against the petitioner and the second respondent. The plaint was amended and a prayer for decree of mandatory injunction was added. Thereafter, the first respondent filed an application in I.A.No.394 of 2015 to receive the reply statement. The application was allowed by the Trial Court. The order dated 18.06.2015 in I.A.No.394 of 2015 is challenged by the first defendant primarily on the ground that the reply statement would amount to a fresh plaint and as such, the Trial Court was not correct in allowing the application.

3. The learned counsel for the petitioner by taking me through the plaint originally filed in O.S.167 of 2005 and the plaint amended subsequently as well as the reply statement, contended that totally a new case is sought to be built up by way of reply statement. According to the learned counsel, the first respondent ought to have incorporated all these details in her amended plaint. The present application to receive the reply statement was filed after the commencement of trial and as such, the learned Judge was not correct in passing the order

challenged.

4. The learned counsel for the first respondent justified the impugned order and contended that it was only when the petitioner took up a contention that he was given a Patta in respect of the property, where, he has made an encroachment, the first respondent filed the application to receive the reply statement for the purpose of stating as to how he managed to obtain Patta by making use of his influence. According to the learned counsel, the wife of the petitioner was the President of the Panchayat. The petitioner was also a member of the Panchayat. The petitioner, by making use of his position fabricated the revenue records and obtained a Patta. It was only to explain the *modus operandi* adopted by the petitioner to obtain Patta, the first respondent filed the reply statement.

5. The first respondent filed the suit with a substantial prayer to direct the petitioner to remove the barbed wire fence, which was erected by blocking the cart track. The suit was contested by the petitioner with a plea that there was no such cart track.

6. The petitioner has not made a claim earlier that he was given

Patta in respect of the suit property. It was only at a subsequent point of time, the petitioner made a claim that he was given Patta and as such, the disputed portion is no longer a poramboke land. It was only thereafter, the first respondent filed the application to receive the reply statement. The first respondent wanted to expose as to how the petitioner managed to get Patta in respect of a public property, which was declared as a Poramboke and used as a cart track. In fact, the first respondent has only explained the manner and method by which, the petitioner encroached on a Poramboke land.

7. Even after filing the reply statement, the burden is on the first respondent to prove the allegation made against the petitioner. The first respondent, being the plaintiff is bound to prove her case. It is not as if the petitioner is duty bound to prove the negative.

8. The learned Judge rightly exercised his discretion by allowing the application. I do not find any error or illegality in the said order warranting interference, by exercising the revisional jurisdiction under Article 227 of the Constitution of India.

9. In the up shot, I dismiss the Civil Revision Petition. No costs.

Consequently, connected miscellaneous petition is closed.

18.10.2016

Index:Yes/No

svki

To

The Principal District Munsif, Tiruchengode

K.K.SASIDHARAN, J.

(svki)

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