

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.07.2019

CORAM

THE HONOURABLE DR. JUSTICE VINEET KOTHARI
and
THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN

W.A. No.2053 of 2013
and
M.P.No.1 of 2013

The Institute of the Brothers of St.Patrick,
Gandhi Nagar,
Adyar, Chennai 600 020,
Rep. by its Secretary, Bro.Johnson.

..Appellant

Vs

- 1.The Principal Secretary and
Commissioner of Land Administration,
Chepauk, Chennai-3.
- 2.The District Revenue Officer,
Collector Office,
Singaravelan Maaligai,
Chennai-1.
- 3.The District Revenue Officer,
Land and Estate Department
Corporation of Chennai,
Ripon Building, Chennai-3.
- 4.The Tahsildar,
Mylapore-Triplicane Taluk,
Chennai-4.

..Respondents

PRAYER: Appeal is filed under Clause 15 of Letters Patent Act,
to set aside the order dated 18.09.2013 passed by the learned
Single Judge in W.P.No.21619 of 2013.

Prayer in WP 21619 of 2013 : Certiorarified mandamus to call for
the records in Ref. D.Dis. No.K4/376/2013 dt 25.7.2013 on the
file of the 1st respondent and consequently quash the same with
the direction to the 4th respondent to issue Patta in favour of

the petitioner Institution in respect of the land comprised in S. No.2/1 (T.S. No.2/part) of Block No.24 admeasuring 10 acres and 2 grounds in Kottur Village Mylapore -Triplicane Taluk Chennai District.

For Appellant : Mr.ARL.Sundaresan
Senior Counsel
for M/s.AL.Gandhimathi

For Respondents : Mr.Vijay Narayan
Advocate General
Assisted by
Mr.R.Arunmozhi for R3
Mr.A.N.Thambidurai for R1, 2 and 4
Special Government Pleader

JUDGMENT

[Judgment of the Court was delivered by DR.VINEET KOTHARI, J.]

The present Writ Appeal has been filed by the Appellant, The Institute of the Brothers of St.Patrick, a Society registered under the Tamilnadu Societies Registration Act, 1875, against the order of the learned Single Judge dated 18.09.2013, which was filed by the present Appellant for seeking a direction to the Respondent, District Revenue Officer and other concerned Authorities like Tahsildar to issue patta in favour of the Petitioner Institution in respect of the land in Survey No.2/1, (T.S.No.2/Part) of Block No.24, admeasuring 10 acres and 2 grounds, in Kottur Village, Mylapore-Triplicane Taluk, Chennai District.

2. The claim of the petitioner was based on exparte decree in O.S.No.4413 of 2005, which was decreed exparte against the Defendants, Collector of Chennai and Tahsildar, by a short order, which has been quoted by the learned Single Judge in paragraph 10 of the order impugned before us. Paragraph 10 of the order of the learned Single Judge is quoted below for ready reference:

"10. Since the petitioner placed heavy reliance on the Civil Court Decree in O.S.No.4413 of 2005, I have summoned the original records. The records produced by the City Civil Court indicates that the learned Civil Judge mechanically passed a judgment and decree holding that the subject property belongs to the petitioner. The learned Civil Judge marked the documents produced by the petitioner and after examining an employee of the petitioner passed the following judgment:

"Plaintiff present. Examined as P.W.1. Proof affidavit of P.W.1 filed. Ex.A1 to A.14 marked. Perused, claim proved. Suit is decreed as prayed for with costs.""

3.Learned Senior Counsel for the Appellant/Petitioner Mr.ARL.Sundaresan, fairly submitted that the judgment of the learned VI Assistant City Civil Court is indeed not a speaking judgment and therefore, the matter may even be restored for a fresh trial to the trial Court in O.S.No.4413 of 2005.

4.Learned Advocate General, Mr.Vijay Narayan, appearing for the City Corporation submits that since the Corporation has the claim over the land in question, as it belongs to the City Municipal Corporation, even the City Corporation should be impleaded as Defendant in the said suit and the learned counsel for the Appellant has not fairly objected to the same.

5. Having considered the rival submissions and having perused the order of the trial court quoted by the learned Single Judge, we respectfully agree with the finding of the learned Single Judge and we are at a loss to understand, how the learned trial Judge could pass such a short and cryptic judgment in a civil suit, even though exparte, without discussing the facts, evidence and the arguments of the plaintiff side also. Such a cryptic order by a Civil Court cannot be said to be a valid foundation for a Decree passed in favour of the Appellant.

6. Therefore, in our considered opinion, the said Judgement and Decree passed by the learned trial Judge in O.S.No.4413 of 2005 dated 23.08.2005, deserves to be set aside and the suit deserves to be restored for fresh trial in accordance with law.

7. Accordingly, the Judgment and Decree dated 23.08.2005 passed in O.S. No.4413 of 2005 is set aside and the same is restored to the trial Court for fresh trial in accordance with law. We further direct the Chennai City Corporation to be impleaded by the trial court as a Defendant in the said suit and the suit will commence from the beginning stage. The defendants including the new defendant shall be given an opportunity for filing of written statement, etc., and thereafter, the trial be proceeded in accordance with law.

8. The trial court will also consider the application for temporary injunction also, if any afresh in accordance with law after giving the opportunity of hearing to the defendants.

9. The pendency of suit, will not prevent the defendants from taking any other legal action in accordance with law nor it will prevent the Petitioner/Appellant from seeking their legal remedy in accordance with law. No costs. The connected CMP is closed.

Sd/-
Assistant Registrar (CCC)

//True copy//

Sub Assistant Registrar

vri

To

1. The VI Assistant Judge,
The VI Assistant City Civil Court,
Chennai.
- 2.The Principal Secretary and
Commissioner of Land Administration,
Chepauk, Chennai-3.
- 3.The District Revenue Officer,
Collector Office,
Singaravelan Maaligai,
Chennai-1.
- 4.The District Revenue Officer,
Land and Estate Department
Corporation of Chennai,
Ripon Building, Chennai-3.
- 5.The Tahsildar,
Mylapore-Triplicane Taluk,
Chennai-4.

+1cc to Mr.R.Arunmozhi, Advocate SR.No.59885

+1cc to M/s.AL.Gandhimathi, Advocate SR.No.59960

+1cc to Government Pleader SR.No.60226

W.A.No.2053 of 2013

RV (CO)
GMY (06/08/2019)