

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 10.11.2017

Delivered on: 06.12.2017

Coram

The Honourable Mr. Justice V. PARTHIBAN

W.P. No.7292 of 2012 &
MP Nos.1 & 2 of 2012

C.Kailasam

... Petitioner

versus

1. The Commissioner,
HR & CE (Admn) Department,
Chennai-600 034.

2. The Joint Commissioner,
HR & CE (Admn) Department,
Coimbatore.

3. The Executive Officer,
A/m Pattatharasiamman Temple,
Pappanaickanpalayam,
Coimbatore town,
Coimbatore taluk and District.

... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, praying for the issuance of Writ of Certiorarified Mandamus, to call for the entire records of the 1st respondent relating to R.P.No.117/2010/D2 dated 8.2.2012 and order of the 2nd respondent in Miscellaneous Petition No.27/2009/Aa1 dated 22.11.2010, quash the same and consequently, direct the respondents not to interfere with lawful possession and enjoyment of the petitioner of his property of land and building situated at Door No.4/181 Part, Arunthathiyar Street, Pappanaickenpalayam, Krishnarayapuram village, Coimbatore taluk and District comprised in T.S.Nos.10/962/1 and 2 measuring an extent of 924 sq.ft. within the Registration District of Coimbatore and Sub Registration District of Peelamedu.

For Petitioner : Mr.R.Bharathkumar

For Respondents : Mr.M.Maharaja, Spl.G.P.
-R1&R2
Mr.R.T.Doraisamy for R3

ORDER

The present writ petition has been filed, seeking for the following relief:

"To issue of Writ of Certiorarified Mandamus, to call for the entire records of the 1st respondent relating to R.PL.No.117/2010/D2 dated 8.2.2012 and order of the 2nd respondent in Miscellaneous Petition No.27/2009/Aa1 dated 22.11.2010, quash the same and consequently, direct the respondents not to interfere with lawful possession and enjoyment of the petitioner of his property of land and building situated at Door No.4/181 Part, Arunthathiyar Street, Pappanaickenpalayam, Krishnarayapuram village, Coimbatore taluk and District comprised in T.S.Nos.10/962/1 and 2 measuring an extent of 924 sq.ft. within the Registration District of Coimbatore and Sub Registration District of Peelamedu.

2. The petitioner's wife had originally purchased the property comprised in T.S.No.10/962/1 measuring an extent of 363 sq.ft. in Door No.4/181 and 10/962/1 situated at Arunthathiyar Street, Krishnarayapuram village, Pappanaickenpalayam, Coimbatore taluk from one Thiru P.Karuppusamy vide sale deed dated 29.1.2001 registered as Document No.92 of 2001 at Sub Registrar Office, Peelamedu. The petitioner's vendor was originally in possession and enjoyment of the said property without any interference having obtained electricity and water connection to the said property. The vendor of the petitioner's wife who conveyed the property as above, died on 22.12.2004 leaving behind him, his wife as sole legal heir to succeed his estate. Thereafter, his wife, namely, Smt.Valliammal, by sale deed dated 1.2.2006 registered Document No.292 of 2006 at Sub Registrar Office, Peelamedu, sold and conveyed an extent of 924 sq.ft. house site together with superstructure thereon at D.No.4/181 including the electricity connection, water connection etc. After the conveyance of the property, the entire property comprised in T.S.No.10/962/1 and 2 at Door No.4/181 Part, Arunthathiyar Street, Krishnarayapuram village, Pappanaickenpalayam, Coimbatore taluk and District, owned and possessed by the petitioner. After the purchase of the property,

the petitioner and his family members are in absolute possession and enjoyment of the property. According to the petitioner, the revenue records also stand in the name of the petitioner.

3. While so, third respondent filed a Miscellaneous Petition No.27 of 2009 under Section 78(1) of the Hindu Religious and Charitable Endowments Act, 1951 before the second respondent for recovery of possession of the subject property on the ground that the petitioner was an encroacher of the temple property to an extent of 600 sq.ft. comprised in T.S.No.962/2 at Door No.181. The case of the petitioner was that the original vendor, namely, Karuppusamy had been granted patta to the said property as early as in 1977 and in fact, the said Karuppusamy had filed a suit in O.S.No.1170 of 1995 against the respondents and revenue authorities for permanent injunction, not to interfere with his possession and enjoyment over the subject property and the said suit was also decreed in his favour. As against the decree of the trial Court, an appeal was filed in A.S.No.258 of 1997 which also came to be dismissed on merits. Therefore, the petitioner's vendor had enjoyed perfect title and ownership of the subject property.

