



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 17.07.2018

Delivered on : 26.07.2018

CORAM:

WEB COPY

THE HONOURABLE MR. JUSTICE M.V.MURALIDARAN

CRP(PD) (MD) .No.1878 of 2015

and

M.P(MD) .No.1 of 2015

N.K.Beemarajan

... Petitioner

Vs.

- 1.Janaki
- 2.S.Renganathan
- 3.Ramakrishnan
- 4.S.Venkatalakshmi

5.S.Venkataraman
S/o Late Sethuramakrishnan
119/1 Sarvasmuthira Agraharam Street,
Chinna Suraikaipatti,
Rajapalayam,
Virudhunagar District.

(Respondents 1 to 4 are represented by
their power of attorney and the
fifth respondent herein)

6.Alaguraj

... Respondents

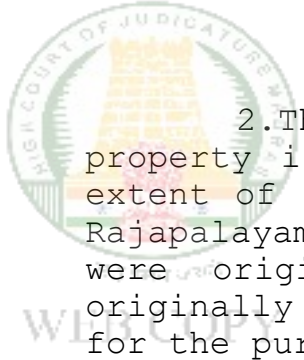
Prayer : Petition filed under Article 227 of the Constitution of India, to set aside the fair and decretal order dated 06.06.2015 made in I.A.No.584 of 2011 in O.S.No.99 of 2011 on the file of the Subordinate Judge, Srivilliputhur.

For Petitioners : Mr.M.Vallinayagam
Senior Counsel for
Mr.I.Velpradeep

For Respondent : Mr.G.Prabhu Rajadurai

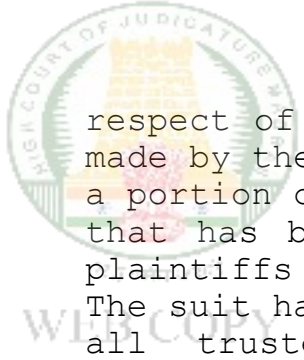
O R D E R

The first defendant is the revision petitioner before this Court challenging the order passed in I.A No.584 of 2011 in O.S No. 99 of 2011 on the file of the subordinate Judge, Srivilliputur.



2. The case of the plaintiffs is that the plaint schedule property is part and parcel of agricultural land measuring to an extent of 16.24 acres in Survey No.102/4 of Pudupalayam Village in Rajapalayam Taluk. The plaint schedule property and some other lands were originally service - Inam Lands. The suit property is originally granted as Inam in favour of the plaintiffs' forefathers for the purpose of performing Pooja in Sri Vettai Venkatesha Perumal Temple. In the enquiry before the Settlement Tashildar -I, Kovilpatti, under the provisions of Tamil Nadu Minor Inams (Abolition and conversion into Ryotwari) Act, the Settlement Tashildar-I, by his order dated 10-12-1996 in case No. 44/Sri/66 held that the said Seturamakrishnan along with his 20 co-shares were entitled to patta in respect of the plaint schedule property and some other lands. Accordingly, patta for the plaint schedule property was issued in favour of Sethuramakrishnan and his co-shares in Patta No. 1098. The said Sethuramakrishnan had been in joint possession of the plaint schedule property along with his Pangalis by regularly rendering his service by performing Pooja in Sri Vettai Venkatesa Perumal Kovil until 14-04-2008 the date in which he passed away leaving behind the plaintiffs herein as his legal heirs. Thereafter, the plaintiffs 2, 3 and 5 have been performing the Pooja-service in the Sri Vettai Venkatesa Perumal Temple and are in joint possession and enjoyment of the plaint schedule property with their Pangalis. The plaintiffs are entitled to 1/21 share in the plaint schedule property. There is no partition among the plaintiffs and their pangalis in respect of the plaint schedule property till date. Hence, the plaintiffs filed the suit for permanent injunction against the defendants, their men and agents restraining them from changing the character of the plaint schedule property as cultivable land into any other type including a house-plots and also for a relief of permanent injunction against the defendants, their man and agents restraining them from alienating or encumbering in any way any portion or full extent of the plaint schedule property until a valid partition is effected between the plaintiff and his panglis.

