

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 06.11.2019

PRONOUNCED ON : 26.11.2019

CORAM

THE HONOURABLE Mr. JUSTICE **R.PONGIAPPAN**

C.R.P.PD.No.1341 of 2014
and M.P.No.1 of 2014

Arulmigu Somanatha Swami Temple
Rep by its Executive Officer,
Kolathur,
Chennai - 600 099.

... Petitioner

Vs.

1. K.Boopalan
2. M.Kangeyan

... Respondents

PRAYER : Civil Revision Petition is filed under Section 115 of C.P.C., to set aside the order dated 07.11.2013, made in I.A.No.11516 of 2013 in O.S.No.4689 of 2007 on the file of the V Assistant Civil Civil Court, Chennai.

For Petitioner : Mr.T.Sundaresan

For Respondents

For R1 : No appearance

For R2 : Mr.B.Kumar, Senior Counsel
For Mr.R.Loganathan

ORDER

Aggrieved over the order dated 07.11.2013, made in I.A.No.11516 of 2013 in O.S.No.4689 of 2007 on the file of the V

Assistant Civil Court, Chennai, the petitioner, being a third party to the above said suit, filed this Civil Revision Petition.

2. Before the trial Court, the first respondent in this Civil Revision Petition filed a suit in O.S.No.4689 of 2007 as against the second respondent and sought for the relief of permanent injunction restraining the second respondent/defendant, his agents or servants or anyone in interfering with the peaceful possession and enjoyment of the suit property, measuring an extent of 1 acre 70 cents situated at Sri Moogambigai Street, Kolathur, Chennai.

3. During the course of the trial proceedings, the revision petitioner filed an application in I.A.No.11516 of 2013, under Order 1 Rule 10(2) of C.P.C., to impleade him as a proposed defendant in the suit. The learned V Assistant Judge, City Civil Court, Chennai, after affording opportunities to the respondents 1 & 2, by an order dated 07.11.2013, dismissed the said application filed by the petitioner herein. Aggrieved over the said findings, the petitioner is before this Court with the present Civil Revision Petition.

4. In the affidavit filed by the petitioner in support of the application in I.A.No.11516 of 2013, he has stated that the petitioner/ proposed defendant ie., Arulmigu Somanatha Swami Temple, is the absolute owner of the suit schedule property. The said temple is having property in large extent at No.65, Kolathur Village, within the Chennai Corporation Limit. The said lands were originally cultivable wet lands and the petitioner temple was cultivating the lands through its tenants. After the implementation of Urban Development Scheme, a number of colonies and nagars sprang up and a 100' road had been laid and all the irrigation facilities were blocked. Hence there was no agricultural operation in the above said lands. Therefore, the petitioner temple kept the same as vacant house site lands in its possession. Ownership and possession of the above said lands were approved and confirmed by the Secretary of the then Hindu Religious and Endowment Board.

4.1. The petitioner further averred that the then officials of the Special Commissioner and Commissioner of Land Administration, Chepauk, Chennai, has wrongly classified the lands measuring 1 Acres and 70 cents in Survey Nos.6/8, at No.65, Kolathur Village, Chennai as "Anadeenam" with ulterior motive to allot the same to their own favorite persons. When the same was questioned by the temple authorities, the

revenue officials has stated that during the time of inspection under the Tamilnadu Minor - Inams Abolition and conversion into Ryotwari Patta Act, the lands were classified as "Anadheenam". In this regard, the then Executive Officer of the petitioner temple had written a letter dated 10.01.1990 to the Special Assistant Director, Natham and Land Survey, Ashok Nagar, Chennai, to issue patta for the above said lands in favour of the petitioner temple. For the letter sent by the petitioner temple, the Inspector of Natham and Land Survey, Perambur had replied as the land was stood only in the name of the petitioner temple.

4.2. While being so, on the basis of the classification, the first respondent/plaintiff claimed possession under the alleged deed of sale, taking advantage of the order made in favour of the first respondent/plaintiff in all Court proceedings such as suits in O.S.No.6943 of 1995 dated 30.06.2005 made by the V Assistant City Civil Court, Chennai, and in A.S.No.30 of 2006 dated 05.10.2007, made by the IV Additional City Civil Court, Chennai. As against the said orders, the petitioner herein has filed S.A.Sr.No.72257 of 2010 and S.A.Sr.No.4431 of 2009 with the petition to condone the delay in filing the above second appeals.

