

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

DATED: 04.08.2016

CORAM:

THE HONOURABLE MR.JUSTICE S.S.SUNDAR**W.P(MD)No.2514 of 2014****and****M.P(MD)No.2 of 2014**

R.Vasanthi

... Petitioner

Vs.

1.The Zonal Deputy Tahsildar,
Karur Taluk,
Karur District.

2.M.Sivasamy,
The Zonal Deputy Tahsildar,
Karur Taluk,
Karur District.

3.K.Nagarajan

4.A.P.Sankar

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, calling for the records relating to the impugned order passed by the first respondent in his proceedings Ni.Mu.RTR/5191/2011, dated 05.11.2011 and quash the same as illegal and arbitrary.

For Petitioner : Mr.B.Saravanan

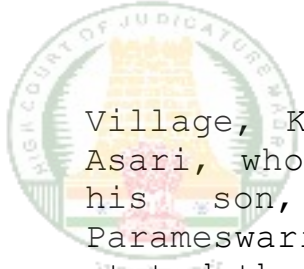
For Respondents : Mr.Aayiram K.Selvakumar
Government Advocate for R.1 and R.2
Mr.S.Gokul for R.3
No appearance for R.4

ORDER

This writ petition has been filed seeking a Writ of Certiorari to call for the records relating to the impugned order passed by the first respondent in his proceedings Ni.Mu.RTR/5191/2011, dated 05.11.2011 and quash the same as illegal and arbitrary.

2. Brief facts that propelled the petitioner herein to file the present writ petition, as stated by the petitioner in the affidavit filed in support of this writ petition, are as follows:

2.1. The case of the petitioner is that the property measuring an extent of 99 cents in S.No.124 and another property measuring an extent of 60 cents in S.No.123/2 in Lakshmi Narayana Samuthiram



Village, Karur Taluk, Karur District, were owned by one Arumuga Asari, who died intestate leaving behind his wife, A.Lakshmi and his son, Shanmugasundaram and his daughters, Rajeswari, Parameswari and Maheswari, as his legal heirs. Further, it is stated that the said Shanmugasundaram executed a power of attorney deed on 30.01.2002 in favour of the fourth respondent, in respect of the aforesaid properties. However, the said power of attorney deed was duly cancelled by the principal by way of another registered document on 26.03.2002. The principal, namely, Shanmugasundaram died on 20.06.2009, leaving behind his legal heirs.

2.2. It is the further case of the petitioner that he purchased two items of properties referred to above, from the legal heirs of Arumuga Asari and Shanmugasundaram under the registered sale deed dated 05.02.2010, which was registered as Document No.1189 of 2010. Further, he is in possession and enjoyment of the properties and that his name has been included in Patta No.702.

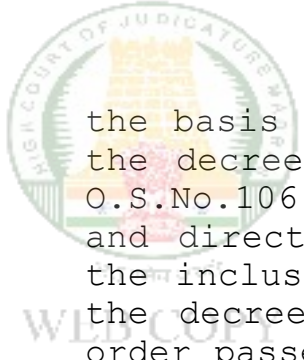
2.3. It is further stated that he was constrained to file a suit in O.S.No.233 of 2011 before the District Munsif Court, Karur, for permanent injunction, as against the fourth respondent and his wife, Prema, since they tried to interfere with his possession and enjoyment of the properties.

2.4. It appears that the fourth respondent has entered into an agreement of sale in respect of the same landed property with the third respondent, acting as a power of attorney agent of the deceased Shanmugasundaram.

2.5. It is to be noted that the sale agreement alleged to have been executed by the fourth respondent in favour of the third respondent is dated 22.09.2006, much after the cancellation of the power of attorney deed, that was earlier executed by the said Shanmugasundaram, in favour of the fourth respondent.

2.6. However, the third respondent filed a suit for specific performance in O.S.No.299 of 2009 on the file of the Principal Subordinate Court, Karur, after the death of the said Shanmugasundaram. It is not in dispute that the said Shanmugasundaram, the principal, was a party to the said suit. According to the petitioner, the exparte decree obtained in the said suit by the third respondent, based on which, a sale deed dated 09.09.2011 has been executed by the trial Court, is a collusive one and therefore, it is a nullity. The petitioner also appears to have filed the civil suit in O.S.No.106 of 2013 on the file of the Additional District Munsif Court, Karur, for a declaration that the judgment and decree dated 02.02.2011 are invalid, that the sale deed executed by the Sub Court, Karur, on 09.09.2011 is invalid and for other consequential reliefs and that the said suit was decreed by a judgment and decree dated 10.10.2015, during the pendency of this writ petition.

