

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.09.2017

CORAM :

THE HONOURABLE MR. JUSTICE M. GOVINDARAJ

CRP.PD.No. 1461 of 2013
and M.P.No 1 of 2013 and
CMP.No.9404, 9405 & 9406 of 2017

S.Raj

... Petitioner

Vs.

1. M.Balasubramanian
2. Tmt. K. Bharathi
3. Selvi. Sridevi Ramesh
4. The Collector of Chennai
Chennai Collectorate
Singaravelar Maligai
32, Rajaji Salai, Chennai-1
5. The Tahsildar
Mambalam-Guindy Taluk
K.K. Nagar, Chennai-78.

... Respondents

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the order passed on 07.12.2012 in I.A.No. 303/2011 in O.S.No.13167/2010 on the file of learned XVIII Additional Judge, City Civil Court, Chennai.

For Petitioner : Mr. R.Mary Devakumari
For Respondent : Mr. T.S.Ramarathnam
Mr. T.R Sundaram for R3
For R2 : Mr. Sundar Narayan
For R4-R5 : Mr. T.Jayarama Raj
Government Advocate C.S

ORDER

The Revision Petitioner is a hapless victim of innocent purchase from the persons, who had no title.

2. Originally, the property belonged to one Shanmugam & Dhandapani admeasuring an extent of 4.20 acres in equal moiety. Both of them gave Power of Attorney to one C.Krishnamoorthy to form layout and sell the plot in respect of 1.10 acres and one acre respectively. The said Power of Attorney misusing his power sold out the entire extent of 4.20 acres as approved and unapproved plots and there were multiple sales of one plot to several persons.

3. During the course of events, it appears that the said Shanmugam and Dhandapani have claimed a sum of Rs.42,000/- as price for entire extent of 4.20 acres. The said C.Krishnamoorthy identified one V.Ramesh and he paid a sum of Rs.42,000/- in full quit and the receipt of money was acknowledged by a stamped receipt towards full settlement of entire sale consideration of 4.20 acres. Letter of authorisation was executed in favour of Ramesh as agent coupled with interest in order to evade stamp duty for registering a sale deed. Pursuant to the receipt of money, the physical possession of

the entire 4.20 acres purported to have been handed over to Ramesh in the year 1975 itself. The said C.Krishnamoorthy, for handing over the physical possession, requested Ramesh to pay him a sum of Rs.1,36,500/-. In order to raise funds, Ramesh mortgaged the original documents vice Document Nos.2366/65, 2367/65 and 776/69 pertaining to the property. Later, the mortgage was redeemed and the said C.Krishnamoorthy handed over all the original documents along with the irrevocable power of Attorney given by Shanmugam & Dhandapani in favour of him to Ramesh. In addition to that, Krishnamoorthy has also executed Power of Attorney in favour of Ramesh enabling him to sell independently as an agent coupled with interest.

4. The said Ramesh, thereafter, obtained a layout approval in the year 1975. By way of a registered sale agreement dated 06.10.1982, bearing Document No.3355/82, he agreed to sell the entire 4.20 acres to one Marimuthu Chettiar. On 22.07.1983, a sale deed was registered in favour of the said Marimuthu Chettiar and the same was ratified by C.Krishnamoorthy in the capacity of Power of Attorney of Shanmugam & Dhandapani. Thus, the entire property was handed over to the possession of Marimuthu Chettiar and he became the owner. In the meanwhile, Shanmugam and Dhandapani filed suit

for bare injunction against Krishnamoorthy and Ramesh and obtained injunction in O.S.Nos.5672 and 5673 of 1983. They have also filed suits for bare injunction against Balasubramaniam S/o.Marimuthu Chettiar from selling the plots any further in future. Curiously, the said Shanmugam & Dhanpanai have neither cancelled the Power of Attorney given to Krishnamoorthy nor filed any suit for declaration of their title.

5. On the other hand, Marimuthu Chettiar filed suit for declaration of the sale deed dated 22.07.1983 executed by Ramesh and the indenture ratifying the sale in favour of Marimuthu Chettiar are true and valid and the same was decreed and registered as Document No.341 of 1989 dated 15.03.1989. It is contended that it was a collusive decree, but was not challenged by any one and became final. Thereafter, Marimuthu Chettiar sold the 54 plots to various persons between 1989 and 1990 as approved by the Director of Town Planning. Individual patta was granted in their favour by the Collector on 01.06.1999. This was objected by Shanmugam and Dhandapani. On the finding of the Zonal Tahsildar that the claim of purchasers of plots from Marimuthu Chettiar is genuine, Collector ordered for issuance of individual patta and the same was granted on 20.02.2000.

