



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 06.07.2018

Pronounced on : 02.08.2018

CORAM

THE HON'BLE MR. JUSTICE M.V.MURALIDARAN

WEB COPY

C.R.P. (MD) (PD) Nos.1181 and 1182 of 2018

CRP (MD) (PD) No.1181 of 2018

Kandasamy

.. Petitioner/5th Defendant

Vs.

- 1.Duraisamy Gunaseelan
- 2.Duraisamy Venkateswaran
- 3.Duraisamy Vigneshwaran
- 4.R.Pushpavathy
- 5.R.Premavathy

1 to 5 represented by Power Agent J.STEPHEN,
Son of Joseph Christian, No.112, Nadu Street,
Varaganery, Trichy-8.

...Respondents 1-5/Plaintiffs

6. The State of Tamilnadu,
Represented by its District Collector,
Collectorate Building, Trichy - 1.

7. The District Revenue Officer,
Collectorate Building, Trichy - 1.

8. The Revenue Divisional Officer,
Collectorate Building, Trichy - 1.

9. The Tahsildar,
Town Hall, Trichy - 1. .. Respondents 6 to 9/Defendants 1 to 4

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India, against the Fair and Decreetal order passed in I.A.No.1091 of 2017 in O.S.No.228 of 2009, on the file of the III Additional District Munsif, Tiruchirapalli, dated 15.03.2018.

CRP (MD) (PD) No.1182 of 2018

Kandasamy

.. Petitioner/5th Defendant

vs.

- 1.Duraisamy Gunaseelan
- 2.Duraisamy Venkateswaran
- 3.Duraisamy Vigneshwaran
- 4.R.Pushpavathy
- 5.R.Premavathy

All are represented by Power Agent J.STEPHEN,
Son of Joseph Christian, No.112, Nadu Street,
Varaganery, Trichy-8.

...Respondents 1-5/Plaintiffs



6. The State of Tamilnadu,
Represented by its District Collector,
Collectorate Building, Trichy - 1.

7. The District Revenue Officer,
Collectorate Building, Trichy - 1.

8. The Revenue Divisional Officer,
Collectorate Building, Trichy - 1.

9. The Tahsildar,
Town Hall, Trichy - 1.

.. Respondents/Defendants 1 to 4

PRAYER: Civil Revision Petition is filed under Article 227 of the Constitution of India, to strike off the suit in O.S.No.228 of 2009, on the file of the III Additional District Munsif, Tiruchirapalli, dated 15.03.2018.

(In both the CRPs)

For Petitioner	: Mr.V.Chandrasekar
For Respondents	: Mr.R.Sundar Srinivasan (for R1 to R5) Mrs.VPM.Vaishnavi (for R6 to R9) Government Advocate

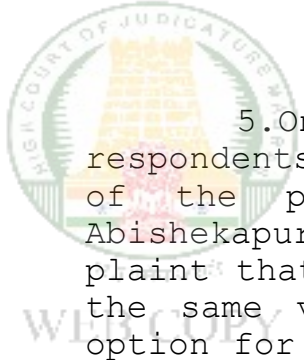
COMMON ORDER

The parties in both the Civil Revision Petitions are one and the same and the petitioner has invoked the extra-ordinary and supervisory jurisdiction of this Court to set aside the order passed in I.A.No.1091 of 2017 in O.S.No.228 of 2009 dated 15.03.2018 on the file of the learned III Additional District Munsif, Tiruchirapalli. In the Civil Revision Petition in CRP(MD)No.1182 of 2018, the petitioner has sought for struck off the plaint in O.S.No.228 of 2009 now pending on the file of the learned III Additional District Munsif, Tiruchirapalli, on the ground of abuse of process of law. Both the Civil Revision Petitions are disposed by a common order.

2.The petitioner is the 5th defendant in the suit and the respondents 1 to 5 are the plaintiffs who are represented by a power agent in the suit. The respondents 1 to 5 through their power agent have filed the suit for declaration that the entire proceeding of the 2nd defendant with regard to notification under Section 13 of the Tamil Nadu Survey and Boundaries Act, 1923 is void and illegal.

