

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.03.2019

CORAM:

THE HONOURABLE MR. JUSTICE M.M. SUNDRESH
AND
THE HONOURABLE MR. JUSTICE C.SARAVANAN

S.T.A. No. 1 of 2012

Mohammed Safi

...Appellant

Vs.

1.The Assistant Settlement Tahsildar
Dharapuram

2.The Assistant Director of Survey of Land Records,
Coimbatore -18

3. Sri. Selvavinayagar Temple,
Rep. By its Fit person,
Agraharam Puthur

4. A.H.Muneer Ahmed

... Respondents

Prayer : Appeal filed under Section 30 of the Tamil Nadu Minor Inams (Abolition & Conversion into Ryotwari) Act, 1963 against the judgment and decree dated 14.09.2011 in Inam C.M.A.No.2 of 2002 by the Principal Subordinate Judge & Civil Miscellaneous Appellate Authority, Coimbatore, confirming the order passed by the Settlement Tahsildar No.2, Gobichettipalayam in Ref S.R.No.132/1968/MI.Act Palladam Taluk dated 22.10.1968.

For Appellant : Mr.P.Sunil

for Mr.T.Viswanatha Rao

For Respondents: Mr.K.Ashok Kumar for R3

No appearance for R1,R2 & R4.

JUDGMENT

(Delivered by M.M.Sundresh,J.)

This appeal has been preferred against the order of the Tribunal, which confirmed the order passed by the Settlement Officer on two grounds. Firstly, on the service of notice on the appellant at the time before the proceedings initiated by the Settlement Tahsildar and secondly, on the scope and applicability of the Act vis-a-vis the Civil Court decree. Accordingly, the Tribunal has held that there is proper service of notice which has been made by affixture and the third respondent temple was not a party before the Civil Court.

2. Learned counsel appearing for the appellant placing reliance upon the Division Bench judgments of this Court in T.K.Ramanujam Kavirayar and others v. Sri La-Sri Sivaprakasa Pandara Sannadhi Avargal, Hereditary Trustee of Vilapoojai Kattalai attached to Sri Courtalanathaswami Temple, Courtalam, Thiruvavavaduthurai Adheenam, reported in 1988 (2) L.W. 513 and W.T.Jothimani v. Minor Khoday etc. & another, reported in 1999 (2) L.W. 425 submitted that the judgment and decree rendered by the Civil Court is binding on the Settlement Tahsildar and the Tribunal, as the case may be. The Tribunal was in error in accepting the affixture made. A mere affixture therefore, cannot be termed as a service of notice.

3. Learned counsel appearing for the third respondent submitted that the Civil Court decree is not binding on the Tribunal. In any case, under Section 8(2) of the Act, a person who claims patta will have to (i) show possession for sixty years prior to the coming into effect of the Act; or (ii) possession for a continuous period of 12 years immediately before 01.04.1960. As both the contingencies have not been complied with, the decree will have to be dismissed. Learned counsel also raised an objection for prosecuting the appeal by the fourth respondent, a subsequent purchaser of the said property in the year 1972.

4. We have heard the learned counsel appearing on either side and perused the records including the judgment and decree in O.S.No.13 of 1961 as confirmed in A.S.No. 428 of 1962. The judgments rendered were admittedly prior to the order passed by the Settlement Tahsildar dated 22.10.1968. Though a contention has been raised by the learned counsel appearing for the third respondent that in the aforesaid proceeding, the said respondent is not a party, on a perusal, we find that the second defendant therein was arrayed as a hereditary trustee representing the third respondent before us. Therefore, the said contention raised and as recorded by the Tribunal, in our considered view, cannot be a correct one. Similarly, we find that the sale effected by the appellant in favour of the fourth respondent who sought to be transposed as the appellant, cannot be taken as a transfer of title since the decree itself is one for declaration that the temple is having only a melwaram right. In other words, the decree is not one for title of the appellant before us, but to declare him as a "keelvaram" holder. Therefore, the said contention is also rejected.

5. The only other contention to be gone into is with respect to the service of notice. In our considered view, the recording of the Tribunal regarding the affixture cannot be accepted. If the appellant could not be present, some other mode could have been adopted by making a paper publication. After all, the

appellant was conscious about his representation and that is the reason why he filed a suit earlier which attained finality in the dismissal of A.S.No. 428 of 1962. Perhaps, even the third respondent before us ought to have brought this fact to the notice of the Settlement Officer at that point of time.

