

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.10.2017

CORAM

THE HONOURABLE MR. JUSTICE V.PARTHIBAN

W.P.No.3306 of 2012

and

M.P.No.1 of 2012

1. V.Gopalsamy
2.V.Swaminathan .. Petitioners
Vs.

1.The Revenue Divisional Officer,
Coimbatore.

2.The Tahsildar,
North Taluk Office,
Balasundaram Road,
Coimbatore-18.

3.Mr.S.Santhakumar, B.E,
The Revenue Divisional Officer,
Coimbatore.

4.Mr.K.Damodarasamy .. Respondents

Petition filed under Article 226 of The Constitution of India praying for the issuance of a writ of certiorari to call for the records made in reference in Mu.Mu.8930/2009/A2, dated 23.12.2011 from the file of the first respondent and quash the same.

For Petitioners :Mr.Vijay Shankar for M.Sanjaiyan

For Respondents :Mr.S.V.Duraisolaimalai, AGP for R1 & 2

:Mr.R.S.Selvam, G.A. for R3

Mr.B.Vijayakumar for R4.

ORDER

The petitioners have approached this Court seeking the following relief:

'To issue a writ of certiorari to call for the records made in reference in Mu.Mu.8930/2009/A2, dated 23.12.2011 from the file of the first respondent and quash the same'.

2.The petitioners, who are brothers have purchased 8.36 acres in S.F.No.14/2, Gudalur Village, Coimbatore North Taluk from one P.K.Venugopal for valid consideration by a registered Sale Deed dated 21.04.1954. According to the petitioners, the physical possession of the lands were factually handed over to the petitioners even prior to the registration of the sale deed. The petitioners have been in absolute enjoyment of the lands without any interference in their title, ever since they came into possession of the lands prior to the registration of Sale Deed dated 21.04.1954. After the sale was effected, the revenue records such as patta, chitta, adungal etc were transferred in the name of the petitioners and they had been paying necessary tax and charges to the Government in respect of the lands purchased by them from the said P.K.Venugopal.

3. While matter stood thus, one Mrs.Sarojini and Mrs.Rukmani, who are the sisters of the said P.K.Venugopal, have jointly filed a suit against the petitioners in O.S.No.1501 of 1980 on the file of the Sub Court, Coimbatore for declaring the Sale Deed dated 21.04.1954 as null and void and for consequential delivery of possession. According to the sisters, P.K.Venugopal was minor at the time of the sale of the property to the petitioners and therefore, the said sale was a nullity. The suit was laid after 26 years from the date of purchase of the lands by the petitioners.

4.The suit was contested by the petitioners and by a judgement and decree dated 31.07.1984, the learned Sub-Judge, Coimbatore dismissed the suit. However, while dismissing the suit, the learned trial Judge had observed that P.K.Venugopal was minor on the date of the execution of the sale deed and therefore, the sale was void. However, the learned trial Judge went on to hold that the purchasers namely the petitioners herein, who had been in possession and enjoyment of the property for more than the statutory period, had perfected their title by adverse possession. By this, the title to the subject lands was confirmed as far as the petitioners were concerned while dismissing the suit, the learned trial Judge had also directed the plaintiffs therein to pay a sum of Rs.1,13,288.50 by way of stamp duty for laying the suit, since the suit was originally filed as indigent persons.

5.Having aggrieved by the judgement and decree of the trial Court, the plaintiffs therein Mrs.Sarojini and Mrs.Rukmini filed an appeal before this Court in A.S.No.5 of 1986. The Division Bench of this Court by its judgement dated 16.06.1993, dismissed the appeal filed by the plaintiffs in the suit and directed the appellants to pay a sum of Rs.1,13,288.50, since the appeal had been filed as indigent persons. While dismissing the appeal filed by the plaintiffs in the suit, the Division Bench of this

Court has also given a clear finding of fact that the said P.K.Venugopal was not a minor on the date of the execution of the Sale Deed dated 21.04.1954. According to the petitioners herein, the judgement of this Court dated 16.06.1993 passed in A.S.No.5 of 1986 had become final and no further appeal was filed against the said judgement.