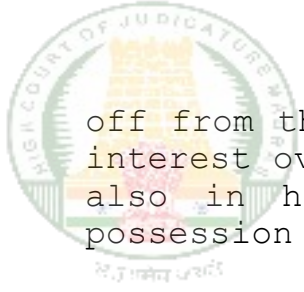
3.The respondents 1 to 5 have also prayed for another relief to declare that the order of the 3rd defendant in the proceeding No.2237/07 dated 26.08.2008 is null and void.

4.The respondents 1 to 5 have also prayed for a relief of injunction simpliciter against the petitioner herein and finally the respondents 1 to 5 have prayed for a declaration that the grant of patta in favour of the 5th defendant is null and void.



5. On a reading of the plaint it is very clear that the respondents 1 to 5 herein as plaintiffs claimed themselves as owners of the property comprised in T.S.No.5/1A1A1A1A1 situated in Abishekapuram Village in Trichy Taluk. It is also averred in the plaint that the petitioner herein is claiming right in T.S.No.5 in the same village. When there is rival claims of title the only option for the respondents 1 to 5 to file a suit for declaration of their title but the respondents 1 to 5 simply questioned the order passed by the statutory authorities before the Civil Court as if there is a boundary dispute between the petitioner and the respondents 1 to 5. Further, in the plaint the respondents have questioned the grant of patta. As far as grant of patta it is governed by a statute called Patta Pass Book Act and as per the Act hierarchy of forums have been constituted to relieve the Civil Court from the burden of spot inspection and verification of village records etc. However judicial review is also contemplated in the Act by seeking common law remedy to declare the title of the party before the Civil Court and if any decree is passed by the competent Civil Court that would bind the authorities concerned. On a perusal of the plaint it is manifestly clear that the respondents 1 to 5 without invoking the statutory remedy available jumped to the conclusion and filed the suit to declare the orders passed by the statutory authorities are null and void. Why the respondents 1 to 5 have failed to pray for a declaration of title against the contesting party is a million dollar question? The respondents 1 to 5 are claiming right over the suit properties but failed to file a suit for declaration of their title having known the fact that the petitioner is also claiming right over the properties in question through registered documents.

6. In paragraph 8 of the plaint the respondents 1 to 5 have pleaded that the petitioner herein has purchased properties and also obtained patta in his name. Further, it is also averred that the survey number stated in the documents stand in the name of the petitioner herein are re-survey numbers. Now from the pleadings it is very clear that the petitioner herein is also having documents in respect of the properties in question. So the contention of the respondents 1 to 5 is that the petitioner is claiming right on the basis of re-survey number whereas the respondents 1 to 5 are claiming right over the properties comprised in a different survey number. Now, the identity of the property owned by the respondents 1 to 5 is in question. The statutory authorities after careful survey of the land found that the petitioner is in possession and enjoyment of the property as per his document of title. But, the respondents 1 to 5 have not filed any suit for declaration of their title right from 2004 onwards knew full well that the petitioner is denying their title. Now the remedy to declare their right is time barred and law will not help the persons who have slept over their right. Without seeking a relief of declaration of title any suit filed by the respondents 1 to 5 is nothing but a futile exercise. So this Court is of the firm opinion that in the absence of a prayer for declaration of title the suit is incompetent and has to be struck



off from the file. The petitioner herein has got absolute title and interest over the properties in question and the revenue records are also in his favour which indicates that he is in constructive possession of the properties in question.

7. The learned counsel for the petitioner has brought to the notice of the Court that the District Revenue Officer has also passed an order in Na.Ka.No.Aa6/9373/2014 dated 10.09.2015. This Court perused the order. The District Revenue Officer has set aside the order passed by the Revenue Divisional Officer in Na.Ka.No.A1/1776/2011 dated 26.03.2014. Therefore, the order passed in favour of the petitioner herein has been affirmed in the statutory enquiry. The respondents 1 to 5 having known the fact that the petitioner herein is also claiming right over the property said to have been owned by them have not chosen to declare their title through the Civil Court which clearly amounts to shirking their right to establish their title before the Civil Court which certainly go to the root of the matter.

