

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 23.07.2019

CORAM

THE HONOURABLE Mr.JUSTICE K.KALYANASUNDARAM

W.P.No.29802 of 2004
and WP.MP.No.36194 of 2004
and WV.MP.No.538 of 2005

1. Kannan
2. Pon Muthu Kani Ammal
3. Muralidharan
4. Jagadeesan
5. Jayakumar ...Petitioners

Vs

1. The Revenue Divisional Officer,
Chengalpattu.
2. The Tahsildar,
Tambaram at Tambaram.
3. Kala ...Respondents

Prayer:- The Writ Petition is filed under Article 226 of the Constitution of India, seeking for a Writ of Certiorarified Mandamus, calling for the records relating to the 1st respondent's order made in Rc.No.6741 of 2001, dated 22.02.2004 and quash the same and consequently direct the respondents to restore the order of the 2nd respondent's order made in Na.Ka.No.14011/2000 A1, dated 03.08.2001.

For Petitioners : Mr.M.Babu Muthu Meeran

For Respondents : Ms.M.Lalitha, G.A., for RR1 & 2
No Appearance, for R3

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ORDER

This Writ Petition has been filed to issue a Writ of Certiorarified Mandamus, calling for the records of the first respondent made in Rc.No.6741 of 2001, dated 22.02.2004 and quash the same and consequently direct the

official respondents to restore the order of the 2nd respondent made in Na.Ka.No.14011/2000 A1, dated 03.08.2001.

2. The case of the petitioner is that the lands measuring an extent of 13.52 acres comprised in Survey No.102 and 3.60 acres in Survey No.103 of No.180, Agaramthen Village in Saidapet Taluk, originally belonged to one Krishnasamy Mudaliar. The said Krishnasamy Mudaliar died intestate on 04.07.1986 and thereafter, his legal heirs sold the property to the petitioners herein through various registered sale deeds. The third respondent filed an application before the second respondent under Section 4 of the Tamil Nadu Agricultural lands Record of Tenancy Rights Act, 1969 to register her as the cultivating tenant of the above said lands.

3. It is the case of the third respondent that her father Munusamy Naicker became the tenant of the lands in the year 1963 and after his demise on 24.11.1990, she has been cultivating the same.

4. The third respondent applied before the second respondent to record her as cultivating tenant. The second respondent after due enquiry, came to the conclusion that the lands in dispute were in possession of the petitioners. By observing so, rejected the application of the third respondent. Aggrieved over the same, the third respondent preferred a revision before the first respondent / Revenue Divisional Officer, Chengalpattu. The first respondent allowed the revision and directed the second respondent to record the third respondent as cultivating tenant in respect of the lands in dispute. Challenging the same, the present Writ Petition has been filed.

5. The learned counsel for the petitioners would urge that there is no dispute that the petitioners became the absolute owner of the properties through the registered sale deeds. It is further submitted that the petitioners instituted a suit in O.S.No.307 of 1994 against the third respondent and her mother seeking permanent injunction. During the pendency of the said suit, the third respondent along with her mother, filed another suit in O.S.No.159 of 1997 for permanent injunction. Both the suits were taken up for joint trial and on the basis of the evidence produced by the parties, the learned District Munsif, Tambaram came to the conclusion that the third respondent and her mother failed to prove their case and the suit was dismissed.

6. It is further submitted that the matter was taken up on appeal before the learned Additional Sub-Judge, Chengalpattu in A.S.No.3 of 2003. The learned Appellate Judge, on proper appreciation of evidence, came to the conclusion that the third respondent was not in possession of the property as alleged.

7. The learned counsel for the petitioners further contended that the first respondent, without considering the findings given by the competent Civil Court, came to the conclusion that the third respondent and her mother were in possession of the property and allowed the revision. According to the learned counsel, the order of the first respondent is liable to be set aside on the ground that there was no proper appreciation of evidence before passing the order.

8. The learned Government Advocate appearing for the respondents 1 and 2 argued in support of the order impugned in this Writ Petition.

9. Despite service of notice and the name of the third respondent having been printed in the cause list, none appeared for her on 19.07.2019 and hence the matter is posted under the caption for orders. Even today, there is no representation for the third respondent.

10. In the case on hand, there is no dispute that the lands in Survey Nos.102 and 103 in Agaramthen Village in Saidapet Taluk were originally belonged to one Krishnasamy Mudaliar and after his demise, the legal heirs of the said Krishnasamy Mudaliar sold the properties in favour of the petitioners, vide sale deeds, dated 23.10.1988, 21.02.1990 and 23.10.1989. According to the petitioners, the said lands had been under the possession and enjoyment of the petitioners' vendor, viz., Krishnasamy Mudaliar and children. It is now under their possession and enjoyment.

11. However, it seems that the third respondent approached the second respondent to register her name as cultivating tenant. Though it is contended that her father Munusamy Naicker was the cultivating tenant since 1963 and after his death in the year 1990, the third respondent and her mother are cultivating the lands in dispute, but no documentary evidence was produced in support of her case.

12. On the other hand, Village Administrative Officer gave a statement before the second respondent stating that the petitioners are in possession of the lands and they have planted Mango, Coconut and other cash crops in the lands. It is also seen that the second respondent conducted inspection on the said lands on

03.08.2011 at 11.30 am and found that the petitioners are in possession of the lands.

13. It is evident from the decision of the Civil Court in O.S.No.159 of 1997, dated 25.11.2002 and A.S.No.3 of 2003, dated 23.12.2004, the Trial Court and the Appellate Court on proper appreciation of evidence held that the third respondent failed to prove her possession of the suit lands. The first respondent, without considering the material evidence allowed the revision.

14. Taking note of the above facts, in my considered opinion that the impugned order of the first respondent cannot be sustained. Accordingly, the order is set aside and the Writ Petition is allowed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

pvs
To

1. The Revenue Divisional Officer,
Chengalpattu.
2. The Tahsildar,
Tambaram at Tambaram.

+1cc to Mr.L.Chandra kumar, Advocate SR.No. 62712
+1 cc to Government Pleader Sr.No. 63370

सत्यमेव जयते

W.P.No.29802 of 2004

A.SK(25/09/2019)

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