

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 22.11.2016

CORAM

THE HONOURABLE MR.JUSTICE T.MATHIVANAN

C.R.P. (NPD) .No.2979 of 2010

N.S.Nedunchezian

... Petitioner

- Vs -

Datchinamoorthy (died)

1.Mannangati @ Murugaiyan

2. Venkatachalam

3. Ramachandiran

4. The Presiding Officer,
Revenue Court (North),
Puducherry.

... Respondents

(R4 impleaded as party respondent
vide order of Court dated 7/11/14
made in M.P.No.1 of 2012 in
C.R.P.No.2979 of 2010)

Prayer : Civil Revision Petition is filed under Section 115 of C.P.C., against the Order dated 01.09.2009 and made in P.C.T.P.A.No.2 of 1992 on the file of the Revenue Court (North) at Puducherry.

For Petitioner : Mr.Mr.K.Surendranath

For 2nd Respondent : Mr.D.Ravichander

For 4th Respondent : Mr.J.Kumaran,
Govt. Advocate (Puducherry)

For Respondents 1 and 3 : No Appearance

O R D E R

This memorandum of civil revision has been directed against the order dated 01.09.2009 in PCTPA No.2 of 1992 on the file of the Presiding Officer, Revenue Court (North), Puducherry.

2. The revision petitioner herein is the petitioner in the above said petition whereas the respondents 1 to 3 are the respondents therein and the 4th respondent who is the Presiding Officer, Revenue Court(North), Puducherry has been impleaded as a party/respondent in view of the order of this Court dated 07.11.2014 in M.P.No.1 of 2012.

3. The petitioner herein had filed a petition in PCTPA No.2 of 1992 before the Revenue Court, to order eviction of the respondent from the petition mentioned land under the Pondicherry Cultivating Tenants Protection Act, 1970. This petition was resisted by the respondents 1 and 3 by filing their respective counter statements. The Presiding Officer, Revenue Court(North), the 4th respondent herein after hearing both sides had proceeded to pass an order on 01.09.2009 and thereby he had dropped the proceedings. In paragraph No.5(clause-4) he had stated as follows:-

'On perusing all the records available, argument made by the parties, especially the field enquiry report of the Tahsildar as stated above that there is a dispute pending in competent civil court by way of a partition suit about who is landlord of the schedule mentioned property. Moreover, the respondent is also not cultivating the land for more than 5 years. Neither the petitioner is undisputed landlord of the land nor the respondent is a cultivating tenant, further more no part of the scheduled mentioned land is under cultivation. Therefore, in the interest of justice, in order to reach a finality in this long drawn proceedings, it is ordered that the proceeding is hereby dropped.'

4. Having been aggrieved by the impugned order dated 01.09.2009 present revision is filed by the petitioner therein under Section 115 of C.P.C., r/w. Section 10 of the Pondicherry Cultivating Tenants Protection Act, 1970.

5. While advancing his argument Mr.K.Surendranath, has drawn the attention of this Court to the proceedings of the above petition on the file of the 4th respondent. It is seen from the order sheet that the above said petition came up for hearing before the 4th respondent on 10.08.2009. On

10.08.2009, 4th respondent had passed the following order:-

***'Pet.& R3 present, counsels Absent.
Tahsildar report required mentioning dispute
regarding landlordship.***

***Copy of the report be given to the parties
present. Call on 21/8/09 for arguments.'***

6. Unfortunately, on the above said date (i.e.,) on 21.08.2009, the petition was not listed; instead the petition was listed only on 28.08.2009 and on that day, it was ordered by the presiding officer as under:-

***'Pet. Absent. R3 present. Since pet. is
present call on 1/9/09 for final order.'***

7. In this connection, Mr.K.Surendranath, learned counsel for the petitioner has submitted that at the first instance, the learned Presiding Officer (R4) had stated that the petitioner was absent and the 3rd respondent was present. Then how the Presiding Officer could have stated as if the petitioner was present. When he was particularly found absent and the petition was posted for final order on 01.09.2009. On 01.09.2009 also the Presiding Officer had written the order as under:-

***'Pet. Absent, counsel Absent. R3 present.
All other Respondents Absent. Counsel for
respondent also absent.'***

8. Then he had proceeded to pass the following order:

'On perusing all the records placed before me, especially the field reports submitted by the tahsildar, taluk office oulgarat it is find out that Neither the petitioner is undisputedly landlord in view of the partition suit pending for the same property, nor the Respondent(3) is a cultivating tenant and further No part of the scheduled mentioned land is under cultivation. Therefore, in order to bring finality to this long drawn proceeding this Court hereby dropped the proceeding by dismissing the petition.'