8. The respondents 1 to 5 have questioned the notification issued under Section 13 of the Tamil Nadu Survey and Boundaries Act, 1923. No doubt survey and boundaries Act had been enacted to resolve the boundary dispute between the parties way back in 1923 because land survey was not in vogue at that point of time. To regularise the land holdings and also to prepare a land survey records Tamil Nadu Survey and Boundaries Act, 1923 was enacted. The Act contemplates various level of officers and various procedures have been contemplated in the Act. Absolutely there is no boundary dispute between the petitioner and the respondents 1 to 5 herein. The dispute is only with regard to title and it could be resolved only by a Civil Court that too in a properly constituted proceeding before a competent Civil Court. The attempt of the respondents 1 to 5 in questioning the notification will not serve any purpose and if at all the respondents are having any grievance they should first declare their right over the properties. Instead of initiating any proceeding for declaration of their right the respondents simply questioned the notification which is nothing but an exercise in futility. Further, when the procedures contemplated in the Tamil Nadu Survey and Boundaries Act, 1923 has not been availed of by the respondents herein on by one then there is no point in questioning the final notification by way of filing the suit. The non-exhaustion of the procedures contemplated in the Act clearly non-suit the respondents 1 to 5 herein. Suffice it to refer to the relevant provisions of the Tamil Nadu Survey and Boundaries Act, 1923. Section 9 runs as follows:

"9. Power of survey officer to determine and record an undisputed boundary - (1) The survey officer shall have power to determine and record as undisputed any boundary in respect of which no dispute is brought to his notice.

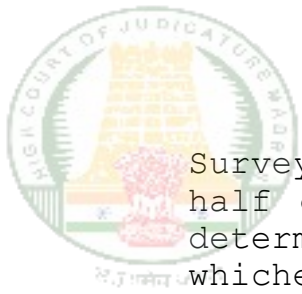
(2) Notice to registered holders of lands affected -
 Notice of every decision of the survey officer under Section 9(1) shall be given in the prescribed manner to the



registered holders of the lands the boundaries of which may be affected by the decision."

9. As already narrated there is no boundary dispute between the petitioner and the respondents 1 to 5. There is absolute dispute regarding the title to the property and therefore the question of sending notice to the registered holders does not arise. When there is no boundary dispute it is not incumbent upon the officers concerned to follow the procedure contemplated in Section 10 of Tamil Nadu Survey and Boundaries Act 1923. However, under Section 11 the remedy of appeal is provided and the petitioners have not availed the remedy provided under the Act. Then under Section 12A second appeal is also provided under the Act. The Section 12A(3) contemplates that no appeal under this Section shall be admitted after the issue of notification specified in Section 13. Further, under Section 12(B) revision is also provided before the Director of Survey and Settlement. The petitioner has not invoked any of the provisions contemplated in the Tamil Nadu Survey and Boundaries Act, 1923 at any point of time. It is an admitted fact that the completion of demarcation had already been notified. However, under Section 14 any person deeming himself aggrieved by the determination of any boundary under Sections 9, 10, 11, 12A, or 12B may institute a suit before the Civil Court by invoking Section 14 of the Act 36 of 1963. As already indicated the perusal of the plaint in question clearly shows that there is no boundary dispute between the parties to the lis. When there is a dispute with regard to title the remedy is only to file a civil suit for declaration of title and the ingenuous attempt of the respondents 1 to 5 by approaching the Civil Court under Section 14 must necessarily fail. What has to be done in a manner known to law could not be achieved by filing a suit which is forbidden by law. The respondents 1 to 5 herein are totally barred from challenging the notification when their title has not been declared by a competent Court. As already stated the respondents 1 to 5 have lost their remedy of filing a suit for declaration within a period of three years from the date of denial and they have been indulged in a shadow fight with the real owner of the properties in question. It is pertinent to point out that the respondents 1 to 5 have been fighting the litigation before the authorities without resorting to the lawful remedy of approaching the Civil Court for declaration of their title for all these years. Therefore, the first relief sought for in the suit in question is nothing but an abuse of process of law and the Courts are established only to save the litigants from being harassed again and again.

10. Further it is submitted that the suit is bad for improper valuation. As rightly pointed out by the learned counsel for the petitioner the suit has to be valued only under Section 45 of Act 14 of 55 as amended. But, the respondents 1 to 5 have filed the suit by valued it under Section 25(d) which is totally illegal. Section 45 of Act 14 of 55 runs as follows:



"In a suit under Section 14 of the Tamil Nadu Survey and Boundaries Act 1923 fee shall be computed on one half of the market value of the property affected by the determination of the boundary or on rupees one thousand whichever is higher. The conduct of invoking Section 25(d) of Act 14 of 55 looms large in this case and there is substance in the argument advanced by the learned counsel for the petitioner."

