

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.02.2016

CORAM

THE HONOURABLE MR.JUSTICE R.SUBBIAH

W.P.No.3720 of 2016
and
W.M.P.No.3106 of 2016

S.R.Jothimani

... Petitioner

Vs.

1.The Tahsildar,
O/o.The Tahsildar,
Annur, Coimbatore District.

2.S.M.Eswaramoorthy

3.K.Loganathan

... Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Mandamus, forbearing the respondents 1 to 3 from interfering with the petitioner's peaceful possession and enjoyment of the property situated in Plot No.20, S.F.No.198/4B situated in Masakkoundan Chetty Palayam (MGC), Avinashi Taluk, Annur, Coimbatore District.

For Petitioner : Mr.Labrar Md. Abdullah

For respondents : Mr.S.V.Durai Solaimalan , AGP (For R1)

Mr.R.Sundarakamesh (For R2)

ORDER

The present writ petition has been filed by the petitioner praying for issuance of a writ of mandamus, forbearing the respondents 1 to 3 from interfering with the petitioner's peaceful possession and enjoyment of the property situated in Plot No.20, S.F.No.198/4B in Masakkoundan Chetty Palayam (MGC), Avinashi Taluk, Annur, Coimbatore District.

2.In the affidavit filed in support of the writ petition, it has been averred by the petitioner as follows:-

2-1The petitioner is the owner of a large extent of property in Masakkoundan Chetty Palayam, Annur Taluk. Originally, his grandfather Late.Rangasamy Chettiar had owned vast extent of land in the said area and he had gifted some of the properties to the Government for public purpose, free of cost. After the demise of his grandfather, the petitioner,

his father, brother and sisters had partitioned all the properties between them on 13.02.1997 vide registered partition deed vide Doc.No.669/1997, in the office of the Sub-Registrar, Annur, Coimbatore Registration District. A large extent of the properties was allotted in favour of the petitioner as per the "B" Schedule in the said document. One such property allotted in his favour is situated in S.No.198/4B, Masakkoundan Chetty Palayam (MGC), Avinashi Taluk, Annur, Coimbatore District. The petitioner and his brothers still hold vast extent of lands and the petitioner has even gifted 2 acres of his own land to the Government, free of cost, for the purpose of developing a Primary Health Centre in the said area.

2-2. In due course of time, finding it difficult to maintain the properties, the petitioner had started selling the properties as house sites to various persons and in furtherance of the same, he had divided his property in S.F.No.198/4B situated in Masakkoundan Chetty Palayam (MGC), Avinashi Taluk, Annur, Coimbatore District, into 20 plots of various dimensions. He had even sold a major portion of the sites and he had retained a larger site with Plot No.20 in the same survey number, since the adjacent sites to the said plot belonged to him and he had therefore retained the same for the purpose of connectivity. While so, the private respondents herein viz., respondents 2 & 3, who intended to purchase a plot, had narrowed down on Plot No.13 in the said survey number and agreed to purchase the same. The petitioner has therefore received the sale consideration for the above said Plot No.13 and had executed a sale deed dated 19.09.2013 vide Doc.No.7677/2013 in Sub-Registrar, Annur, Coimbatore Registration District. Thereafter, the said plots were not developed by the private respondents.

2-3. While so, the petitioner was served with a notice dated 06.10.2015 by the 1st respondent, asking him to appear for an enquiry with respect to survey/subdivision of property situated in S.No.198/4B, 199/1 of Masakkoundan Chetty Palayam (MGC), Avinashi Taluk. Subsequently, the petitioner had made an enquiry and he came to know that the private respondents had played a fraud on the petitioner at the time of registration of the document by inserting a different page No.8, instead of the one that was signed by the petitioner. Hence, the petitioner gave a representation to the government officials regarding the same on 15.10.2015; but, no action was taken on the said representation. The petitioner received a communication asking him to participate in an enquiry on 07.12.2015. In fact, the petitioner is still in possession of the said Plot No.20. According to the petitioner, the 1st respondent in connivance with the private respondents attempted to demarcate the Plot No.20 belonging to him without serving him a copy of the decision taken in the enquiry. Hence, the petitioner has come forward with the present writ petition before this Court.

