

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01.02.2019

CORAM

THE HONOURABLE MR.JUSTICE R.MAHADEVAN

W.P.No.13455 of 2010

- 1.B.Boomadevi
- 2.Karuppasamy Pandian
- 3.Kamatchi Priya

rep.by their Power of Attorney
Agent S.Jayam ...Petitioners

Vs

- 1.The District Collector,
Kancheepuram.
- 2.The Tahsildar,
Tambaram Taluk Office,
Tambaram.
- 3.The Commissioner,
Alandur Municipality,
Alandur, Chennai-16. ...Respondents

Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Mandamus forbearing the respondents herein, their men, agents, servants or any other person or persons claiming through them or authorised by them from in any manner interfering with the petitioners' peaceful possession and enjoyment of the property of an extent of 2.89 acres comprised in Survey No.37 in Nanganallur Village, Kancheepuram District.

For Petitioners : Mr.AR.L.Sundaresan, Sr.Counsel
for Mrs.AL.Ganthimathi

For Respondents : Mr.S.R.Rajagopal,
Addl.Advocate General
assisted by
Mr.V.Jayaprakash Narayanan,
Government Pleader (i/c) for
R1 and R2

Mr.G.Anantharangan for R3

O R D E R

It is stated in the affidavit filed in support of this writ petition that the properties to an extent of 2.89 acres comprised in S.No.37 and 4.87 acres comprised in S.No.32 of Nanganallur Village, Alandur Taluk, originally belonged to one Vijayarangan Pillai and Mohanarangan Pillai. In the said lands, they had constructed Pidari Pachaiaamman temple for worship. Subsequently, the said lands were sold to one Duraisamy Pillai and after his death, his son Chinnathambi had taken over the temple and the said lands and after the death of Chinnathambi, his son, viz. Subbaraya Pillai was in possession of the property. It is further stated that since the family members were unable to devote full attention for maintaining the temple and the aforesaid properties, they formed an Association, viz. Arulmighu Pidari Pachaiaamman Temple Association on 12.01.1983 and they took over the management of the temple and continued enjoyment of the properties. Thereafter, the Association passed a Resolution at its meeting held on 01.03.1992 for sale of the aforesaid properties and one Pandian, the husband of the first petitioner, entered into an agreement of sale. Thereafter, the said Pandian passed away and the legal representatives of the said Pandian, the petitioners herein, requested the vendors to execute the sale deed in their favour and finally upon a decree of specific performance passed in the suit in O.S.No.742 of 2001 by the Subordinate Judge, Chengalpattu on 31.10.2003, sale deed was also registered through Court on 28.10.2004 and the petitioners herein took delivery of the property through Court on 11.04.2005 and since then, they are in possession and enjoyment of the property.

2. According to the petitioners, who are represented through a Power of Attorney Agent, the petitioners herein are in possession and enjoyment of the property, but in the Government records, the said property has been recorded as Pidari Pachaiaamman Thottam and Koil and it has been shown as Government Poramboke. Hence the petitioners made an application to the first respondent putting forth all the aforesaid facts, requesting to transfer patta in the name of the petitioners in respect of the lands in question.

3. The petitioners state that thereafter, the first respondent has directed the second respondent to conduct a spot inspection and also to give a report as to the nature of property and accordingly a report has also been submitted to the first respondent herein, but however, till date the application submitted by the petitioners for transfer of patta has not been considered and no order has been passed. In these circumstances, it is also stated by the petitioners that the officials of the

third respondent entered into the said lands and attempted to interfere with their possession and they have also put up some temporary construction in the said lands. On enquiry by the petitioners, they came to know that the officials are planning to put up a Park in the said place. Hence the petitioners have come up with this writ petition for issuance of a Writ of Mandamus directing the respondents 1 and 2 herein to transfer patta in favour of the petitioners herein in respect of the property in question, on the ground that the lands belong to the petitioners herein.

