

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 28.11.2016

CORAM

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

**CRP(PD)No.2437 of 2012
and
M.P.No.1 of 2012**

1.Palaniammal
2.Kuppadasan
3.Pappathi

.. Petitioners

Vs.

1.Govindan
2.Krishnan
3.Sivasankar

..Respondents

Prayer: Civil Revision Petition filed under Article 227 of the Constitution of India, against the fair and decreetal order of the learned I Additional District Munsif, Salem, dated 02.02.2012 made in I.A.No.37 of 2012 in O.S.No.16 of 2010.

For Petitioners : Mr.R.Subramanian

For Respondents : Mr.T.Murugamanickam

ORDER

The case of the revision petitioners is that he is the defendant in the suit. The respondent herein has filed the above suit in O.S.No.16 of 2010 on the file of the Additional District Munsif Court, Salem as against the revision petitioners for declaration of their title and permanent injunction in respect of the suit scheduled properties containing two items. The suit first scheduled property measures 4 cent and the second scheduled measure 12 cent. Though the respondent herein have no right or interest over the suit 1st suit scheduled property, but has filed the above suit praying for injunction. Therefore the revision petitioners/ defendants filed written statement and contended that they have no claim over the suit 2nd Schedule property, whereas contended that the suit 1st scheduled property belongs to the Revision petitioners and the respondents has no right over it. It was further contended that the respondents herein by playing fraud and in connivance with the revenue authorities managed to manipulate revenue records and has mutated some revenue records that stood in the name of the Revision petitioners during UDR and the previous surveys held by the government.

Whereupon the revision petitioners applied for the certified copies pertaining to the 1st Schedule property, it was rejected by the revenue officials stating that their office does not have the copies sought by the revision petitioners. When the revision petitioners applied for copies under RTI, it was also rejected. Hence the revision petitioners were not in the possession of the Certified copies of the Revenue records and therefore to establish their case before the court the revision petitioners filed I.A.No.37 of 2012 under Rule 75 of Civil Rules of Practice read with Section 151 of CPC praying for a direction to The Tashildar or his authorized subordinate to produce the Adangal, 'A' Register, Field Measurement Book and patta of the property comprised in suit 1st scheduled property from the year 1944. The said I.A was supported by the affidavit of revision petitioners stating that their claim for copies was rejected by the revenue authorities and further the rejection order was also marked as Ex B-10. However the Learned Trial judge without appreciation of the said facts and hopeless position of the revision petitioners has erroneously dismissed the petition made under Rule 75 of Civil Rules of Practice. The said order is impugned herein.

2.I heard Mr.R.Subramanian, learned counsel appearing for the

petitioners and Mr.T.Murugamanickam, learned counsel appearing for the respondents and perused all the relevant records.

3.The learned counsel for the petitioners contended that the learned trial Judge erred in dismissing the petitioner's application, despite it was pleaded and proved that the petitioner has made sincere efforts to collect the documents. When the revenue authorities themselves refused to furnish copies to the petitioners, the trial judge ought to have allowed the petition preferred under Rule 75 of Civil Rules of Practice and thereby consider and take evidence over the same. The fraud played by the plaintiff will come to light only on perusal and considering the prior revenue records pertaining to the suit scheduled of properties.

4.Per Contra, the learned counsel for the respondents contended that the application is unsustainable for the reason that the records sought cannot be looked into by the trial court, since they are much old, Subsequently several surveys and subdivisions have been effected in respect of suit properties. Therefore the learned trial Judge has rightly dismissed the application of the revision petitioners.

5.On perusal of the impugned order it is found that the trial

Court has dismissed the revision petitioners' application made under Rule 75 of Civil Rules of Practice by assigning following three reasons:

1. The revision petitioners failed to establish that they made sincere efforts to collect the documents from revenue officials.
2. There is always possibility of collecting such public documents by the revision petitioners
3. It is impermissible to prefer a petition under Rule 75 of Civil Rules of Practice without making minimum efforts.

6. At this juncture it is relevant to refer the Additional typed set of paper disclosing the fact vide Ex.B10, that the revenue official has refused to furnish the copies sought by the revision petitioners, stating non possession of documents with their office. It is to be noted that the said rejection order of Tashildar to furnish the prior documents pertaining to the suit properties is also been marked as Ex.B10. Thus, this court feels that the Learned Trial judge has not appreciated the records available before it in so far as the first two reasons assigned.

7. Further in so far as third reason assigned by the trial Court, it does not hold good in view of the fact that the revision petitioners has

sought for documents, even before the institution of suit by the respondents herein. It is indispensable that in the said application it is specifically averred that the revenue records are being wrongly mutated. Furthermore it is noteworthy to refer to the counter filed by the respondents herein in the above I.A. contending in para 4 that the land has been surveyed and subdivided by the government agency and the same can neither be assailed nor questioned before the Civil Court. This Court expresses deep displeasure to the said stand of the respondents. It is needless to say that only a civil court is competent to decide upon the civil rights and the validity of title of either party. Baseless mutation or sub division will not confer any title or right. Once dispute arisen, it is for the parties to establish their case before the competent Civil Court.

8. In the case on hand there is a specific stand taken by the revision petitioner that playing fraud the revenue records are being mutated. Hence, the documents produced by either parties, their genuineness and credibility, should be looked into by the trial Court for arriving at right decision. Furthermore it would be safe for the trial Court to rely on the documents produced by a public authority, besides looking into the title deeds of either party.

9. For the foregoing reasons, in the interest of justice the order made by the Additional District Munsif Court, Salem, in I.A.No.37 of 2012 in O.S.No.16 of 2010 is hereby set aside and the trial Court is directed to send for records from the Tahsildar or his authorized Subordinate and after due consideration of the same, shall proceed with.

10. In the result:

(a) this Civil Revision Petition is allowed, by setting aside the order in I.A.No.37 of 2012 in O.S.No.16 of 2010 dated 02.02.2012, on the file of the District Munsif Court, Salem, Salem District;

(b) the trial Court is hereby directed to send for the records from the Tahsildar or his authorised subordinates within a period of 15 days from the date of receipt of a copy of this order;

(c) on production of records, the trial Court is directed to proceed and dispose the suit within a period of three months thereafter. No Costs. Consequently, connected miscellaneous petition is closed.

28.11.2016

Note: Issue order copy on 20.04.2017
Internet: Yes
Index: Yes

vs

To

The I Additional District Munsif,
Salem.

M.V.MURALIDARAN, J.

VS

**Pre-Delivery order made in
CRP(PD)No.2437 of 2012
and
M.P.No.1 of 2012**

28.11.2016

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