3.The private respondents 2 & 3 have filed a counter, inter alia, stating that the contention of the petitioner that the petitioner retained Plot No.20 in S.No.198/4B is absolute falsehood. In fact, the petitioner had conveyed 2486 Sq.ft of land to the respondents 2 & 3 after receiving sale consideration. It is also false to state that that the respondents 2 & 3 had intended to purchase Plot No.13. In fact, in all the sale deeds executed by the petitioner, pertaining to land comprised in S.No.198/4B, the petitioner had not mentioned any Plot Number. The petitioner had received sale consideration of Rs.2,48,700/- for the property sold to the respondents i.e, 2486 sq.ft at the rate of Rs.100/- sq.ft. As such, the claim of the petitioner that he received sale consideration from the respondents 2 & 3 for Plot No.13 and had executed a sale deed dated 19.09.2013 vide Doc.No.7677 of 2013 in Sub-Registrar, Annur, Coimbatore Registration District, is absolutely false. The measurement of the property sold to the private respondent ie., 2486 sq.ft and the measurement of Plot No.13 (1498 sq.ft) are not one and the same. Therefore, the respondents 2 & 3 have purchased an extent of 2486 sq.ft equivalent to 231 sq.meter comprised in S.No.198/4B, Masagounda Chetty Palayam, Annur Taluk. The respondents 2 & 3 deny the allegation of the petitioner that they had played fraud on the petitioner at the time of registration of the document by inserting a different page No.8, instead of the one that was signed by the petitioner as absolute falsehood. Thus, the respondents 2 & 3 sought for dismissal of the writ petition.

4.The 1st respondent has also filed a counter, denying the allegations made by the petitioner.

5.When the matter was taken up for consideration, the learned counsel for the petitioner has made his submissions, reiterating the contentions in the affidavit filed in support of this writ petition.

6.But, it is represented by the learned counsel for the private respondents that the petitioner has already filed a suit in O.S.No.225 of 2016, along with I.A.No.335/2016, on the file of the learned Principal District Munsif, Coimbatore, in respect of the subject property. Further, the issues involved in this writ petition and the said suit are one and the same. Thus, they opposed the prayer of the petitioner in this writ petition.

7.Heard both sides and perused the materials available on record.

8.From a perusal of the affidavit of the petitioner filed in support of the writ petition and the counter filed by the respondents, it could be seen that lot of disputed questions of facts are involved in this matter. The scope of the writ petition under Article 226 of the Constitution of

India, is not to conduct enquiry on the disputes questions of facts and to render a decision. Since lot of disputed questions of facts are involved in this case, the petitioner has to work out his remedy only before the Civil Court, in the suit which he has already filed before the learned Principal District Munsif, Coimbatore, in O.S.No.225 of 2016. Hence, this Court is not inclined to entertain the present writ petition and the same is liable to be dismissed.

9. Accordingly, the writ petition is dismissed. However, the learned Principal District Munsif, Coimbatore is directed to dispose of the interlocutory application in I.A.No.335 of 2016 in O.S.No.225 of 2016, within a period of three weeks from the date of receipt of a copy of this order.

Consequently, connected Miscellaneous petition is closed.
No costs.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

ssv

To

1. The Principal District Munsif Coimbatore.

2. The Tahsildar,
O/o.The Tahsildar,
Annur, Coimbatore District.

+2ccs to Mr.R. Subramanion, Advocate, S.R.No.10017
+1cc to Mr.R.Sundarakamesh, Advocate, S.R.No.10045
+1cc to the Government Pleader, S.R.No.10601

EU(19/02/2016)

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