

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 15.03.2017

DATE OF DECISION : 19.04.2017

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA

Review Application No.19 of 2014
in
Writ Petition No.11764 of 2009

A.Manimekalai .. Review Applicant/Petitioner

-VS-

1. The Commissioner of Land Administration
Chepauk
Chennai 600 005

2. The District Collector
Kancheepuram
Collectorate Office
Kancheepuram

3. The Tahsildar
Chengalpattu
Kancheepuram

4. The Tahsildar
Thiruporur Taluk
Thiruporur
Kancheepuram District
(R4 impleaded vide order of Court
dated 7.7.2015 in MP 1/15 in
Rev.Appln.No.19/2014)

.. Respondents/Respondents

Memorandum of Grounds of Review Application under Order 47 Rule 1
read with Section 114 of Civil Procedure Code, to review the order dated
5.8.2013 in W.P.No.11764 of 2009.

For Review Applicant	::	Mr.K.Doraisami Senior Counsel for Mr.N.Ishtiaq Ahmed
For Respondents	::	Mr.C.Manishankar Additional Advocate General assisted by Mr.M.Dig Vijaya Pandian Additional Government Pleader

ORDER

This review application has been filed to review the order passed by me in Writ Petition No.11764 of 2009 dated 5.8.2013.

2. Mr.K.Doraisami, learned senior counsel for the review applicant, while reiterating the necessary facts of the case that the review applicant's late father Mr.K.Appanraj was holding 5.00 acres of agricultural land in S.No.177/1 at Thazhambur village, Chengalpattu Taluk, now Tiruporur Taluk; that the said Appanraj claimed that the said land was assigned to him under the Freedom Fighter's category on 29.7.67 in T.K.D.C.No.101/1376 and Patta No.378 was also issued to him on 9.7.74; that on the basis of the patta, the said Appanraj had also taken agricultural loan in Equitable Mortgage No.2 of 1984 from Indian Overseas Bank, Adyar branch, which was repaid on 29.1.98 and that subsequently the Bank also had filed a suit in O.S.No.7506 of 1999, which came to be dismissed as settled out of Court on 9.8.96, submitted that when the review applicant's father was assigned the land in S.No.177/1 at Thazhambur

village, Tiruporur Taluk under the Freedom Fighter's category and also produced the documents, namely, patta passbook, kist receipts etc., evidencing that Patta No.378 in S.No.177/1 stood in the name of his late father Mr.K.Appanraj, the writ petition has been dismissed by this Court holding that the review applicant has not proved the assignment. Secondly, when the suit in C.S.No.830 of 1991 was filed before this Court by Indian Overseas Bank, which was subsequently re-numbered as O.S.No.7506 of 1996 on the file of City Civil Court, Chennai, the plaintiff-Bank has clearly mentioned in paragraph-3 of the plaint that Mr.Appanraj deposited with the plaintiff on 20.2.88 title deeds of property belonging to him with an intent to create equitable mortgage by deposit of title deeds in favour of the plaintiff Bank, wherein Schedule B of the plaint schedule property relates to S.No.177/1 measuring 5.00 acres comprised in Patta No.378 of Thazhambur village and in the list of documents filed along with the plaint, Serial nos.14 to 17 relate to land ownership book, encumbrance certificate from 1.1.76 to 4.2.88 of B schedule property, this Court has rejected the prayer of the writ petitioner.

3. Continuing his arguments, the learned senior counsel submitted that the proposal contained in the letter of Tahsildar to allot alternate land in Thaiyur B village will also clearly establish the factum of assignment of land in favour of the petitioner's father late Appanraj and also the subsequent cancellation of the same. Moreover, when paragraph-21 of the order dated 19.8.2005 passed by the

District Collector, Kancheepuram would show the possibility of assignment of land in S.No.177/1 of Thazhambur village in favour of late Appanraj and the subsequent cancellation of the same and destruction of records having been admitted, these facts were not properly brought to the notice of this Court by the other side. Had these documents been brought to the notice of this Court at the time of hearing of the writ petition, this Court would not have dismissed the writ petition. Therefore, the stand taken by this Court that the ban order relied on by the District Collector in paragraph-24 of the aforesaid order for coming to the conclusion that the land in Thazhambur village could not have been assigned in favour of Appanraj is contrary to the finding of this Court rendered in another W.P.No.21357 of 2011 dated 8.7.2013. Hence, the order passed in the writ petition is liable to be reviewed, the learned senior counsel pleaded.

4. Opposing the above submissions, Mr.C.Manishankar, learned Additional Advocate General assisted by the learned Additional Government Pleader for the respondents submitted that when the review applicant came to this Court by filing the W.P.No.11764 of 2009 challenging the proceedings dated 22.4.2009 bearing R.Dis.No.F2/35344/05 passed by the Principal Secretary/Commissioner of Land Administration, Chennai confirming the order passed by the District Collector, Kancheepuram in proceedings Na.Ka.24608/2003/B1 dated 19.8.2005, to quash the same with a consequential direction to the respondents to assign