11. It is also submitted that the order passed by the Revenue Divisional Officer could not be questioned before the Civil Court and the remedy is elsewhere. Apart from that the case of the petitioner herein has been further strengthened after the order passed by the District Revenue Officer. The Civil Court lacks inherent jurisdiction to go into the validity of the order passed by the Revenue Divisional Officer when alternative remedy is provided in the statute itself.

12. As far as the relief of injunction simpliciter the respondents 1 to 5 have not filed any document to show prima facie possession. Further, it is submitted that the properties in question were acquired for formation of a national highway and the question of possession could not be gone into by the Court. When the Government has acquired the lands in question for formation of a national highway then the prayer for injunction could not be granted at all by the Court. Therefore, the Civil Court has no jurisdiction to go into the question of possession when the right of the Government is involved as per the doctrine of eminent domain. The cause of action has not been specifically pleaded in the plaint to make out a case for getting the relief of injunction.

13. The respondents 1 to 5 have also sought for another prayer for declaration that the patta granted in favour of the petitioner herein is null and void. Obviously the Civil Court has no jurisdiction to decide the issue because the Act provides a remedy of appeal and revision. Without resorting to the lawful exercise as contemplated in the Act the entire exercise of the respondents 1 to 5 is not bonafide.

14. The learned counsel for the respondents without answering the questions raised by the learned counsel for the petitioner simply harping on technicality. The learned counsel for the respondents submits that the Civil Revision Petition is not maintainable and the petitioner herein has to file application under Order 7 Rule 11(d) of the Civil Procedure Code for rejection of plaint and he has also cited decisions to that effect. All those decisions cited by the learned counsel for the respondents does not apply to the case on hand. Absolutely there is no satisfactory reply



given by the learned counsel for the respondents to the contentions raised by the learned counsel for the petitioner.

15. Having failed in their attempt to file the suit within the time stipulated for filing a suit for declaration and having failed in the proceedings before the statutory authorities the suit in question is incompetent and the attempt of the respondents 1 to 5 clearly amounts to abuse of process of Court and law. The Hon'ble Apex Court in K.K.Modi v. K.N.Modi reported in 1982 (2) AIR SCW 116 has held that frivolous or vexatious proceedings may also amount to an abuse of process of Court, especially where the proceedings are absolutely groundless. The Court then has the power to stop such proceedings summarily and prevent the time of the public and the Court from being wasted. Undoubtedly, it is a matter of Courts discretion whether such proceedings should be stopped or not and this discretion has to be exercised with circumspection. It is a jurisdiction which should be exercised sparingly and exercised only in special cases. The principle laid down by the Hon'ble Apex Court squarely applicable to the case on hand. It is submitted that the respondents 1 to 5 had been indulging in this sort of activity only to prevent the petitioner from enjoying the fruits of the acquisition proceedings. A lawful owner who has lost his land in the acquisition should not be deprived of the lawful compensation amount that too at the instance of a person who has no right over the lands in question. It is clearly an abuse of the process of Court and also amounts to improper use of machinery of Court. Hence, this Court has no other alternative except to exercise the inherent power to strike off the plaint.

16. The Civil Revision Petition in CRP(MD) (PD) No.1182 of 2018 is allowed and the suit in O.S.No.228 of 2009 is struck off from the file of the learned III Additional District Munsif, Tiruchirapalli. No costs.

17. As far as the Civil Revision Petition in CRP(MD) (PD) No.1181 of 2018 is concerned, no finding is necessary since the suit itself is struck off from the file of the learned III Additional District Munsif, Tiruchirapalli. No costs.

Sd/-
Assistant Registrar (CO)

/True Copy/



To

The III Additional District Munsif,
Tiruchirapalli.

+2CC to Mr.V.CHANDRASEKAR, Advocate, SR.Nos. 76775, 76776

+2CC to Mr.R.SUNDAR SRINIVASAN, Advocate, SR.No. 76513

C.R.P. (MD) (PD) Nos.1181 and 1182 of 2018

02.08.2018

VSV

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