6. On appeal from Shanmugam and Dhandapani, the then Collector set aside the patta granted on 20.02.2000 by his order dated 11.05.2002 without hearing the grantees. Under the directions of High Court, Commissioner for Land Administration after issuing notice to concerned parties, revised the order of Collector dated 11.05.2002 and confirmed the patta granted by Tahsildar dated 20.02.2000. Shanmugam and Dhandapani had effectively contested the revision before the Commissioner for Land Administration by engaging counsel. The order in revision dated 10.02.2003 passed by the Commissioner for Land Administration was challenged by way of Writ Petition in W.P.No.9650 of 2003. This Court by its order dated 24.04.2008 declared that the grant of patta by the Tahsildar dated 20.02.2000 is valid and if the legal heirs of Shanmugam and Dhandapani are still aggrieved, they can approach the Civil Court for establishing their title, subject to law of limitation. With this background, the petitioner has now sought to amend the prayer in the suit to set aside the patta granted by Tahsildhar and Collector dated 20.02.2000 and restore them in his favour.

7. The petitioner claims that his predecessor in title, one Prema, has purchased the property directly from Dhandapani himself by way of Document No.420/1977 dated 27.06.1977 in the approved

layout No.221/1975. Further on the basis of the sale deed, for plot No.31 patta was granted in sub-division No.257/35, under patta No.4185 by Tahsildhar, Mambalam, Guindy Taluk. From Prema, the petitioner purchased the suit property by way of a registered document No.2911/2004 dated 09.06.2004. But her possession was interfered by defendants 1 to 3. When she protested the registration of sale deed in favour of third parties, she came to know of a decree dated 13.07.1974 in favour of Prema in a suit for injunction in O.S.No.8214/1991. On the basis of the title through registered sale deed dated 09.06.2004, the plaintiff has preferred the above suit for declaration and injunction.

8. From a perusal of the pleadings, it is seen that the suit prayer was amended twice in the past, in I.A.No.80 of 2011, which reads as under:

"a) Declaring the right and title of the plaintiff to the suit property;

*b) For permanent injunction restraining the defendants, their men and their agents from ** altering the physical features of the suit property till delivery possession to the plaintiff and not to alienate or encumber the suit*

property and not to put up any construction in the suit property;

** Amended as per order dated 12.11.08 in Appln. No.4398/08.*

*** Amended as per order dated 05.10.09 in Appln. No.4173/09.*

** b)6) directing the 3rd defendant to deliver vacant possession of the plaint schedule property plot No.31 after removal of the unauthorised construction put up by the 3rd defendant.*

b)6)b) directing the 3rd defendant to pay the plaintiff future mesne profits at the rate of Rs.1000/- p.m., from 14.12.07 till delivery of possession.

c) directing the defendants to pay the costs of the suit.

d) pass such further or other orders as this Hon'ble Court may deem fit and proper in the circumstances of the case and thus render justice."

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9. Now, in the present application in I.A.No.303 of 2011, the petitioner / plaintiff sought to amend the plaint in O.S.No.13167 of 2010, as under:-

"After para 13A add the following as para 13AA.

13AA. I submit that I have alleged in the plaint in para 5 that my vendor Ms.R.Prema was in possession of the suit property from the date her purchase on 27.06.1977 and she was given separate patta No.4185 and separate sub division as survey no.257/35 by the Tahsildar, Mambalam - Guindy Taluk and that she was in continuous possession and enjoyment of the suit property till she sold the same to me on 09.06.2004 on which date she handed over the possession of the suit property to me. Where as, the 3rd defendant in her written statement at para 8 alleges that R.Prema's patta 4185 was cancelled by the District Collector on 16.03.1999 and the third defendant has also listed certain documents namely serial numbers 16, 43 and 35 to 46 in the list of documents relied on by the third defendant regarding the subsequent patta proceedings conducted behind the back of Ms.R.Prema. It is pertinent to note here that the second defendant does not spell out anything about issue of patta in her name by the Revenue Department Officials concerned. Moreover, O.S.No.8214/91 filed by R.Prema was pending all along from 1991 to 2002

even as per the admission of the defendants. While so, the earlier registered land owner R.Prema was not put on notice regarding the subsequent patta proceedings at any time. Therefore, those proceedings are not binding on Prema or the plaintiff. I have submitted my rebuttal in para 5 of the reply statement to the written statement of the third defendant and I have also clearly set out in para 9-A of the plaint how the third defendant trespassed into the suit property in the nocturnal hours between 13.12.2007 and 14.12.2007.

