

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 05.03.2018

CORAM:

THE HON'BLE MR.JUSTICE K.K.SASIDHARAN
AND
THE HON'BLE MR.JUSTICE P.VELMURUGAN

W.A No.470 of 2017,
CMP.Nos.7040 and 7041 of 2017

K.Arumugam

... Appellant

-Vs-

1.The Presiding Officer (Tribunal - II)
cum Sub-Divisional Magistrate (South)
Villianur, Govt. of Puducherry
O/o The Presiding Officer (Tribunal - II)
O/o The Deputy Collector (Revenue) South
Revenue Complex, Villianur,
Puducherry - 605 110.

2.K.Irisammal

3.The Tahsildar,
Taluk Office, Government of Puducherry,
Villianur, Puducherry.

4.The Station House Officer,
Mangalam Police Station,
Puducherry.

5.Sengeniamma

... Respondents

PRAYER: Writ Appeal filed under Clause 15 of Letters Patent against the order passed in W.P No.5164 of 2015 dated 19.01.2017.

WP.No. 5164 of 2015 :Writ Petition filed under Article 226 of the constitution of India praying for a Writ of Certiorari, Calling for records relating to the impugned order vide No. 04/2014/POT-II/2014 dated 11.12.2014 passed by 1st respondent and quash the same.

For Appellants : Mr.V.R.Kamalanathan

For Respondents: Ms.G.Sumithra for R2

Mrs.V.Usha, Addl.Govt.Pleader (Pondy)
for R3 and R4

R5 -Notice Served

J U D G M E N T

[Judgment of the Court was made by
K.K. SASIDHARAN, J.]

This is a classic case of a son dragging his aged mother from pillar to post after throwing her from the residential house in which she is a major shareholder. This case also shows the pitiable condition of the aged parents and their plight during their advanced age, besides the change in attitude of the children towards their parents.

2. The land in R.S.No.74/59 and 73/8 was allotted to the father of the appellant and his mother, by the Government of Puducherry under the provisions of Pondicherry Land Grants Rule, 1975. The father of the appellant died. His right was inherited by the appellant, the second respondent and two other children. The second respondent is having 1/2 share in respect of the entire property in her own right and 1/4 share in her capacity as the legal heir of Thiru.Kannan, the father of the appellant.

3. The second respondent has been living along with the appellant in the residential house constructed by her husband. The appellant appears to have made a claim that the house was constructed only by him and as such, it should be given exclusively to him. The second respondent was driven out of the house. The second respondent started to live along with her another son.

4. The second respondent filed a petition before the Tribunal under the Puducherry Maintenance and Welfare of Parents and Senior Citizens Rules, 2011. The Tribunal appears to have offered sufficient opportunity to the appellant to compromise the matter. Since there was no settlement among the parties, the Tribunal directed the appellant to vacate the residential house and permitted the second respondent to stay there peacefully. The order was challenged before the writ court.

5. The learned single Judge passed series of interim orders for an amicable settlement of the matter. The appellant was directed to pay a sum of Rs.50,000/- to the second respondent. Since payment was not made, the writ petition itself was dismissed. The order is under challenge in this intra court appeal.

6. Since the mother and the son are the litigants in the subject case, we have summoned both the parties for an amicable settlement. We have also summoned two other children of the second respondent and the Tahsildar of Villanur Taluk, Pondicherry.

7. The report submitted by the Tahsildar, Villianur indicates that the land in question was allotted to the second respondent and her husband. There is a residential house in the said property. The second respondent is presently residing along with her son Thiru.Elumalai, in a hut which was constructed by encroaching upon the Government land. The elder son is residing in a nearby house along with his family.

8. After hearing the parties at length and the Tahsildar, we directed the appellant to arrive at a settlement with the second respondent by permitting her to stay in the house constructed in the land allotted to her. There was a suggestion to the appellant to move his family to the house constructed by his brother on condition that the other son should move along with his mother to the house, in respect of which, the Tribunal has passed the order. We have directed the parties to sit with their counsel and arrive at a settlement. The matter was adjourned to be posted today for reporting settlement.

9. When the intra court appeal was taken up for hearing, the learned counsel for the appellant submitted that the appellant is not prepared for any kind of settlement. According to the learned counsel, the house in question was constructed only by the appellant and as such, he should be permitted to occupy the house to the exclusion of all others.

10. There is no dispute that the land in question belongs to the appellant, the second respondent and her two other children. The second respondent is the major share holder. The appellant is not agreeing to allot a separate room for his mother. The appellant wanted his mother to stay elsewhere and occupy the house in which she is the major shareholder. Such a contention cannot be accepted in a matter of this nature. The second respondent should be given a shelter during her advanced age. She should not be at the mercy of others even for shelter.

11. The Tribunal passed an order directing the appellant to vacate the house and permit the second respondent to reside there. We modify the said order by directing the appellant to permit the second respondent to reside in the subject house. The second respondent should be allotted a separate room for her stay. She should also be given liberty to take the assistance of her other children. The appellant shall not object the residence of the second respondent in the residential house, which is the subject matter of the litigation before the Tribunal.

12. The order passed by the Tribunal is modified to the extent indicated above.

13. The intra court appeal is disposed of with the above direction. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CCC)

//True copy//

Sub Assistant Registrar

svki

To

- 1.The Presiding Officer (Tribunal - II)
cum Sub-Divisional Magistrate (South)
Villianur, Govt. of Puducherry
O/o The Presiding Officer (Tribunal - II)
O/o The Deputy Collector (Revenue) South
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- 2.The Tahsildar,
Taluk Office, Government of Puducherry,
Villianur, Puducherry.
- 3.The Station House Officer,
Mangalam Police Station, Puducherry.

+1cc to Mr.V.R..Kamalanathan, Advocate SR.No.16586
+1cc to Mr.G.Sumithra, Advocate SR.No.16545
+1cc to Government Pleader (Puducherry)SR.No.10487 & 16740

W.A No.470 of 2017

NRK (CO)
GN(04/04/2018)

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