<https://hcservices.courts.gov.in/hcservices> 27. It appears that the third respondent has applied before the first respondent, the Zonal Deputy Tahsildar, for inclusion of his name in the patta in respect of the aforesaid properties, on



the basis of the sale deed obtained through the Court pursuant to the decree for specific performance, which had been set aside in O.S.No.106 of 2013. The first respondent allowed his application and directed to include the name of the third respondent. Since the inclusion of the name of the third respondent is pursuant to the decree in O.S.No.299 of 2009, the petitioner challenges the order passed by the first respondent, dated 05.11.2011, on various grounds in the present writ petition.

3. Heard the learned Counsel for the petitioner, the learned Government Advocate appearing for the respondents 1 and 2 and the learned Counsel for the third respondent and perused the materials available on record. Despite notice served on the fourth respondent, there is no representation on behalf of him.

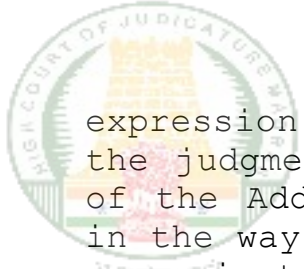
4. A reading of the impugned order shows that the first respondent has passed the order based on the sale deed that was obtained through the Court pursuant to the decree in the suit for specific performance. The first respondent has not given an opportunity to the petitioner, whose name is registered as the land owner.

5. It is pertinent to point out that the first respondent is not the competent authority to effect mutation of names in the revenue records as per the provisions of the Tamil Nadu Patta Passbook Act.

6. Considering the facts as found from the records, this Court finds that the decree obtained in O.S.No.299 of 2009 on the file of the Principal Subordinate Court, Karur, for specific performance, and the sale deed obtained by the third respondent pursuant to the decree for specific performance, are all void, for the simple reason that the power of attorney deed executed by the said Shanmugasundaram has come to an end on 26.03.2002 and that the sale agreement dated 22.09.2006, executed in favour of the third respondent by the fourth respondent, is illegal. In view of the decree that was granted on 10.10.2015 in O.S. No.106 of 2013 on the file of the Additional District Munsif Court, Karur, the third respondent is not entitled to claim any right over the property which is the subject matter of the present writ petition and the suit in O.S.No.299 of 2009 on the file of the Principal Subordinate Court, Karur as well as the suit in O.S.No.106 of 2013 on the file of the Additional District Munsif Court, Karur.

7. Since this Court feels that the application for the grant of patta in favour of the third respondent is fraudulent, having regard to the facts and circumstances set out in the affidavit filed in support of the writ petition, this Court is satisfied that the impugned order passed by the first respondent is illegal and hence, the same is liable to be set aside.

8. However, the learned Counsel for the third respondent submitted that the judgment and decree in O.S.No.106 of 2013 on the file of the Additional District Munsif Court, Karur, has not been set aside by the High Court as there has been a further appeal that is pending at the instance of the third respondent. Therefore, he sought for a specific observation from this Court that any



expression of opinion on the merits of the case, on the basis of the judgment and decree passed in O.S.No.106 of 2013 on the file of the Additional District Munsif Court, Karur, should not stand in the way of the third respondent to prosecute the further appeal as against the judgment and decree passed in O.S.No.106 of 2013.

9. This Court makes it clear that the present writ petition is directed only against the order passed by the first respondent in recognising the third respondent as the owner of the property. This Court is inclined to set aside the order of the first respondent based on the factual materials placed before this Court and the judgment and decree passed in O.S.No.106 of 2013, which will not certainly stand in the way of the third respondent in establishing his right as against the petitioner either in the appeal which he claimed to have filed against the judgment and decree passed in O.S.No.106 of 2013 on the file of the Additional District Munsif Court, Karur, or by filing any other suit against the petitioner with regard to the properties in question.

10. With these observations, this writ petition is allowed as above and the impugned order passed by the first respondent is set aside. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(AS)

/TRUE COPY/

Sub Assistant Registrar

To

1. The Zonal Deputy Tasildar,
Karur Taluk, Karur District.
2. M. Sivasamy,
The Zonal Deputy Tahsildar,
Karur Taluk, Karur District.
3. The Additional District Munsif, Karur.

+1cc to M/S.B.SARAVANAN, ADVOCATE SR NO:42319

+1cc to M/S.THE SPECIAL GOVERNMENT PLEADER, SR NO: 42212

+1cc to M/S.S.GOKULRAJ, ADVOCATE SR NO: 42131

rsb

JA-KBM-10.08.2016-4P:7C

W.P (MD) No.2514 of 2014
and

M.P (MD) No.2 of 2014
04.08.2016