I respectfully submit that after filing of the written statement in this case I came to know the wrangle of patta culminating I have alleged in the plaint in para 5 that my vendor Ms.R.Prema was in possession of the suit property from the date of her purchase on 27.06.1977 and she was given separate patta No.4185 and separate sub division as Survey No.257/35 by the Tahsildar, Mambalam - Guindy Taluk and that she was in continuous possession and enjoyment of the suit property till she sold the same to me on 09.06.2004 on which date she handed over the possession of the suit property to me. Whereas, the 3rd defendant in her written statement at para 8 alleges that "R.Prema's patta

4185 was cancelled by the District Collector on 16.03.1999 and the plaintiff Raj was never in possession of the plot no.31" (this suit property). In support thereof, the third defendant has listed certain documents namely serial numbers 16, 43 and 35 to 42 in the list of documents relied on by the third defendant regarding the subsequent patta proceedings conducted behind the back of Ms.R.Prema. It is pertinent to note here that the second defendant does not spell out anything about issue of patta in her name by the Revenue Department Officials concerned. Moreover, O.S.No.8214/91 filed by R.Prema was pending all along from 1991 to 2002 even as per the admission of the defendants. While so, the earlier registered land owner R.Prema was not put on notice regarding the subsequent patta proceedings at any time. Therefore, those proceedings are not binding on Prema or the plaintiff. I have submitted my rebuttal in para 5 of the reply statement to the written statement of the third defendant and I have also clearly set out in para 9-A of the plaint how the third defendant trespassed into the suit property in the nocturnal hours between 13.12.2007 and 14.12.2007.

5.I respectfully submit that after the filing of the written statements of the defendants in this case, I came to know about the wrangle for patta culminating in W.P.No.9650 of 2003 on the Appellate side of this Hon'ble High Court. A perusal of the records in W.P.No.9650 of 2003 revealed that the patta of this plaintiff's vendor Ms.R.Prema namely the Patta No.4185 with separate sub division No.257/35 there for stands disturbed after 19 long years by the order of the then Collector (Thiru A.Sugumaran, I.A.S.) in proceedings No.Na.Ka.1/633/99, dated 26.03.1999 by which the pattas granted in favour of 44 earlier purchasers - one of whom is Ms.R.Prema - were set at naught without any statutory notice to them who were the registered holders of land in respect of the separate sub divisions made in their name even before June 1983 as per the statutory provisions contained in the Tamil Nadu Survey and Boundaries Act, 1923 as amended. The entire extent of 4 acres 20 cents comprised in Survey No.257, Velachery Village, after having been sold as house site plots under the Lay Out approved in D.T.P.No.221/75 dated 20.09.1975 was ordered illegally on 26.03.1999 to be reverted back to the names of R.Shanmugam and

M.Dhandapani who had already lost title and possession over this property by virtue of the several registered sale deeds executed by their power agent C.Krishnamoorthy and his associates and by virtue of the several separate pattas granted in pursuance of those registered sale deeds. This order dated 26.03.1999 had been passed without any enquiry, under the guise of rectifying the irregularities in making the sub divisions over the land set apart for streets and public places in the approved lay-out. The plaintiff submits that the patta and separate sub division granted in favour of this plaintiff's vendor and similar earlier purchasers in respect of the various plots approved in D.T.P.No.221/75 dated 20.09.1975 cannot be disturbed without due statutory notice and without due enquiry as contemplated under the Tamil Nadu Survey and Boundaries Act, 1923 as amended. Therefore, all the subsequent proceedings starting from the order of the then Collector (Thiru A.Sugumaran, I.A.S.) in proceedings No: Na.Ka.1/633/99, dated 26.03.1999, the patta issued to the rivals on 29.02.2000 by the then Tahsildar (N.George) under the control and supervision of the then Collector are illegal and invalid. Therefore, I submitted on 30.05.2008 an

application to the Tahsildar Mambalam - Guindy Taluk and I have also caused a legal notice under Sec.80 C.P.C. dated 17.02.2009 to the collector of Chennai and Tahsildar Mambalam - Guindy Taluk to restore the patta No.4185 and the subdivision S.No.257/35 in the name of R.Prema and transfer the same to my name and the same stands without due compliance."

10. The first respondent/first defendant is the son of Marimuthu Chettiar. The second respondent/second defendant purchased the property in 1990 and subsequently, the third respondent/third defendant purchased the property from the second defendant. In so far as the 4th and 5th defendants are concerned, they are the official respondents. They have filed a counter affidavit based on an inspection report that there is no trace of title or patta in favour of Prema or the petitioner/plaintiff.