6.While so, at the instance of disgruntled sisters, the possession and enjoyment of the petitioners in respect of the subject property was sought to be disturbed every now and then and in the said circumstances, the petitioners were constrained to file a suit in O.S.No.1520 of 2009 before the District Munsif Court, Coimbatore, wherein, the said Mrs.Sarojini and Mrs.Rukmini and the legal heirs were arrayed as defendants in the suit. In I.A.No.1538 of 2009, an interim injunction as prayed for was granted and since the defendants did not chose to contest the suit and eventually an exparte decree was passed on 19.10.2009, restraining the defendants therein from in any way interfering with the petitioners' peaceful possession and enjoyment of the properties. No appeal was filed against the exparte decree and therefore, the same had become final and binding on the parties.

7.Having failed in their attempts to interfere with the peaceful possession and enjoyment of the lands of the petitioners, the sons of the said Mrs.Sarojini and Mrs. Rukmini namely A.Venkatesh and K.Damodharasamy filed arbitration cases in ARC No.6 of 2008 & ARC. No.68 of 2008 against their respective mothers, claiming partition of the properties purchased by the petitioners on 21.04.1954. The petitioners were not added as parties in the arbitration cases. According to the petitioners, arbitration cases were filed before one All India and Overseas Arbitration Committee, which had no legal status and it was only a Phoney Committee constituted illegally and the same was not authorised by any law in force. The said A.Venkatesh and K.Damodharasamy in collusion with the arbitrators appointed by the so-called Arbitration Committee had passed an award granting partition. Since the illegal arbitration proceedings had been initiated and conducted at the instance of the said A.Venkatesh and K.Damodharasamy and by the persons illegally assuming to be the arbitrators, a criminal complaint was filed by the petitioners and the same was taken on the file of the Judicial Magistrate, Coimbatore for punishing the persons, who have entered into a conspiracy against the petitioners under the various Sections of the Indian Penal Code (IPC). However, on the civil side, the petitioners have also laid a suit in O.S.No.1727 of 2009, challenging the award passed by the arbitrators. However, the arbitrators, Mrs.Sarojini, Mrs. Rukmini and their sons remained exparte in the proceedings in O.S.No.1727 of 2009.

8. By taking illegal advantage of the so-called award of partition, the fourth respondent in the present writ petition had submitted a petition with the Tahsildar for transferring of patta. However, the Tahsildar after asserting the factual possession with reference to all the relevant materials, dismissed the petition filed by the fourth respondent. The application was rejected by the proceedings of the Tahsildar on 30.07.2007. Against the order of the Tahsildar, the fourth respondent filed an appeal before the third respondent and an enquiry was conducted in the appeal. On the part of the petitioners, all the relevant documents were furnished, including the orders passed by the trial Court and the High Court in O.S.No.1501 of 1980 and in A.S.No.5 of 1986 respectively.

9. Strangely, the third respondent while holding that the award passed in the arbitration proceedings in ARC.No.68 of 2008 & ARC No.6 of 2008 cannot be acceptable as a valid award, has however held that the patta can be transferred to the legal heirs of Mrs.Sarojini and Mrs.Rukmini. A conclusion was arrived at by the third respondent on the basis that the sale which was effected in the year 1954 was void and therefore, the original revenue entries needed to be restored. Consequently, the third respondent directed the Tahsildar, the second respondent herein to give effect to the order by changing the revenue records. The proceedings of the third respondent dated 23.12.2011 by transferring the patta in the name of the fourth respondent is put to challenge in this writ petition.