9. On perusal of the detailed order, as it is seen from page No.9 of the typed set of papers, this Court is able to find that in opening paragraphs, it is stated as under:-

'This petition coming on this day for final hearing before me in the presence of the Respondent No.3. Both the counsels were called absent. Respondent No.2&4 were called absent. Petitioner absent. Upon perusing the records, the court has delivered the following order.'

10. In paragraph No.3 of the impugned order the 4th

respondent (Presiding Officer) had observed that:

'The counsel for the petitioner has stated that the respondent are the tenants under the oral lease agreement made between his father and the respondents father and that agreement is still in force.'

11. In this connection Mr.K.Surendranath, learned counsel for the petitioner has pointed out that in the docket order dated 01.09.2009, the 4th respondent (Presiding Officer) had stated that the petitioner was absent when the petition was taken up for hearing. In the third paragraph of the order impugned, entirely contrary to the order passed in the docket sheet of the petition, he had observed that the counsel for the petitioner has stated.

12. With reference to the discrepancy and contradictory order passed by the 4th respondent, the learned counsel for the petitioner has submitted that the order itself seemed to be perverse in nature and therefore, he has urged to set aside the impugned order.

13. Mr.K.Surendranath, learned counsel for the petitioner has also invited the attention of this Court to page no.15 of the typed set of papers wherein the letter

dated 08.10.2009 addressed to the Sub-Divisional Magistrate (north), Puducherry is available. It is stated that:

'I had filed PCTP No:2 & 3/1992 and I had been pursuing and contesting both the cases all these years. The matter was posted for report of Thasildar. I was informed that the Thasildar had submitted his report and the case was posted for enquiry on 21.08.2009. However on 21.08.2009 there was no sitting and as per the information posted/pasted on the notice board all the cases of 21.08.2009 were adjourned to 25.09.2009. On 25.09.2009 when I came to attend my case; to my shock and surprise I was informed by bench clerk that orders were passed in PCTP No:2/1992 on 1/9/2009.'

In this connection he has also stated that :

He was unable to understand as to how this could happen without there being an enquiry on the report submitted by Thasildar and without hearing me. Therefore, he was seriously concerned with the way my case has been handled.

14. On the other hand, Mr.D.Ravichander, learned counsel for the 2nd respondent has canvassed that even assuming for a moment without admitting the impugned order is perverse in nature. No proof was available to show that

the petitioner himself was the landlord in respect of the disputed land and that the report submitted by the Tahsildar was also not resisted and challenged by the petitioner. The 4th respondent herein had to invoke the provisions of Pondicherry Cultivating Tenants Protection Act, 1970, and proceeded to drop the proceedings. Ultimately he proceeded to dismiss the petition which according to the 2nd respondent the interference of this Court did not require.

15. The learned Government Advocate, Puducherry has fairly submitted that the impugned order had been passed without hearing both parties to the petition and therefore, he did not have any objection to set aside the order.

16. This Court has perused the grounds of the revision and on striking of balance between the submissions made by the learned counsels for the petitioner as well as for the respondents, finds that the impugned order is liable to be set aside and the petition in PCTPA No.2/1992 may be remitted back to the file of the Revenue Court(North), Puducherry for fresh disposal after hearing both parties to the petition and also after giving fair opportunity to put-forth their respective contentions.

17. Keeping in view of the above said fact, this Civil Revision Petition is allowed and the impugned order is set aside and the petition in PCTPA No.2/1992 is remitted back to the file of the Revenue Court(North), Puducherry with a direction to dispose the same afresh after giving fair opportunity to both sides to put-forth their respective contentions and the petition shall be disposed of within a period of two months from the date of receipt of a copy of this order. However, there shall be no order as to costs.

22.11.2016

Index:Yes / No
Internet: Yes / No
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To

The Presiding Officer,
Revenue Court (North),
Puducherry.

T.MATHIVANAN, J. ,

ssn

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