4.Mr.AR.L.Sundaresan, learned senior counsel appearing for the petitioners has specifically submitted that only upon a decree of specific performance passed in the suit in O.S.No.742 of 2001 by the Subordinate Judge, Chengalpattu on 31.10.2003, sale deed was registered through Court on 28.10.2004 by which petitioners herein took delivery of the property through Court on 11.04.2005. In such circumstance, it is not proper on the part of the officials of the third respondent, to interfere with the peaceful possession and enjoyment of the property in question.

5.Mr.S.R.Rajagopal, learned Additional Advocate General, appeared for the first respondent and Mr.V.Jayaprakash Narayanan, learned Government Pleader for the second respondent.

6.Mr.V.Jayaprakash Narayanan, learned Government Pleader has submitted that the petitioners before the Courts have not come with clean hands and all their attempts are to grab the property worth about Rs.100 Crores, belonging to the temple, without proper documents, that too with collusion. He claimed that along with the writ petition filed by the petitioners, a copy of the original sale agreement entered into between the petitioners and the so-called land owners of the property, has not been enclosed in the typed set of papers. Further, even the details relating to the agreement entered into between them have not been specified. Neither any papers relating to the judgment made in O.S.No.742 of 2001 by the Subordinate Judge, Chengalpattu, nor the connected papers in E.P.No.1 of 2004 have been enclosed in the typed set of papers and further, there is no whisper about the details of the same in the affidavit. The petitioners only claim that the land belongs to them and they are entitled as per the judgment passed by the Lower Court, without any supporting documents, according to the learned Government Pleader.

7.Further, the learned Government Pleader has submitted that the Hindu Religious and Charitable Endowments Department has not been added as a party in this writ petition and that the land in question belongs to Pidari Pachaiaamman Temple for

decades and no private party is entitled for patta in respect of the said land. He submitted that this property worth about several crores of rupees has been fraudulently claimed by the petitioners without any basic document and that only the Power of Attorney Deed executed by some third parties has been produced before the Lower Court and hence the claim of the petitioners to forbear the respondents from interfering with their possession and enjoyment of the property in question, has to be summarily rejected.

8.Mr.S.R.Rajagopal, learned Additional Advocate General, has submitted that since there were illegalities in the transactions, in order to ascertain the nature of the land, proper inspection was directed to be conducted and accordingly, the first respondent directed the second respondent to conduct a spot inspection pursuant to which it was found that the lands belong to Pidari Pachaiamman temple and the said property belongs to the Hindu Religious and Charitable Endowments Department and the petitioners cannot squat over the property worth about Rs.100 Crores, stating that the same has been acquired through Court, that too by an ex-parte judgment.

9.The learned Additional Advocate General further submitted that the entire attempt of the petitioners in collusion with third parties is fraudulent in nature, which is very much apparent by the attitude of the petitioners in approaching this Court earlier by filing a writ petition in W.P.No.7738 of 2009, for transfer of patta in favour of the petitioners herein, which facts are absolutely suppressed in the case on hand. In W.P.No.7738 of 2009, liberty was given by this Court to the petitioners only to avail the statutory remedy under Section 3 of Patta Pass Book Act for transfer of patta in accordance with law, while dismissing the said writ petition as withdrawn, on 07.03.2013, but such facts regarding the specific liberty given by this Court to approach the authorities under the Patta Pass Book Act, have not been put forth before this Court. He also submitted that when that writ petition filed in the year 2009 for transfer of patta was pending without there being any final order passed, the present writ petition has been filed in the year 2010 praying for forbearing the respondents from interfering with their possession and enjoyment of the property in question, which itself vitiates the maintainability of the present writ petition.

10.The learned Additional Advocate General has further submitted that the petitioners have filed another writ petition in W.P.No.21880 of 2017 praying for considering the representation of the petitioners dated 10.07.2017 and to forbear the Fit Person of the temple from interfering with the peaceful possession and enjoyment of the petitioners. Even that

writ petition was withdrawn with liberty to file a Civil Suit before the appropriate Court and the said facts have not been placed before this Court even today. He finally submitted that the judgment passed by the Trial Court which has been relied upon by the learned counsel for the petitioners, is not a suit for title, but only an injunction suit and the judgment obtained is only an ex-parte judgment without dealing with the case on merits.

11.The learned counsel for the third respondent has adopted the arguments advanced by the learned Additional Advocate General appearing for the respondent No.1.