10. Mr.Vijay Shankar, the learned counsel for the petitioners would strenuously contend that the impugned order passed by the third respondent dated 23.12.2011 is per se illegal, malafide and cannot be countenanced in law at all for more than one reason. He would submit that the entire issue in regard to the title of the subject land has been settled by the order passed by the trial Court vide its judgement and decree dated 31.07.1984, which was confirmed by the Division Bench of this Court vide judgement dated 16.06.1993 in A.S.No.5 of 1986. The so-called arbitration proceedings is fraudulent proceedings, was not authorised by any law and the persons, who exercised the power of arbitration were not authorised by any law for conducting any arbitration proceedings. The Committee which conducted the arbitration proceedings was self styled Committee involved in fraudulent activities by luring innocent citizens/litigants for serving their own ends. Although the third respondent refused to give credence to the arbitration proceedings, yet by deliberately overlooking the fact that the Division Bench of this Court has cleared the title of the

petitioners herein in respect of the subject lands by giving a clear finding that the P.K.Venugopal, who sold the property in the year 1954 was not a minor.

11.The learned counsel would further contend that even other wise, the learned trial Court in O.S.No.1501 of 1980 in its judgement dated 31.07.1984 had held that the petitioners had perfected their title by adverse possession as they were in possession and enjoyment of the lands for more than the stipulated statutory period. Such finding of fact had been affirmed in appeal by the judgement of the Division Bench of this Court dated 16.06.1993 in A.S.No.5 of 1986. The Division Bench of this Court has gone further and held that as regards the status of P.K.Venugopal was concerned, he was not found to be a minor, which meant that in all fours, the title of the petitioners in respect of the subject lands was found to be valid and unquestionable.

12.The learned counsel for the petitioner further contended that the fourth respondent as well as the others and the arbitrators of the Committee, who were proceeding against criminally were eventually convicted by the competent criminal Court vide the judgement of the criminal Court dated 22.07.2013 under various Sections of IPC, including criminal conspiracy. The said judgement of the trial Court had also confirmed in appeal. Therefore, he would contend that the action of the third respondent in passing impugned order to the detriment of the petitioners is per se smacks of malafide, arbitrariness and suffers from misapplication and non application of mind and liable to be interfered with.

13.Upon notice, Mr.Mr.S.V.Duraisolaimalai, the learned Additional Government Pleader entered appearance for the first and second respondents and filed a detailed counter affidavit. In the counter affidavit no reference has been drawn to the judgement and decree passed by the Division Bench of this Court dated 16.06.1993 in A.S.No.5 of 1986. The counter affidavit is rather sketchy does not spell out even iota of reason in support of the impugned order passed by the third respondent. The counter affidavit merely states that the third respondent has passed orders on the basis of the order passed by the trial Court. Even that statement cannot be correct in view of the fact that the trial Court had dismissed the suits filed by Mrs. Sarojini and Mrs. Rukmini and as far as the title is concerned, the same was held in favour of the petitioners herein. The averments contained in the counter affidavit have been reiterated by the counsel appearing for the third respondent.

14.The learned counsel for the fourth respondent has also made his submissions.

15. Upon considering the rival submissions of the learned counsel appearing for the parties and after perusing the relevant materials and the pleadings placed on record, this Court is in full agreement with all the contentions raised on the part of the petitioners that the order passed by the third respondent, which is impugned in the writ petition cannot be sustained under any circumstances. The order per se disclosed malafide mind set on the part of the third respondent. He had deliberately over looked the judgement and decree passed by the Division Bench of this Court dated 16.06.1993 in A.S.No.5 of 1986. Even other wise, it appears that the third respondent had shown undue indulgence to the claim of the fourth respondent over looking the perfected title demonstrated by the circumstances of the case as explained above on the part of the petitioners. In fact, it is relevant to extract the operative portion of the order dated 16.06.1993 in regard to the findings of this Court in A.S.No.5 of 1986, wherein, the Division Bench of this Court has held that the said P.K.Venugopal was not a minor. Paragraph No.10 of the order dated 16.06.1993 is extracted below:

10. The next important question relates to the age of Venugopal on the date of execution of Ex.B-2. The appellants have based their claim on the ground that their brother P.K. Venugopal was a minor when Ex.B-2 the sale deed dated 21.4.1954 relating to the suit property came into existence. They pressed into service Ex.A-12 the Register of Admissions and Withdrawals (for use in Elementary Schools) maintained by the District Board Basic School, Narasimhanaicken Palayam, Coimbatore Taluk in support of their contention that their brother was born on 28.7.1936. They also rely upon Ex.A-13 the certificate issued by the Headmaster of the said school on 7.1.1980 which reads that the date of birth of K. Venugopal as recorded in the school Admission Register is 28.7.1936. P. W.3 Balakrishnan the Headmaster of the school from 1979 onwards speaks about Ex.A-13 certificate issued by him. Since his evidence is only to the effect that the certificate was given as per the entry found in Ex.A-12 Register, we have now to scrutinize the same for the purpose of arriving at the conclusion. In Ex.A-12 Register serial number 34 is the entry relating to Venugopal son of Krishnama Naidu of Pudu Palayam. In this his date of birth is given as 28.7.1936. Learned Counsel for the respondents points out that there is overwriting in figure '6' and so it is not possible to hold with certainty that the year of birth is 1936. The other entries in this register

indicate that Venugopal left the school on 7.6.1944 when he was in the V Standard. And he was admitted in the school on 10.6.1941 in the Standard. So he had studied three years in the school. Had his date of birth been 28.7.1936, he would have completed five years on 28.7.1941. Learned Counsel for the respondents submitted that unless he had completed five years, he would not have been admitted in the I Standard as per Educational Rules. So, it is likely that the date of birth 28.7.1936 given in Ex.A-12 is not correct. P. W.3 Headmaster admits in cross examination that a pupil should have completed five years for admitting him in the Elementary School. If he is less than five, the admission could be made with the written sanction of Deputy Inspector of Schools. Venugopal had not completed five years when he was admitted in the school on 10.6.1941 as per Ex.A-12 Register. There is no record in their school to show whether the permission of the Deputy Inspector of Schools was obtained for him. Incase a student is admitted with such permission of Deputy Inspector of Schools, the Register of Admissions and withdrawals should contain records relating to the same. There is no such endorsement in Ex.A-12. The orders passed by Deputy Inspector of Schools on this aspect are permanent records. Had there been any application from the Headmaster to the Deputy Inspector of Schools seeking exemption of age limit for the student and the consequential order, both the applications and the orders would be available in the Office of the Deputy Inspector of Schools. In their school no application seeking exemption for Venugopal is available. P.W.4 Sundaresan is the Deputy Inspector of Schools, Coimbatore East. He has produced Ex.A-24 the proceedings of the Director of Public Instructions, Madras dated 18.4.1963. In this the Director of Public Instructions has drawn the attention of the Officers to G.O.Ms. No. 1296, Education, dated 16.6.1960. This reads that first admissions are made direct to higher standards without reference to a correspondingly higher minimum age. The minimum age for voluntary admission in the first standard shall continue to be five plus. And it is not clear from his evidence whether in 1941 the Education Rules were so strict that a student before completing five years age could not have been admitted in the

first standard. However, there is no convincing explanation on the overwriting which is visible even to naked eye in the figure '6' found on the date 28.7.1936 appearing in column 9 of Ex. A-12.

16. From the above, it is very clear that the title of the petitioners in respect of the subject lands by no stretch of legal or factual standard can be doubted or questioned. That being the case, this Court is unable to appreciate as to how the third respondent had passed the impugned order in favour of the fourth respondent. The attitude of the third respondent in the face of the clear judgement and decree of both the trial Court as well as the High Court is a brazen attempt to trifle with the judicial orders passed by the Courts by misusing his power vested under the statute. The impugned order passed by the third respondent is a act of mindless temerity and the same required to be deprecated. This Court is unable to comprehend under what circumstances the third respondent was impelled to pass such preposterous and unacceptable orders in the facts and circumstances of the case. Therefore, this Court is constrained to impose an exemplary cost of Rs.10,000/- on the third respondent, who has been arrayed as a party in his name. The said cost is to be paid by the third respondent to the petitioners within a period of two weeks from the date of receipt of copy of this order, failing which, the petitioners are at liberty to proceed against him in the manner known to law.

