

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.08.2018

CORAM

THE HONOURABLE MR.JUSTICE HULUVADI G.RAMESH
AND
THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM

W.A.No.1720 of 2018
and C.M.P.No.13776 of 2018

V.K.Tamilmani Appellant/Petitioner

-vs-

- 1.The District Collector,
Kancheepuram District,
Kancheepuram.
- 2.The Commissioner of Land Administration,
Chepauk, Chennai-600 005.
- 3.The Secretary to Government,
Adi Dravidar and Tribal Welfare Department,
Secretariat, Chennai-600 009.
- 4.The Superintendent of Police,
Kancheepuram District,
Kancheepuram-631 501.
- 5.The Inspector of Police,
Chengalpattu Taluk Police Station,
Kancheepuram District-603 002.

6.V.G.Thirumalai Naicker Respondents/Respondent

Appeal filed under Clause 15 of Letters Patent, against the order passed by this Court in W.P.No.17449 of 2018 dated 13.07.2018 praying to issue a Writ of declaration, Declaring that the land measuring 2.22 Acre comprised in Survey No. 74/ 1 Vetha Narayanapuram Village Chengalpattu Taluk Kancheepuram District as panchami land and any sale to other than scheduled caste or encroachment thereon is illegal and void abinitio.

For Appellant :: Mr.R.Prabhakaran
For Respondents:: Mr.P.S.Sivashanmugasundaram,
Special Government Pleader

JUDGMENT
(Delivered by HULUVADI G.RAMESH, J.)

It is the case of the appellant that the land comprised in Survey No.74/1, having an extent of 2.22 acre situated at Vetha Narayanapuram Village, Chengalpattu Taluk, was assigned to his father Kathirvel @ Sivaprakasam in the year 1966. Since then, the appellant's father and the appellant have been cultivating and rearing cattle in the said land and also constructed a house in the said property. During the year 2008, the appellant's father had settled the said property in favour of the appellant and his brothers Parthasarathy and Padmanaban. Records relating to Chitta, Adangal, EB connection, Land Tax are all standing in the name of the appellant and his brothers. While so, a local politician Mr.Balasubramanian has created a purported sale deed in favour of one Ninthimathi in the year 2000, who subsequently sold the property in favour of her husband V.G.Thirumalai Naicker, the sixth respondent herein. Immediately after noticing the said alienation of the property, the appellant applied under RTI Act and the Headquarters Deputy Tahsildar, Chengalpattu, by his reply dated 27.10.2016 informed the appellant that the land in Survey No.74/1, Vetha Narayanapuram is the assigned land of Adi Dravidar as per "A" Register that shows that the panjami land cannot be sold or reclassified. Further, the Panjami land cannot be alienated to any person for 10 years from the date of assignment and thereafter, it can alienated only to SC/ST (Depressed Classes). The appellant has brought to the notice of the District Collector and other respondents to take cognizance of the above facts and not to allow Thirumalai Naicker or anyone to encroach or trespass into their property. Since there was no response, the appellant filed a writ petition before this Court in W.P.No.17449 of 2018 to declare the said land as Panchami land and sale of the said land to persons other than Scheduled Caste community, or encroachment thereon, is illegal.

2.The learned counsel for the appellant submitted before the writ Court that the sixth respondent had already approached this Court by filing Crl.O.P.No.915/2018 under Section 482 of Cr.P.C. seeking a direction to the respondents 1 and 2 therein to provide police protection to construct the compound wall as sought for in the complaint dated 10.12.2017 given by him, and this Court by an order dated 21.06.2018, given a finding that the land belongs to the sixth respondent and directed the police to give sufficient protection for putting up the compound wall around the said property. In the light of the above order passed in Crl.O.P.No.915/2018, it was submitted that appellant is unable to approach and express his position. It was also submitted that one civil suit is pending between the parties.

3.After hearing the arguments advanced on either side, the learned single Judge held that the writ petition lacks merit since the appellant is attempting to convert the writ jurisdiction of this Court under Article 226 of the Constitution of India into one of a civil court to pass a decree for declaration which is untenable, more particularly, when a civil suit in O.S.No.174/2011 is pending between the parties. It was also held that this Court when sitting under Section 482 of Cr.P.C., while entertaining the Crl.O.P.No.915/2018, by its order dated 21.06.2018 has given a clear finding in favour of the sixth respondent herein that the property belongs to him and it appears that another detailed order dated 3.7.2015 was passed by this Court in yet another Criminal Original Petition No.13607 of 2015 which shows that the sixth respondent has twice established his case that the property-in-question belongs to him. Finally, the learned single Judge held that the matter has to be looked into only by the competent civil court where the suit is pending between the parties. We are not inclined to interfere with the stand taken by the learned single Judge in the writ petition, as the matter is a civil dispute, which has to be agitated only before the competent Civil Court.

4.In view of the above stated circumstances, the impugned order passed by the learned single Judge in the writ petition is confirmed and the writ appeal is dismissed. No costs. Consequently the connected miscellaneous petition is closed.

-s/d-

Assistant Registrar(CS-II)

True Copy

Sub-Assistant Registrar

KM
To

1.The District Collector,
Kancheepuram District,
Kancheepuram.

2.The Commissioner of Land Administration,
Chepauk, Chennai-600 005.

3.The Secretary to Government,
Adi Dravidar and Tribal Welfare Department,
Secretariat, Chennai-600 009.

4.The Superintendent of Police,
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5.The Inspector of Police,
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Kancheepuram District-603 002.

+2 Ccs to Mr.R. Prabakaran, Advocate sr 56284.
+1 CC to The Govt. Pleader sr 56079.

W.A.No.1720 of 2018
and C.M.P.No.13776 of 2018

GJII (CO)
SP(30/08/2018)



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