12.Heard the learned counsel on either side and perused the materials available on record carefully and meticulously.

13.It is the case of the petitioners that the property in question originally belonged to one Vijayarangan Pillai and Mohanarangan Pillai and after their death the property devolved around their subsequent legal heirs. The learned senior counsel appearing for the petitioners has emphasised the point that only upon a decree of specific performance passed in the suit in O.S.No.742 of 2001 by the Subordinate Judge, Chengalpattu on 31.10.2003, sale deed was registered through Court on 28.10.2004 and in such circumstance, it is not proper on the part of the officials of the third respondent, to interfere with the peaceful possession and enjoyment of the property in question. But according to the submission of the learned Additional Advocate General, proper inspection was carried out by the second respondent pursuant to which it was found that the lands in question belong to Pidari Pachaiamman temple as per Government records and that without any valid and legal documents, a suit came to be filed wherein an ex-parte order was passed. Hence the petitioners have to refrain from claiming the said property which belongs to the Hindu Religious and Charitable Endowments Department and no one can squat over the property. Hence he pleaded to dismiss the writ petition with costs.

14.Having heard the submissions of the parties and on an exhaustive analysis of the materials available on record and also the copy of the decree etc. shown by the Government Pleader, this Court finds that it is an improper and illegal claim on the part of the petitioners by suppressing the material facts, coupled with mala fides and ulterior motives. It is the claim of the petitioners that upon a decree of specific performance passed in the suit in O.S.No.742 of 2001 by the Subordinate Judge, Chengalpattu on 31.10.2003, sale deed was registered through Court on 28.10.2004 by which petitioners

herein took delivery of the property through Court on 11.04.2005 and in such circumstance, it is not proper on the part of the officials of the third respondent, to interfere with the peaceful possession and enjoyment of the property in question. But here, the genuineness of the claim of the petitioners has to be looked into. The specific arguments of the learned Government Pleader that before the Subordinate Judge, Chengalpattu, no relevant materials as regards the title deeds have been placed, but rather the Power of Attorney Deed only had been placed, which alone cannot be relied upon by the Trial Court for deciding the title, cannot be simply overlooked. Even according to the petitioners, the sale agreement was entered in the year 1992, but the suit came to be filed only after 9 years in the year 2001, and the reasons for such laches have not been explained. The period of the agreement is also not shown. The trial Court cannot simply pass a two-line judgment stating that the records have been perused and the claim of the petitioners has been proved, without analysing the records. It is the duty cast upon the Trial Court to verify the basic and required facts for deciding the issue. Even in this writ petition, none of those title documents have been enclosed in the typed set of papers.

15. The Hon'ble Supreme Court, in the case of Badami v. Bhalu, reported in (2012) 11 SCC 574, held that judgment and decree obtained by playing fraud would be a nullity and that the subsequent decrees passed on the claims of right, title, interest and possession based on a decree which was vitiated by fraud, are also liable to be set aside. In the present case, the Trial Court has completely failed to try the suit in compliance with the procedures prescribed in the Civil Procedure Code. The Hon'ble Supreme Court has held in the above referred judgment that in case of failure on the part of the Trial Court to try the suit in compliance with the procedures prescribed in the Civil Procedure Code and also the failure to spot the fraud played upon it by the petitioners, the entire proceedings has to be set aside.

16. In the present case, a copy of the sale agreement entered into in the year 1992 between the so-called land owners and the petitioners had been taken into consideration for filing the suit in the year 2001 and the petitioners have neither placed before the Trial Court nor before this Court, any other materials / documents. Further, the person who entered the agreement in the year 1992 passed away. Thereafter, it is not known as to whether the same agreement has been taken into consideration or any other subsequent agreement has been entered into by and with whom, for filing specific performance suit. The details connected thereto had not been placed either before the