3. The revision petitioner/first defendant filed a written statement stating that the total extent of the property in Survey No.102/4 is 17.67 acres at Pudhupalayam Village, Rajapalayam Taluk, Virudhunagar District. The Settlement Tashildar-I, Kovilpatti, under the provisions of Tamil Nadu Minor Inams (Abolition and conversion into Ryotwari) Act, by his order dated 10-12-1996 in case No.44/Sri/66 held that the said Seturamakrishnan along with the plaintiffs' father Sethuramakrishnan and 20 co-shares were entitled to patta in respect of property in Survey No.102/4 measuring to an extent of 17.67 acres at Pudhupalayam Village, Rajapalayam Taluk, Virudhunagar District. The plaintiffs' father Sethuramakrishnan has obtained 1.43 acres out of the total extent of 17.67 acres through partition between the other 20 pangalis on 08.09.1982 and sold the same to one S.A.Renganatha Raja. The plaintiffs have filed the suit by suppressing the earlier sale of their father's share in the total extent of 17.67 acres. The plaintiffs filed the present suit in



respect of the remaining 16.24 acres by cleverly excluding the sale made by their father. The father of the plaintiffs has already sold a portion of the property even in the year 1984 to a third party and that has been suppressed in the plaint. After the said sale, the plaintiffs are having no right over the plaint schedule property. The suit has been filed without adding the proper parties as well as all trustees. The plaintiffs have no right over the suit property and even without having any cause of action, the suit has been filed and by suppressing material facts.

4. During the pendency of the suit, the respondents/plaintiffs have filed I.A No.216 of 2011 seeking an interim injunction. The trial court dismissed the application and the same was challenged by the respondents/plaintiffs in C.M.A No.12 of 2011 before the Principle District Court, Srivilliputhur. The appellate court by order dated 25.06.2012 granted an interim injunction in favor of the respondents herein. Aggrieved by the same, the 1st defendant/revision petitioner filed C.R.P(MD) No.1581/2012 before this Court. This Court by order dated 13.12.2012 disposed the revision petition with following direction.

"As such, in the facts and circumstances of the case, I would like to observe, while allowing this Civil Revision Petition and setting aside the order passed by the first Appellate Court that the plaintiffs are at liberty to file application under Order VI Rule 17 of the code of Civil procedure to get the plaint amended and such an application shall be disposed of as per law within a period of fifteen days from the date of taking up the matter. If at all such amendment application is allowed subject to hearing the objections in any. Of the defendants, then the question of seeking interim injunction would arise. Consequently, the connected Miscellaneous Petition is close. No costs."

5. Based on the above direction given by this Court in C.R.P (MD) No.1581/2012, the respondents herein filed I.A No.14 of 2013 seeking amendment in the plaint. The amendments are as follows;-

1. In paragraph 11 of the plaint the following shall be substituted.

So this suit is laid for declaration, permanent injunction and cost.

2. In paragraph 13 of the plaint in the 2nd line, the valuation of Rs.1,02,00/- shall be substituted for Rs.1,01,00/- and a court fee of Rs.75,836.50/- Shall be substituted for Rs.75,751/-.



3. In the particular of valuation in the plaint the following shall be added

Relief of declaration is valued at Rs.1,000.00

Court fee paid thereon under Sec.

25(d) of court fee act is Rs. 75.50

Total valuation Rs.1,02,000.00

Total Court fee Rs.76,826.50

4. In the prayer of the plaint the following shall be added as relief (aa)

(aa) by declaring that the plaintiffs are entitled to common right to possess and enjoy the suit property as service holder of Sri Vettai Venkatesha Perumal Temple Rajapalayam.

5. In the plaint schedule property the following shall be substituted.

விருதுநகர் பதிவு மாவட்டம், இராஜபாளையம் வட்டம், முதுப்பாளையம் கிராமம் சர்வே எண். 102/4 ஏல் உள்ள சுமார் 16.24 ஏக்கர் பரப்பளவுள்ள நஞ்சை நிலத்தில் வாதிக்கு அருள்மிகு வேட்டை வெங்கடேசபெருமான் திருக்கோவில் பூணைக்குரிய மானிய பங்கு பிரிவில்லாத 1/21 மட்டும்.