11. The trial Court after scrutinizing the orders passed by the High Court in W.P.No.9650 of 2003 dated 24.04.2008 which narrates the entire history of the property has come to a conclusion that predecessor in title of the petitioner/plaintiff herself was not having any title and that the grant of patta in favour of the

respondents 2 and 3 have already been affirmed by orders of City Civil Court and High Court, has dismissed the application for amendment of prayer.

12. The learned counsel for the petitioner has elaborately argued the revision before this Court. She would contend that the defendants have played fraud and cheated the Court. An attempt is made to defeat the title of real owners by collusive decree. When a patta was granted by 5th respondent in favour of Prema, his predecessor in title in patta No.4185 for sub-division 257/35, it should not be cancelled without notice to him. Therefore, the amendment sought by the petitioner must be allowed and the order passed by the trial Court is patently illegal.

13. I have gone through the order passed by this court in W.P.No.9650 of 2003 dated 24.04.2008, as confirmed by the Hon'ble First Bench of this Court. A clear finding was given to the legal heirs of Shanmugam and Dhandapani to approach the Civil Court to establish their title. The patta granted in favour of persons like defendants 2 and 3 were affirmed. The petitioner's predecessor herself purchased the property from Dhandapani in the year 1977, whereas the original

documents and physical possession have already been entrusted in the year 1975 itself to one Ramesh for valid consideration. The title was declared by the Civil Court in O.S.No.9641 of 1988 in favour of Marimuthu Chettiar who purchased it from the said Ramesh. So to say, on the date of sale, the said Dhandapani himself had no title, possession, much less the title deeds. Patta granted pursuant to the sale was set aside by the fourth defendant and sanction of patta to similarly placed persons like 2nd and 3rd respondents, as stated supra, has been affirmed by the High Court. It is also pertinent to note that the suit filed by Prema for bare injunction in O.S.No.8194 of 1991 was also dismissed on 27.08.2002. Admittedly, no appeal has been filed against the dismissal order. Till date, no decree or order came to be passed in favour of Shanmugam and Dhandapani declaring their title. While this being so, the claim of the petitioner that he has valid title is surprising. The trial Court has rightly found that the predecessors in title have not themselves proved their title in the manner known to law. On the other hand, they have themselves passed on the title which they did not possess to others. They appeared to have indulged in fraudulent transfers. The petitioner is a hapless victim of innocent purchase from a person who has no title.

14. Even assuming that the issue is a matter for trial, the prayer sought by the petitioner in this amendment petition is hopelessly barred by limitation and amounts to setting up a new case. The learned counsel relied on the judgment reported in 2004 (3) MLJ 250 for amendment, wherein it is held as under:

"Civil Procedure Code (V of 1908), Order 6, Rule 17 – Amendment of plaint – Suit for permanent injunction to include one for recovery of possession – Patta assigned to petitioners before trial stage – Land trespassed after suit was filed – Amendment of plaint – Prayer – No new case set up in the amendment petition – Petitioner can amend the plaint."

The said judgment is not applicable to the petitioner as he did not possess valid title or semblance of possession. It is a case without any title as evidenced by the declaration made by the Division Bench of this Court in W.A.No.263 of 2009 dated 30.03.2009 while affirming the findings of this Court in W.P.No.9650 of 2003 dated 24.04.2008.

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15. The petitioner's predecessor herself has not chosen to challenge the alleged transfer of patta in time. On the other hand, the order granting patta of the Tahsildhar dated 20.02.2000 has already been confirmed. The prayer now sought, as held by the learned Judge, is not at all sustainable in law.

16. The order of the trial Court is based on valid reasons and the judicial discipline requires the Courts to abide by the decision rendered by superior Courts. For that matter, this Court is also bound by the decision of the Hon'ble Division Bench in this specific issue vide its order in W.A.No.263 of 2009 dated 30.03.2009. Therefore, viewing from any angle, the prayer sought for by the petitioner cannot be entertained.

17. In result, this Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petitions are closed. A direction is issued to the trial Court to complete the trial within a period of three months from the date of receipt of a copy of this order.

20.09.2017

Speaking/non Speaking

Index : yes/no

Internet : yes/no

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M.GOVINDARAJ, J.

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To

1. The Collector of Chennai
Chennai Collectorate
Singaravelar Maligai
32, Rajaji Salai, Chennai-1
2. The Tahsildar
Mambalam-Guindy Taluk
K.K. Nagar, Chennai-78.
3. The learned XVIII Additional Judge,
City Civil Court,
Chennai.



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