Trial Court or before this Court. Without there being any basic document available for considering the case in detail, the Trial Court, only based upon the Power of Attorney Deed placed by the petitioners and averments regarding an agreement of the year 1992, filed in the year 2001, cannot come to the conclusion to decide straightaway the suit. In a suit for specific performance, not only the agreement forms the basis but also the other title deeds and if those are not furnished, the issue cannot be simply decided. Even according to the document dated 01.03.1992, the Resolution of the so-called Association of the temple, the property belongs to the temple and in such an event, the vendors cannot claim title and without any order obtained from the Court, or from the Commissioner, Hindu Religious and Charitable Endowments Department under Section 34 of the Act, no sale can be effected by any of the third parties. These vital facts have not been gone into. But the Trial Judge, for the reasons best known to him, has decreed the suit. It is pertinent to point out that the temple was opened to public worship and the public of that locality have been worshipping the deity for decades. Therefore, it is a public temple and hence, Section 34 of the Hindu Religious and Charitable Endowments Act comes into operation. No property belonging to a religious institution can be sold without the permission of the Commissioner. Hence, the alleged sale even based on a decree is a nullity.

17. In the case of Ramesh Chand Ardawatiya v. Anil Panjwani, reported in (2003) 7 SCC 350, the Hon'ble Supreme Court has held that while proceeding ex-parte, although the Court is not bound to frame issues and deliver judgment on each issue, it must scrutinise the available pleadings and documents, consider the evidence adduced and frame the points for determination and deal with each of the points at issue. It has also been held that the necessity of proof by the plaintiff of his case to the satisfaction of the Court, cannot be dispensed with by the Court for deciding the issue. Paragraph-33 of the said judgment reads as under:

"33. So far as the plea of bar as to maintainability of suit for failure to seek further relief is concerned, we cannot find fault with the plaint as framed. The defendant was alleged to be a rank trespasser who was in the process of committing a trespass and was allegedly raising unauthorized construction over the property neither owned nor legally possessed by him. The relief of specific performance is not a further relief to which the plaintiff is entitled or which he could have sought for against this defendant. Thus, from the point of view of the present defendant, we cannot find any such defect or infirmity in the relief sought for by the plaintiff as would render the suit not maintainable

and liable to be thrown out at the threshold. But there is substance in the other limb of this submission made by the learned Senior Counsel for the defendant-appellant. Even if the suit proceeds ex parte and in the absence of a written statement, unless the applicability of Order 8 Rule 10 CPC is attracted and the court acts thereunder, the necessity of proof by the plaintiff of his case to the satisfaction of the court cannot be dispensed with. In the absence of denial of plaint averments, the burden of proof on the plaintiff is not very heavy. A prima facie proof of the relevant facts constituting the cause of action would suffice and the court would grant the plaintiff such relief as to which he may in law be found entitled. In a case which has proceeded ex parte the court is not bound to frame issues under order 14 and deliver the judgment on every issue as required by Order 20 Rule 5. Yet the trial Court should scrutinize the available pleadings and documents, consider the evidence adduced, and would do well to frame the "points for determination" and proceed to construct the ex parte judgment dealing with the points at issue one by one. Merely because the defendant is absent the court shall not admit evidence the admissibility whereof is excluded by law nor permit its decision being influenced by irrelevant or inadmissible evidence."

While enunciating the principles as regards dealing of the suit by the Trial Court, the Hon'ble Supreme Court has ultimately held that the Trial Court should scrutinize the pleadings and documents, consider the evidence adduced, and would do well to frame the "points for determination" and proceed to construct the ex parte judgment dealing with the points at issue one by one. Thus, a well considered judgment has to be passed in a case dealing with specific performance. But, in the case on hand, the petitioners have not approached the Court with sufficient materials and the Trial Court has also not dealt with the case properly as per the principles enunciated by the Hon'ble Supreme Court as stated supra. It is relevant to point out here that a Court of law has to do its utmost to ensure that injustice is not meted out to a party. It is also made clear that a decree passed on the basis of a false and frivolous suit is not only a nullity, but an injustice to the Society.