The said application was allowed. Thereafter, the respondents filed yet another I.A.No.15 of 2013 seeking to implead the Sri Vettai Venkatesa Perumal Temple as third defendant in the suit.

6. At this juncture, the revision petitioner/1st defendant filed the present I.A No.584 of 2011 seeking rejection of Plaint under Order 7 Rule 11(a)&(d) and Section 151 CPC on the ground that the total extent of the property in Survey No.102/4 is 17.67 acres at Pudhupalayam Village, Rajapalayam Taluk, Virudhunagar District. The Settlement Tashildar-I, Kovilpatti, under the provisions of Tamil Nadu Minor Inams (Abolition and conversion into Ryotwari) Act, by his order dated 10-12-1996 in case No. 44/Sri/66 held that plaintiffs' father and 20 other co-shares were entitled to patta in respect of property in Survey No.102/4 measuring to an extent of 17.67 acres at Pudhupalayam Village, Rajapalayam Taluk, Virudhunagar District. Further, the plaintiffs' father Sethuramakrishnan has obtained 1.43 acres out of the total extent of 17.67 acres through the partition between the other 20 pangalis on 08.09.1982 and sold the same to one S.A.Renganatha Raja. The plaintiffs have filed the suit by suppressing the earlier sale of their father's share in the total extent of 17.67 acres. The plaintiffs filed the present suit in respect of the remaining 16.24 acres by cleverly excluding the share made by their father. Moreover, the father of the plaintiff has already sold a portion of the property even in the year 1984 to a third party and that has been suppressed in the plaint. After the



said sale, the plaintiffs are having no right over the plaint schedule property. The suit has been filed without adding the proper parties as well as all the trustees. The plaintiffs have no right over the suit property and even without having any cause of action, the suit has been filed by suppressing material facts. The respondents filed their detailed counter and the trial Court after analyzing the documents marked by the revision petitioner dismissed the interlocutory application by order dated 06.06.2015. Challenging the said dismissal order passed in I.A. No.584 of 2011 on the file of the Subordinate Judge, Srivilliputhur, the present civil revision petition is filed.

7. Heard Mr.M.Vallinayagam, learned Senior Counsel appearing for the petitioner contented that the suit filed by the respondents is not maintainable in law and there is no cause of action for the plaintiffs/respondents 1 to 5 herein to file the above suit for the plaint reliefs. The main contention of the learned Senior Counsel is that the plaintiffs' father Sethuramakrishnan has obtained 1.43 acres out of the total extent of 17.67 acres through the partition between the other 20 pangalis on 08.09.1982 and sold the same to one S.A.Renganatha Raja. Now the plaintiffs have filed the suit by suppressing the earlier sale of their father's share in the total extent of 17.67 acres. The plaintiffs filed the present suit in respect of the remaining 16.24 acres by cleverly excluding the sale made by their father. The said sale deed dated 11.04.1984 executed by the plaintiffs' father is a registered document in favour of S.A.Renganatha Raja. In the said sale deed, the plaintiffs are parties to the document and the plaintiffs' father sold the property on behalf of the plaintiffs also as Kartha. The plaintiffs without challenging the earlier sale by their father, the present suit is not maintainable. The contention put forth on the side of the revision petitioner is that the suit for declaration in respect of 16.24 acres without impleading the 20 other co-sharers is not maintainable and hit by non-joinder of necessary parties. Suppressing the earlier sale which being the part and parcel of the present suit schedule property would only go to show that the respondents by playing fraud and misrepresentation have filed the suit. The plaintiffs have not approached the Court with clean hands and are guilty of fraud, suppression of facts and misrepresentation and as such they are not entitled for any relief.