the alternate land as per the proposal sent by the third respondent-Tahsildar, Chengalpattu in his proceedings R.C.No.1647/2003/B1 dated 31.3.2005 by assigning 5.00 acres of land in Tahiyur B village comprised in S.No.1395-C/3A, 1279-6A, 6B1, 6B2 and 1299, this Court, doubting the case of the review applicant with regard to the assignment of land, has held that the review applicant's father was not able to produce the order of assignment at any point of time before any authority. Therefore, when the review applicant's father late Appanraj, claiming to have been assigned with 5.00 acres of agricultural land in S.No.177/1 at Thazhambur village, now Tiruporur Taluk under Freedom Fighter's category on 29.7.67, had failed to produce the copy of the assignment and even today, no evidence whatsoever with regard to the assignment of land has been produced to show that the father of the petitioner was the original assignee, the petitioner cannot say that she is entitled to continue in physical possession of the land in question. When the respondents at no point of time had assigned any land in favour of the review applicant's father late K.Appanraj, more particularly, in S.No.177/1 at Thazhambur village, now Tiruporur Taluk, if they plead that the original order of assignment was wrongly cancelled, even the cancellation of assignment order also was neither produced before this Court at the time of hearing of the writ petition nor before hearing the review application, hence the order passed by this Court in the writ petition that there was neither an order of assignment passed in favour of the review applicant's father in S.No.177/1 nor

the said assignment was subsequently cancelled, will hold good.

5. Adding further, the learned Additional Advocate General for the respondents submitted that had the respondents, as pleaded by the review applicant, assigned 5.00 acres of land in S.No.177/1, Thazhambur village, Chengalpattu Taluk, now Tiruporur Taluk under Freedom Fighter's category in favour of late Mr.K.Appanraj, after the cancellation of the land, the review applicant's father or the other family members would have rushed to the civil Court seeking injunction against the respondents not to interfere with their possession in respect of the land in S.No.177/1 of Thazhambur village. The reason for not going to the civil Court by the family members of the review applicant would clearly prove that they were not issued with any assignment order at any point of time by the revenue authorities. Therefore, knowing fully well this fact and accepting the impossibility of establishing her case before the civil Court that there was an assignment order in favour of the review applicant's father in respect of 5.00 acres of land in S.No.177/1 in Thazhambur village, now Tiruporur Taluk, she has unnecessarily visited this Court with the writ petition. Hence the order passed by this Court does not suffer from any error apparent on the face of the record and the review application is liable to be dismissed, he pleaded. Again replying to the submission made by the learned senior counsel for the review applicant that Patta No.378 was issued on 9.7.74 and on the basis

of the said patta, the review applicant's father had also taken agricultural loan from Indian Overseas Bank, Adyar branch in Equitable Mortgage No.2 of 1984, which was repaid on 29.1.98, he submitted that when the Bank filed O.S.No.7506 of 1996, which was dismissed as settled out of Court on 9.8.96, there is no mention about the category of land at all in the settlement, however, the Branch Manager of the Bank also confirmed that no agricultural loan was sanctioned to anyone in respect of the land comprised in S.No.177/1 at Thazhambur village. In this background, the review applicant's argument for possession of the land in question and the subsequent mortgage are not at all true, because they are fabricated story on the assignment. Even the Principal Secretary/Commissioner of Land Administration in his rejection order dated 22.4.2009 has clearly stated that the adangal entries for S.No.177/1 in Thazhambur village produced by the review applicant did not bear the attestation of any revenue authorities and that they cannot be taken as proof of assignment in favour of the review applicant.

6. I also find much force in the submissions made by the learned Additional Advocate General for the respondents. When the review applicant claims that her father late K.Appanraj was holding 5.00 acres of agricultural land in S.No.177/1 at Thazhambur village, Chengalpattu Taluk, now Tiruporur Taluk on the basis of an order of assignment issued to him under Freedom Fighter's

category on 29.7.67, she has admittedly not produced the copy of the assignment order before me at the time of hearing of the writ petition challenging the order passed by the District Collector, Kancheepuram, as confirmed by the order passed by the Principal Secretary/Commissioner of Land Administration, Chennai. According to the review applicant, the order cancelling the assignment was also not issued to her family members. But the respondents have categorically denied these two statements stating that Mr.K.Appanraj was neither issued with any assignment order at any point of time nor the said assignment was cancelled subsequently, inasmuch no records are available in the revenue department to show that any order of cancellation of assignment was issued to the review applicant. Therefore, when there is a claim by the review applicant that there was an assignment order in favour of her father for holding 5.00 acres of agricultural land in S.No.177/1 at Thazhambur village under the Freedom Fighter's category on 29.7.67 and the same was cancelled by another order and that there is a counter claim by the respondents that there was no assignment at all in favour of Mr.K.Appanraj, this Court cannot delve into such controversies, as they are supposed to produce all the documents before the civil Court factually. It is pertinent to mention herein that the writ petition filed by the review applicant was dismissed solely on the ground that she was not able to produce the order of assignment in respect of 5.00 acres of land in S.No.177/1 at Thazhambur village said to have been issued in her father's favour by the

respondents. This apart, the order of cancellation said to have been issued was also not produced before this Court. Therefore, when neither the order of assignment in favour of Mr.K.Appanraj nor the order of cancellation was produced, the review applicant cannot maintain the review application for allotment of 5.00 acres of land in Thazhambur village or for any other relief. Hence this Court, finding no error apparent on the face of the record, is not inclined to entertain the review application. Accordingly, the review application fails and it is dismissed. Consequently, M.P.No.2 of 2015 is also dismissed as unnecessary. No costs.

Speaking/Non speaking order

19.04.2017

Index : yes

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T.RAJA, J.

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