



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 27.02.2018

CORAM :

THE HONOURABLE MRS.JUSTICE J.NISHA BANU
C.R.P. (PD) (MD)No.378 of 2018

and

C.M.P. (MD)No.1690 of 2018

M.Ramkumar ... Petitioner / Petitioner /
Plaintiff

vs.

1.S.Stephen
2.A.Arumugam Pillai
3.A.Shanmugampillai
4.The District Collector,
Kanyakumari District at
Nagercoil.
5.The Tahsildar,
Thovalai Taluk at
Boothapandi,
Thovalai Taluk,
Kanyakumari District.

... Respondents / Respondents /
Defendants

PRAYER: Petition filed under Article 227 of the Constitution of India, to set aside the fair and decreetal order dated 12.12.2017 passed in I.A.No.194 of 2017 in O.S.No.8 of 2017 on the file of District Munsif cum Judicial Magistrate Court, Boothapandi.

For Petitioner : Mr.M.P.Senthil
For Respondents : Mr.K.Anbarasan,
Additional Government Pleader
for R.4 &R.5

ORDER

This Civil Revision Petition has been filed to set aside the fair and decreetal order passed by the learned District Munsif cum Judicial Magistrate, Boothapandi, in I.A.No.194 of 2017 in O.S.No.8 of 2017 dated 12.12.2017.

2. Among other things, the learned Counsel for the petitioner would aver that the petitioner herein, as plaintiff, has filed the suit in O.S.No.8 of 2017 before the learned District Munsif cum Judicial Magistrate, Boothapandi,

- for the relief of declaration regarding his right and interest to use and enjoy the pathway in the 'A' schedule property and also for free access to ingress and egress for the plaint 'B' schedule property;
- for permanent injunction restraining the respondents 1 to 3/defendants from encroaching the plaint 'A' schedule property;



- for further declaration that the sale deed dated 20.06.2016 executed by the respondents 2 & 3 in favour of the 1st respondent as null and void; and
- for further injunction restraining the respondents 4 & 5 from giving any patta or tax receipt for 'A' schedule.

According to the petitioner, pending disposal of the suit, the respondents 4 & 5 have issued patta and revenue tax receipts in favour of the first respondent and hence, the petitioner has filed the present interlocutory application in I.A.No.194 of 2017 seeking to amend the plaint. The said application was dismissed by the trial Court and hence, the present revision came to be filed.

3. The learned Counsel for the petitioner would submit that the first respondent/first defendant, in his written statements, in Paragraph 9 has admitted as follows:

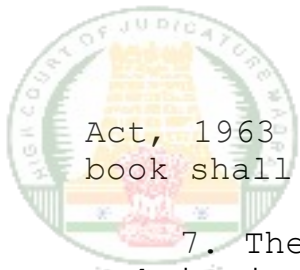
"9. That the 1st defendant further submits that the pathway is under the encroachment of the western side land owner of the plaint 'A' schedule property. The owner of the western land of the 'A' schedule property has encroached the entire pathway and he made the fencing also. So the 'Nilaviyal Pathai' is under the encroachment of the land owner of the western side of plaint 'A' schedule property. The defendant came to know this at the time of Survey done by Commissioner with help of the Thovalai Taluk Head Surveyor. The taluk head survey has mentioned it in his plan as A,B,C,F,G an area of 0.00.50 square meter."

Such being so, the authorities, taking note of the pendency of the suit proceedings, ought not to have issued patta in respect of the disputed property to the first respondent and the learned trial Judge has erroneously dismissed their plea to amend the plaint and therefore, he seeks interference.

4. Heard the learned Counsel for the petitioner and perused the materials available on record. Notice to the respondents is dispensed with.

5. Admittedly, the petitioner himself has accepted that there is a sale deed in favour of the first respondent and the petitioner has filed the above suit to declare the said deed as null and void. The first respondent has approached the revenue authorities and as per the sale deed, the official respondents/revenue authorities have issued patta in his favour, only after verifying the documents.

6. It is a well settled that as per Patta Pass Book Act, no suit shall lie against the Government or any officer of the Government in respect of a claim to have an entry made in any patta pass book that is maintained under the Act or to have any such entry omitted or amended; provided that if any person is aggrieved as to any right of which he is in possession, by an entry made in the patta pass book under the Act, he may institute a suit against any person denying or interested to deny his title to such right, for a declaration of his rights under Chapter VI of the Specific Relief



Act, 1963 (Central Act 47 of 1963) and the entry in the patta pass book shall be amended in accordance with any such declaration.

7. The petitioner has already claimed the relief of declaration and it is also seen from the records that no interim orders have been passed by the lower Court and in the absence of any such interim orders, the official respondents have exercised their discretion and issued patta based on the sale deed. If at all the petitioner succeeds in the above suit, he can get the patta, which was already granted in favour of the first respondent, cancelled. Therefore, in my considered opinion, there is no infirmity or illegality in the order dated 12.12.2017 passed by the learned District Munsif cum Judicial Magistrate, Boothapandi.

8. In result, this civil revision petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/

Assistant Registrar (AS)

/True copy/

Sub Assistant Registrar

To

1.The District Munsif cum Judicial Magistrate,
Boothapandi.

2.The District Collector,
Kanyakumari District at
Nagercoil.

3.The Tahsildar,
Thovalai Taluk at
Boothapandi,
Thovalai Taluk,
Kanyakumari District.

+1cc to Mr.Mr.M.P.Senthil, Advocate, SR.No. 51714

C.R.P. (PD) (MD) No.378 of 2018
and

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GK

KK/JC/27.03.2018/SAR-1/3P-5C