17. In the light of the above narrative and discussion, the impugned order passed by the third respondent dated 23.12.2011 is set aside. All the entries in the revenue records shall stand restored in the name of the petitioners in respect of the lands comprised in S.No.14/2 measuring about 8.36 acres in Gudalur Village, Coimbatore North Taluk.

18. The writ petition is disposed of, with the above direction. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS-V)

//True Copy//

Sub Assistant Registrar

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To

1.The Revenue Divisional Officer,
Coimbatore.

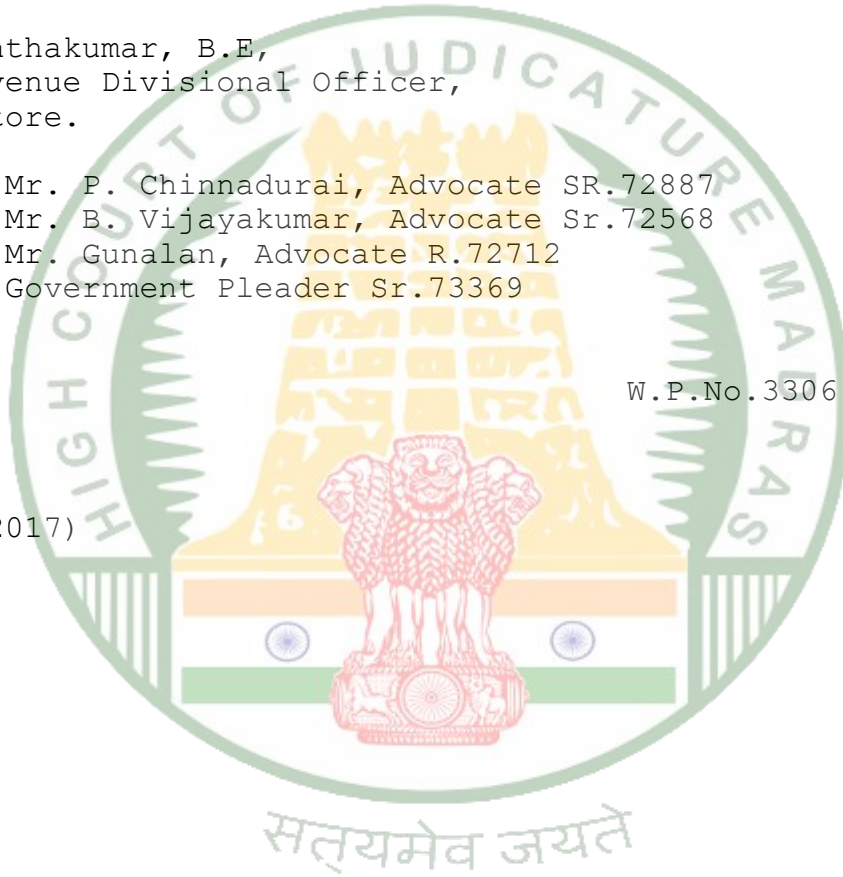
2.The Tahsildar,
North Taluk Office,
Balasundaram Road,
Coimbatore-18.

3.Mr.S.Santhakumar, B.E,
The Revenue Divisional Officer,
Coimbatore.

+ 1 cc to Mr. P. Chinnadurai, Advocate SR.72887
+ 1 cc to Mr. B. Vijayakumar, Advocate Sr.72568
+ 1 cc to Mr. Gunalan, Advocate R.72712
+ 1 cc to Government Pleader Sr.73369

W.P.No.3306 of 2012

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