18.Next comes suppression. This Court finds that the petitioners have suppressed many facts before this Court. This Court has not been placed with the order passed by this Court in W.P.No.7738 of 2009. The said writ petition was filed in the year 2009 and having failed to obtain any orders in the said

writ petition, the present writ petition has been filed. Thereafter, an order was passed in the said writ petition on 07.03.2013, granting liberty to the petitioners to avail the statutory remedy under Section 3 of Patta Pass Book Act for transfer of patta in accordance with law, while dismissing the said writ petition as withdrawn. No details with regard to filing of such appeal has been placed on record. Subsequently, suppressing the order passed in the said writ petition and the pendency of the present writ petition, another writ petition was filed in W.P.No.21880 of 2017 praying for considering the representation of the petitioners dated 10.07.2017 and to forbear the Fit Person of the temple from interfering with the peaceful possession and enjoyment of the petitioners. Even that writ petition was withdrawn on 18.08.2017 with liberty to file a Civil Suit before the appropriate Court and the said fact also has not been placed before this Court, even during final hearing of this writ petition.

19. Thus, one writ petition was filed earlier to filing of the present writ petition and another writ petition was filed subsequent to filing of the present writ petition and the outcome of the decisions rendered in those writ petitions have not been placed before this Court.

20. In the case of Bhaurao Dagdu Paralkar v. State of Maharashtra, reported in (2005) 7 SCC 605, it has been categorically held by the Hon'ble Supreme Court that 'Suppression of a material document would also amount to a fraud on the Court. Although, negligence is not fraud, it can be evidence of fraud'.

21. When a writ petition has been withdrawn, with a specific liberty given by this Court to file a civil suit or to approach the authorities under the provisions contained in Patta Pass Book Act for transfer of patta, the petitioners cannot press or harp upon the relief sought for in the present writ petition, in view of suppression of facts in respect of the outcome of those two writ petitions. Suppression disentitles a party from getting any relief. Therefore, this Court is not inclined to exercise its discretionary power in favour of the petitioners.

22. In a matter where the title has to be decided, exhaustive analysis has to be made as to whether the title obtained by a party is a valid one, by perusing the materials, in the manner known to law. But in the present case, the case has not been dealt with by the Trial Court on merits and it is only an ex-parte judgment. It is simply stated in the judgment of the Trial Court that records have been perused and the suit is decreed. Nothing has been stated as to the genuineness of the claim. It only states that the claim of the petitioners has been

proved, which necessitates interference in the hands of this Court. Hence, the petitioners cannot rely upon the said judgment to claim the property in question. The petitioners have to prove their case to the satisfaction of the Court. They cannot succeed upon the weakness of the case of the other side. Further it is also seen that Hindu Religious and Charitable Endowments Department has not been added as a party in the suit before the Trial Court. Had it been the case dealt with on merits by the Trial Court upon the factual background, and no fault can be found on facts, the matter would have been different. But in the present facts and circumstances of the case, the case of the petitioners will not survive. Hence the decree obtained by the petitioners from the Trial Court, is nullity in law.

23.It is also seen that the petitioners have invoked only the District Collector, Kancheepuram District in the suit filed in O.S.No.619 of 2005 and failed to implead the necessary parties, viz.the Tahsildar, Revenue Divisional Officer and other officials as defendants. The non-joinder of necessary parties by the petitioners in the suit, amply proves the mala fide of the petitioners in obtaining an ex-parte order from the Court. Thus, the suit is also hit by non-joinder of necessary parties.

24.One more point that has to be mentioned here is that in the writ petition filed by the petitioners in the year 2017, ie. W.P.No.21880 of 2017, the prayer made is to direct the authorities to take action based on the representation of the petitioners dated 10.07.2017 and to forbear the Temple from interfering with the peaceful possession and enjoyment of the petitioners and from putting up any construction in the lands. It means, according to the petitioners, they were in possession of the property and they should not be disturbed by the authorities. But that writ petition was withdrawn with liberty to file a civil suit. That itself shows that they were not in possession of the property and they were making a false claim in respect of possession of the property as the property was legally in the possession of the temple.