6. Be that as it may, we are inclined to set aside the order passed by the Tribunal in confirming the order of the Settlement Tahsildar. Since we decided to remit the matter to the learned Settlement Tahsildar to decide afresh, we are not willing to go into the maintainability of the application as to whether the case of the appellant would come within the purview of Section 8 (2) of the Act or not. While doing so, we hold that Section 8 (2) is very restricted in nature and the applicant will have to show that he was in possession for sixty years as contemplated under Section 8(2) or he has purchased the property by way of registered sale deed 12 years preceding 01.04.1960. Certainly, for the second category, the appellant will not be entitled to. Therefore, he has to place the material to prove before the Settlement Tahsildar that he was in possession continuously for a period of sixty years to come within the rigours of Section 8 (2) of the Act.

7. With the above said clarification, we set aside the orders passed by the Settlement Tahsildar as confirmed by the Tribunal and remit the matter to the Settlement Tahsildar to decide the matter afresh. The appellant and the third respondent are at liberty to place sufficient materials to substantiate their respective contentions. We direct the Settlement Tahsildar to conclude the proceeding within a period of four months from the date of receipt of a copy of this order. We permit the fourth respondent/subsequent purchaser also to take part in the proceedings before the Settlement Tahsildar.

In view of the above, the appeal stands allowed. No costs. Consequently, connected C.M.P.No. 5191 of 2019 and M.P.No. 1 of 2012 are closed.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

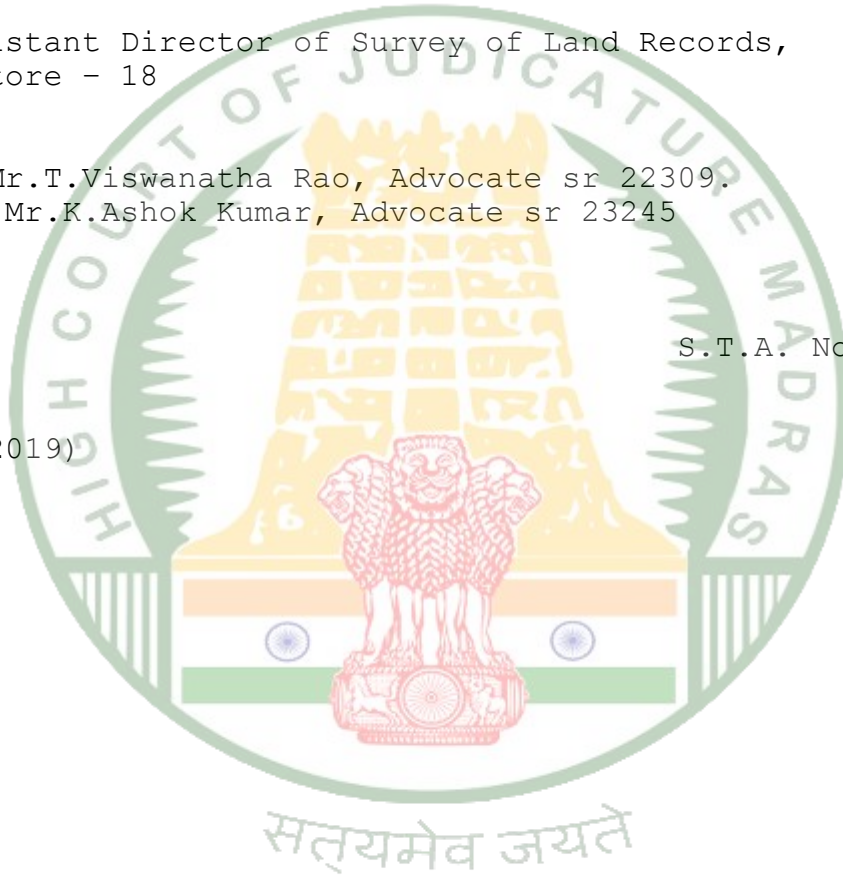
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To:-

- 1.The Principal Subordinate Judge &
Civil Miscellaneous Appellate Authority,
Coimbatore.
 2. The Settlement Tahsildar No.2,
Gobichettipalayam.
 - 3.The Assistant Settlement Tahsildar
Dharapuram
 - 4.The Assistant Director of Survey of Land Records,
Coimbatore - 18
- +1 CC to Mr.T.Viswanatha Rao, Advocate sr 22309.
+2 Ccs to Mr.K.Ashok Kumar, Advocate sr 23245

S.T.A. No. 1 of 2012

GJ(CO)
SP(30/04/2019)



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