

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.03.2018

CORAM

THE HONOURABLE Mr.JUSTICE K.KALYANASUNDARAM

W.P.No.18116 of 2016
and
W.M.P.No.15883 of 2016

K.Loganathan .. Petitioner

Versus

1. The District Collector,
Cuddalore District,
Cuddalore.
2. The President,
Maavidandal Panchayat,
Maavidandal Village,
Vridhachalam Taluk,
Cuddalore District.
- 3.The Executive Engineer,
(Operation & Maintenance),
Tamil Nadu Electricity Board,
Bhoodamur Village,
Vridhachalm Taluk.

4.Thirisangu

5.Paramasivam

.. Respondents

Prayer: The Writ Petition is filed under Article 226 of the Constitution of India, seeking for a Writ of Mandamus, forbearing the second respondent from granting any approval for construction of house in the plots in Survey No.55/1 to the extent of 0.83 cents situated in Ko.Ponneri Village, Vridhachalam Taluk, Cuddalore District.

For Petitioner : Mr.R.Arun Dattan

For Respondents : Mr.N.Inbanathan
Additional Government Pleader,
for R1&R2

Mr.M.Varun Kumar
Standing counsel, for R3

Mrs.Hema Sampath,
Senior Counsel for
Mrs.R.Meenal, for R4 & R5

O R D E R

This writ petition has been filed seeking for issuance of writ of mandamus, forbearing the second respondent from granting any approval for construction of house in plots in Survey No.55/1, to an extent of 0.83 cents situated at Ko.Ponneri Village, Vridhachalam Taluk, Cuddalore District.

2. Heard Mr.R.Arun Dattan, learned counsel for the petitioner, Mr.N.Inbanathan, learned Additional Government Pleader for the respondents 1 and 2, Mr.M.Varun Kumar, learned Standing Counsel for the third respondent, Mrs.Hema Sampath, learned Senior Counsel appearing for the respondents 4 and 5 and perused the material documents available on record.

3. According to the petitioner, the property measuring to an extent of 0.83 cents in S.No.55/1, situated at Ko.Ponneri Village, Vridhachalam Taluk, Cuddalore District, was originally owned by his father Mr.Kaliyaperumal, by virtue of registered sale deed dated 16.7.1956. As such he was in possession and enjoyment of the property and Patta was also issued in his name and he died intestate on 21.8.1996.

4. The petitioner would further submit that his father Mr.Kaliyaperumal has three sons and two daughters. During his life time he was indebted to one Mr.Boologam Pillai. Hence, a Suit was filed by the said Mr.Boologam Pillai and the property was sold in the Court auction to one Mr.Srinivasan Pillai. However, in order to defeat the Court auction, the petitioner's father executed the settlement deed in favour of Mrs.Valliammal on 08.6.1970. Based on the settlement deed, she has filed a suit in O.S.No.580 of 1972, before the District Munsif Court, Virudhachalam, as against the auction purchaser Mr.Srinivasan Pillai, for declaration of title and injunction and the same was dismissed on 18.02.1974. After dismissal of the Suit, Mrs. Valliammal, sold the property to one Mrs.Anjalaiammal, on 04.06.1975.

5. According to the petitioner, the entire transaction was void and the petitioner is entitled for 1/6th share in the Suit property. While so, the respondents 4 and 5 have colluded with each other and attempted to sell the property, fraudulently.

6. The learned counsel for the petitioner would submit that the petitioner is having 1/6th share in the suit property and during the pendency of the suit for partition, an attempt was made by the respondents 4 and 5 to acquire the property. Hence,

the present writ petition.

7. In the counter affidavit filed by the fifth respondent, it is stated that in O.S.No.580/1972, the Civil Court held that the settlement deed dated 08.06.1970, was not acted upon and the title of the auction purchaser was upheld. Subsequently, the property was sold to the fifth respondent's mother Mrs.Anjalaiammal, on 04.06.1975. Based on the settlement deed dated 08.06.1970, the fourth respondent filed a suit in O.S.No.787 of 1991, before the Additional District Munsif Court, Virudhachalam, claiming his vested remainder rights and the said suit was also dismissed, as not pressed. As such for the past forty years, no one has questioned the sale deed in favour of the mother of the fifth respondent.

8. According to the fifth respondent, the said Valliammal, is the first wife of Mr.Kaliyaperumal. Since they did not have any issue, he married second time one Mrs.Kaveri and the petitioner is the child born through the second wife. It is further stated that the suit in O.S.No.133/2015, claiming 1/6th share in the suit property is pending before the Principal District Munsif Court, Virudhachalam. Suppressing the above material facts, this writ petition has been filed.

9. The learned Senior Counsel appearing for the respondents 4 and 5 submitted that this writ petition has to be dismissed, on the sole ground of suppression of material facts.

10.It is further submitted by the learned Senior Counsel, that the sale made in favour of the fifth respondent's mother Mrs. Anjalaiammal, on 4.6.1975, was not challenged yet. It is further stated that the property in dispute was already plotted out and in respect of the road and other public utility, a gift deed was executed in favour of the local authority viz., the Commissioner of Kammavaram Panchayat and unless the petitioner succeeds in the suit, he is not entitled for the relief as such sought for in this writ petition.

11. Perusal of the typed set of papers filed by the fifth respondent, would reveal that the fifth respondent had executed a gift deed dated 10.4.2013, in respect of road in favour of the Commissioner of Kammavaram Panchayat. A copy of the plaint filed in O.S.No.133/2015, shows that the suit was filed on 06.05.2015 by the petitioner along with six others claiming share in the suit properties and after a lapse of one year, this writ petition has been filed. But, in the affidavit nothing has been stated about the pendency of the suit. It is also not in dispute, that in respect of the same property, earlier suits in O.S.Nos.580 of 1972 and 787 of 1991 have been filed. However, the sale made in favour of the fifth respondent's mother Mrs. Anjalaiammal, dated 4.6.1975, was not questioned neither by the

petitioner or any other person.

12. In the light of the above facts, I do not find any merits in this writ petition. This writ petition fails and the same is dismissed. However, there shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

-s/d-

Assistant Registrar (CS-II)

True Copy

Sub-Assistant Registrar

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To

1. The District Collector,
Cuddalore District,
Cuddalore.
2. The President,
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3. The Executive Engineer,
(Operation & Maintenance),
Tamil Nadu Electricity Board,
Bhoodamur Village,
Vridhachalm Taluk.

- +1 CC to M/s.R. Meenal, Advocate sr 18282.
+1 CC to Mr.R. Arun Dattan, Advocate sr 18603.
+1 CC to Mr.M. Varukumar, Advocate sr 18273.
+1 CC to Govt. Pleader sr 18846.

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CNR (CO)
SP(05/04/2018)