4. Before the second respondent, the petitioner had submitted all the documents in support of his claim. It was also contended that there was another suit filed on the file of the District Munsif Court, Coimbatore in O.S.No.1913 of 2009 contesting the right of the 3rd respondent over the said property. However, without proper consideration of the materials produced before the second respondent, the second respondent passed an order on 22.11.2010 holding that the petitioner was an encroacher to the extent of 600 sq.ft. of land belonging to the 3rd respondent and consequently, directed the petitioner to vacate and hand over the same. As against the order passed by the second respondent dated 22.11.2010, the petitioner filed a revision petition under Section 21 of the Act before the first respondent. The revision petition was numbered as R.P.No.117 of 2010. Before the revisional authority, the petitioner had produced all the documents and raised several contentions in support of his claim for ownership of the property in question. In the revision petition, a counter affidavit was filed on behalf of the 3rd respondent, inter alia stating that the petitioner was an encroacher to an extent of 600 sq.ft. of the property. However, on an erroneous consideration of the facts and materials, the first respondent by order dated 8.2.2012, rejected the petitioner's revision petition. While rejecting the revision petition, the first respondent, proceeded to hold that the petitioner was an encroacher to an extent of 1040 sq.ft. According to the petitioner, the first respondent had exceeded the jurisdiction and passed an erroneous order, holding that the petitioner, had in fact, encroached the land to the

extent of 1040 sq.ft. which was not the case of the third respondent before the first respondent. As far as the 2nd respondent was concerned, the petitioner had encroached only 600 sq.ft. of the property and therefore, the first respondent's order in R.P.No.117 of 2010 dated 8.2.2012 cannot be countenanced both in law and on facts.

5. The learned counsel appearing for the petitioner would contend that the order passed by the first respondent cannot be sustained for more than one reason, since there was no revision filed by the third respondent as against the order passed by the second respondent dated 22.11.2010. In the absence of any revision petition at the instance of the third respondent, it was not open to the first respondent to grant larger relief to the third respondent at the instance of the petitioner's revision petition. Moreover, even in the counter affidavit filed in the revision petition, the contention that was put forth on behalf of the 3rd respondent was that the petitioner was encroacher of the temple property only to an extent of 600 sq.ft. and not more. That being the case, the petitioner was at loss to understand as to the basis of the order passed by the first respondent holding that the petitioner had encroached 1040 sq.ft. of the temple property.

6. Upon notice, Mr.M.Maharaj, learned Special Government Pleader entered appearance for the respondents 1 and 2 and filed a counter affidavit.

7. During the course of the arguments advanced by the learned counsels appearing for the parties, Mr.R.Bharathkumar, learned counsel for the petitioner would submit that his client has no objection in taking over the alleged extent of encroached land by the temple, namely, 600 sq.ft. in the subject property as ordered by the second respondent by proceedings dated 22.11.2010. However, the learned counsel raised strong objections as to the orders passed by the first respondent in R.P.No.117 of 2010 dated 8.2.2012 since admittedly, the claim of the 3rd respondent itself was that the petitioner had encroached only 600 sq.ft. of the temple property.

8. This Court considered the submissions of the learned counsels for the parties. As fairly contended by the learned counsel for the petitioner that originally, the second respondent passed order holding that the petitioner had only encroached 600 sq.ft. in the subject property. However, strangely the first respondent in the revision petition filed by the petitioner, had held that the petitioner had encroached upon 1040 sq.ft. without any valid basis. As rightly contended by the learned counsel for the petitioner that in the absence of any

revision petition at the instance of the third respondent, such order ought not have been passed by the first respondent. Admittedly, it was not even the case of the 3rd respondent that the petitioner had encroached upon 1040 sq.ft. Such being the case, this Court does not appreciate as to how and on what basis, the first respondent had come to the conclusion that the petitioner had encroached upon 1040 sq.ft. of the temple property.

9. In the above circumstances, this Court has no hesitation in setting aside the order passed by the first respondent dated 8.2.2012 in R.P.No.117 of 2010. Since the learned counsel for the petitioner submitted that the petitioner has no objection for restoring of the order passed by the second respondent dated 22.11.2010 in M.P.No.27 of 2009, the same stands restored.

10. In view of the above, the Writ Petition is partially allowed and the impugned order passed by the first respondent dated 8.2.2012 in R.P.No.117 of 2010 alone is set aside. No costs. Consequently, connected MPs are closed.

Sd/-

Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

SUK

To

1. The Commissioner,
HR & CE (Admn) Department,
Chennai-600 034.

2. The Joint Commissioner,
HR & CE (Admn) Department,
Coimbatore.

3. The Executive Officer,
A/m Pattatharasiamman Temple,
Pappanaickanpalayam,
Coimbatore town,
Coimbatore taluk and District.

+1cc to Mr.R.J.Duraisamy, Advocate, S.R.No.86507
+1cc to Mr.R.Bharathkumar, Advocate, S.R.No.86711

W.P.No.7292 of 2012

SSD(CO)
RRK(14/12/2017)