8. The learned Senior Counsel appearing for the petitioner relied upon a judgment of the Hon'ble Supreme Court in the case of S.P Chengalvaraya Naidu V. Jagannath reported in AIR 1994 SSC 853. wherein it has been observed as follows:

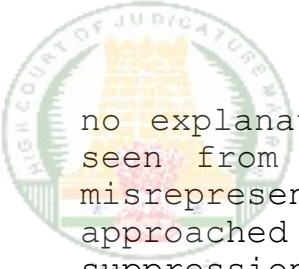
"Fraud is proved when it is shown that a false representation has been made: (i) knowingly, or (ii) without belief in its truth, or (iii) recklessly, careless whether it is true or false. Fraud is a conduct either by letter or words,



which induces the other person or authority to be a definite determinative stand as a response to the conduct of the former, either by words or letter. Allegations thought negligence is not fraud but it can be evidence of fraud. A "fraud" is an act of deliberate deception with the design of securing something by taking unfair advantage of another. It is a deception in order to gain by another's loss."

9. Per contra, Mr.Prabu Rajadurai, learned counsel appearing for the plaintiffs/respondents has vehemently contented that the suit property belonged to the Vettai Venkatesa Perumal Temple and the Settlement Thasildar has given patta to the Poojaries on condition that they can enjoy the land so long as they continue to perform Pooja. The suit property is inalienable. Even without admitting that the alienation has been done, it will not bind the plaintiffs / the Poojaries who have been given patta. The respondents were not aware of the alienation allegedly made by their father.

10. On careful perusal of the rival contentions of both counsels and documents marked by the petitioners/plaintiffs, this Court is of the considered opinion that the present suit was initially filed by the respondents herein for the relief of permanent injunction against the petitioner herein for changing the character of the plaint schedule property as cultivable land into any other type including house-plots and not to alienate and encumber the same. Subsequently, the subject matter was taken up by this Court in C.R.P (MD) No.1581 of 2012 and specific direction was given to the respondents/plaintiffs to amend the prayer in the suit. After that, the respondents filed amendment petition in I.A.No.14 of 2013 without impleading the 20 other pangalies. In the plaint itself, the respondents herein admitted that the suit property is a Patta land which had been issued in favour of the plaintiffs' father and other 20 pangalis by the Settlement Thasildar-I, Kovilpatti, in case No.44/Sri/66 in respect of 17.67 acres, but the plaintiffs suppressed the sale deed dated 11.04.1984 executed by their father and excluding the said extent, the present suit is filed only in respect of 16.24 acres. Further, it is seen from paragraph No.5 of the plaint that the Settlement Tashildar-I, Kovilpatti under the provisions of Tamil Nadu Minor Inams (Abolition and conversion into Ryotwari) Act, by his order dated 10-12-1996 in case No. 44/Sri/66 held that the plaintiff's father Sethuramakrishnan and 20 Co-shares were obtained patta in respect of property in Survey No.102/4 measuring to an extent of 16.24 acres at Pudhupalayam Village, Rajapalayam Taluk, Virudhunagar District. After perusing the document marked by the plaintiffs along with plaint in document No.1 dated 10.12.1966, the copy of the settlement Thasildar in case No. 44/Sri/66, it is seen that the extent of the original settlement is 17.67 acres. But the Suit is laid for 16.24 acres. It is made clear that there is no explanation in the plaint as to why and for what purpose the total extent is reduced by them from 17.67 acres into 16.24 acres, without pleading that there was a partition. There is



no explanation as to how the suit property is subdivided. It is seen from the records that the respondents by playing fraud and misrepresentation have filed the suit. The plaintiffs have not approached the court with clean hands and are guilty of fraud, suppression of facts and misrepresentation and as such they are not entitled for any relief.

11. In view of the above discussions and in the light of the judgments referred above, I am of the considered opinion that the suit filed by the plaintiffs/respondents 1 to 5 is liable to be struck down from its file.

12. In the result, the Civil Revision Petition is allowed and the plaint filed in O.S.No.99/2011 on the file of the Subordinate Judge, Srivilliputhur, is hereby struck down. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar (Cr1.Side)

/True Copy/

Sub Assistant Registrar (Cs-III)

To

The Sub-Judge,
Srivilliputhur.

+1CC to Mr.M.P.Senthil Advocate in SR.No.75294.

+1CC to Mr.T.Antony Arul Raj Advocate in SR.No.75248.

VSV
DS/SKN-RSK/SAR-3 :06.08.2018: 7P/4C

CRP (PD) (MD) .No.1878 of 2015
and
M.P (MD) .No.1 of 2015
26.07.2018.