25.At this juncture, it would be useful to refer to the judgment of the Hon'ble Supreme Court in Civil Appeal No.4527 of 2009 dated 29.01.2019. The Hon'ble Supreme Court dealt with various laws on the subject and finally held that a person who asserts title over a particular property will have to show that he is under settled or established possession of the said property. But merely stray or intermittent acts of trespass do not give such a right against the true owner. The Hon'ble Supreme Court observed that settled possession means such possession over the property which has existed for a sufficiently long period of time, and has been acquiesced to by the true owner; a casual act of possession does not have the

effect of interrupting the possession of the rightful owner; a stray act of trespass or a possession which has not matured into settled possession, can be obstructed or removed by the true owner even by using necessary force. It has also been observed that the settled possession must be effective, undisturbed and to the knowledge of the owner or without any attempt at concealment by the trespasser and there cannot be a strait-jacket formula to determine settled possession. This observation has been made, after relying upon its earlier judgment in the case of Rame Gowda (dead) by Lrs. v. M.Varadappa Naidu (dead) by Lrs. and another, reported in (2004) 1 SCC 769, by a three-Judge Bench. The Hon'ble Supreme Court has also observed that the possession should contain an element of animus possidendi.

26. In the present case, even the stand of the petitioners that they are in possession of the property for decades, cannot be accepted in view of the fact that they have withdrawn the said writ petition in W.P.No.21880 of 2017 with liberty to file a civil suit. Thereafter, they have not filed any civil suit. All these would go to show that the petitioners are not consistent in any aspect of the matter and they have come to this Court with unclean hands.

27. While passing this order, this Court keeps in mind that :

(i) the principle that the powers of the High Court both under Article 226 and 227 cannot be whittled down, nullified, curtailed, abrogated, diluted or taken either by judicial pronouncement or by the legislative enactment or even by the amendment of the Constitution. The power of the judicial review is an inherent part of the basic structure and it cannot be abrogated without affecting the basic structure of the Constitution. (L.Chandra Kumar v. Union of India, (1997) 3 SCC 261 : AIR 1997 SC 112. Curtailment of revisional jurisdiction of the High Court by the amendment in Section 115 CPC does not take away and could not have away the constitutional jurisdiction of the High Court to issue a writ of certiorari to a civil nor is the power superintendence conferred on the High Court under Article 227 of the Constitution taken away or whittled down. (Surya Dev Rai v. Ram Chander Rai (2003) 6 SCC 675(688) : AIR 2003 SC 3044.

(ii) the power under Article 226 of the Constitution can be exercised not only over courts and Tribunals as under Article 227 of the Constitution, but over all 'authorities' which comes within the meaning of Article 12 of the Constitution. Therefore, under the circumstances, this Court has no hesitation in setting at naught the decree in O.S.No.742 of 2001.

28. In view of the above stated circumstances, the petitioners are not entitled for patta and accordingly they are not entitled for the relief sought for in this writ petition. Since this Court has declared the decree obtained by the petitioners as nullity in law, the first and second respondents shall reject the application of the petitioners for patta which has been filed on the basis of the decree obtained from the Trial Court, if not already done earlier. Consequently the sale deed executed in favour of the petitioners also cannot be sustained and accordingly the same is also declared as null and void. The first and second respondents are directed to maintain the entries in the name of the temple. As of now, it is claimed that the property is under the control of the temple authorities. Hence, the same shall be possessed and maintained by the Hindu Religious and Charitable Endowments Department. The Registering Authority of the concerned jurisdiction shall not register any sale or lease by and for any person.

29. The District Collector, Kancheepuram, the first respondent herein, who had not filed counter and not appeared despite filing of vakalat before the Trial Court in O.S.No.619 of 2005 during the relevant period and all the officials connected thereto shall be proceeded departmentally by the Government of Tamil Nadu, and necessary action be taken against such officers, for negligence in official duties, and causing huge loss to the Government.

30. With the above observations and directions, the writ petition stands dismissed. No costs.

Sd/-
Assistant Registrar(CCC)

//True Copy// सत्यमेव जयते

Sub Assistant Registrar

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To

1. The District Collector,
Kancheepuram.

2.The Tahsildar,
Tambaram Taluk Office,
Tambaram.

3.The Commissioner,
Alandur Municipality,
Alandur, Chennai-16.

4.The Sub Registrar,
Kancheepuram.

5.The Chief Secretary,
Government of Tamil Nadu,
Chennai.

W.P.No.13455 of 2010

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