

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 31.10.2018

CORAM :

THE HONOURABLE MR.JUSTICE N.KIRUBAKARAN
and
THE HONOURABLE MR.JUSTICE S.BASKARAN

O.S.A.No.405 of 2018

M.Daniel Nayagom
Rep. by his power agent Mr.Williamson Nayagom .. Appellant

-vs-

1.T.Rajeswari

2.S.Balaji

3.S.Narayanan

4.Member Secretary,
Chennai Metropolitan Development Authority,
Egmore, Chennai 600 008.

5.The Commissioner,
Corporation of Chennai,
Rippon Building,
Chennai 600 003.

.. Respondents

PRAYER: Original Side Appeal filed against the fair and decretal order dated 03.11.2016 made in A.No.1650 of 2016 in C.S.No.110 of 2013 of this Court. Application under orderXIV Rule 8 of O.S.Rule r/w Section 151 CPC r/w order XVI, Rule 6, (i) to

Application NO.1650/2016:- To pass an order of direction to issue summons the Tahsildar to appear before this Court and to furnish all the documents filed by the defendants 2 and 3 for issuing patta pertaining to the suit property viz. (1) in respect of Patta No.1678/12 dated 16.11.2012 issued in favour of 2nd respondent/defendant viz. S.Balaji in Proceeding No. SD/294/12-13 comprised in Old S.No.354, T.S.No.72/1 Block No.171 Velachery Village bearing Door No.345 Pa 26/10 Vijaya Nagar III Main Road (i0 in respect of Patta No.1679/12, dated 16/11/2012 issued in favour of 3rd respondent/defendant viz., S.Narayanan in proceeding No.SD/294/12-13 Comprised in old S, No.354, T.S.No.72/2, Block No.171, Velacherry Village, bearing Door No.345 pa, 26/10 Vijaya Nagar IV Main Road, to give evidence in this regard.

For Appellant : Mr.V.P.Rajendran

For Respondents : Mr.V.Balasubramaniam
for R1 to R3

J U D G M E N T

(Judgment of the Court was delivered by N.KIRUBAKARAN, J.)

The appellant filed a suit for declaration that the settlement deeds executed by the 1st respondent in favour of the 2nd and 3rd respondents vide document No.2456 & 2457 of 2012 as null and void and for mandatory injunction to deliver vacant possession of the registered property and for permanent injunction restraining respondents 4 and 5 from putting up any mode of construction and for other reliefs. The said suit was contested by the respondents. Almost the trial is over. The only question is with regard to the extent of the property to prove that the appellant has sold 4600 sq.ft., of land to the 1st respondent, out of the total extent of 5600 sq.ft., retaining the balance 1000 sq.ft., with him. However, the 1st respondent fabricated the documents to make it appear as if she purchased the entire 5600 sq.ft., of land and obtained patta. Since the patta had been issued by the revenue authorities, the appellant took out an application to issue subpoena to the Tahsildar concerned, to appear before this Court to furnish all the documents filed by the 2nd and 3rd respondents for issuance of patta, pertaining to the suit property and the 1st respondent to give evidence relating to the documents mentioned in the patta. The said application has been dismissed by the learned Single Judge, against which only the present appeal has been filed.

3.The learned Single Judge observed that the patta would not confer any title and the appellant has only challenged the settlement deed executed by D1 in favour of D2 and D3 and no challenge has been made to the sale deed in favour of the 1st respondent. Similarly, on an application of the 1st respondent seeking direction to give evidence, it has been observed that the learned Judge cannot compel the 1st respondent/D1 to enter into the witness box and dismissed the same.

4.Heard both the parties and perused the records. Full opportunity has to be given to the appellant at the time of trial. After all, the appellant has sought to issue subpoena to the Tahsildar who issued patta in respect of the property to a larger extent. Though patta cannot be a title deed still, it would go to show that who continues to be in possession. Further, on what basis, the patta for a larger extent, has been given, has to be deposed by the said officer which will also throw light upon the dispute between the parties. Therefore,

the issuance of subpoena to the concerned Tahsildar is necessary. Therefore, the dismissal order is set aside and subpoena is directed to be issued as prayed for.

6. Therefore, the order of the learned Single Judge is set aside and the appeal is allowed. No costs. We can only request the learned Single Judge to expedite the disposal of the suit at the earliest.

Sd/-
Assistant Registrar

//True copy//

Sub Assistant Registrar

ay/sai

To

The Sub Assistant Registrar (O.S.)
High Court, Madras.

+1cc to Mr.V.Balasubramanian, Advocate SR.No.74670

O.S.A.No.405 of 2018

EV(CO)
GMY(12/12/2018)