4.3. In the mean time, the first respondent/plaintiff is making arrangements to divide the said land into housing plots and attempted to sell them to various persons. The pendency of the present suit came to the knowledge of the petitioner only when the counsel served notice to the respondents herein in C.S.No.284 of 2013 and immediately the petitioner filed this application. If the petitioner temple is not impleaded as a party in the above suit, there cannot be any proper adjudication of the right and title of the suit property which wrongly claimed by the first respondent/plaintiff. Hence the petitioner temple is the necessary party to the suit, otherwise the petitioner temple will suffer irreparable loss.

5. Resisting the claim made by the petitioner, the first respondent/plaintiff has filed a counter affidavit before the trial Court, which averred as follows :-

The first respondent is the owner of the immovable property comprised in Paimash No.736, and R.S.No.6/8 of Kolathur village, T.S.No.21, in Block No.2 of Kolathur Village and the same is inherited from his predecessors in title and he is in physical possession and enjoyment of the property more than nine decades. The property originally owned by one T.Lakshmi Ammal and she failed to pay her revenue dues and hence the Revenue Inspector had sold the property

by public auction and the first respondent/plaintiff's grandfather Raju Mudaliar purchased the property and the sale certificate had also been registered as Document No.1511 of 1904.

5.1. After the demise of the first respondent/plaintiff's grandfather, his grandmother Paripooranammal was put in the possession of the suit schedule property. After her demise, her son ie., father of the first respondent/plaintiff was in the occupation and enjoyment of the suit property. It is not correct to say that Kolathur village was taken over under the provision of the Act XXVI of 1948 and settlement was introduced and the land in Paimash No.736 was treated as Andheenam. During the settlement operation no notice was issued to the predecessor of the first respondent/plaintiff and no enquiry was made before deciding the character of the land, though the land had been in effective enjoyment of the successors of Raju Mudalidar.

5.2. Thereafter, the first respondent/plaintiff filed a Revision before the Director of Survey Settlement for the issuance of patta in respect of the Survey No.6/8, Kolathur Village to his name and by an order dated 04.09.1995, the Settlement Officer directed to issue patta in the name of the first respondent/plaintiff. The first respondent/

plaintiff further averred that he is in continuous possession and enjoyment of the property and he has put up a fencing several year back and also he is paying the tax to the Chennai Municipal Corporation till date. The petitioner temple has already filed a suit in C.S.No.284 of 2013 as if they are in possession of the land and asked for a permanent injunction against the first respondent/plaintiff and also from disturbing their possession of the suit property.

6. The second respondent/defendant has also filed a counter affidavit before the trial Court and stated as follows :-

The second respondent is the title holder of the suit property based on the decree of this Court dated 13.07.2007 in C.S.No.196 of 2004, which was filed by the second defendant in O.S.No.4312 of 2007 contested originally by J.R.Arunkumar and his sons. Now the petitioner filed this application, when the suit was in the advance stage of trial and to be concluded of examination of D.W.12. After examining the evidences and after marking as many as 30 documents, filing this application is not at all warranted.

6.1. The derivation of various extent of land in and around the area, in which the suit property situated and also for the failure in patta

proceedings, the petitioner by introducing very new name one Raja Mudaliar and giving reasons for the failure to secure patta by the said Raja Mudaliar was for the reason that extent of land was belonging to the petitioner temple. Against the decree which was granted in favour of the first respondent/plaintiff in O.S.No.6943 of 1995 and A.S.No.30 of 2006, two second appeals have been made by the petitioner herein, and the same are stated to be there without numbering. Pendency of C.S.No.284 of 2013 before this Court, is not at all the reason for impleading the petitioner as party to the proceedings and there is no cause of action in respect of the petitioner.

6.2. The suit property, consisting of 1 acre 70 cents comprised in Pimash No.736, Survey No.6/8 part, was originally owned and possessed by one Murugappa Mudaliar, S/o. Arunachala Mudaliar, Kolathur, Madras, and the said Murugappa Mudaliar had executed a deed of settlement dated 23.09.1895 and registered as document No.1412/1895 on the file of the Registrar of Madras District, settling the property in favour of Jagadeesa Mudaliar and he being put in possession and enjoyed the said property with full power of alienation. After the death of Jagadeesa Mudaliar, his only son Rengaswamy had inherited the said property and been in absolute possession and

enjoyment of the said property. Through a settlement deed dated 29.01.1965, the said Rengaswamy settled the schedule mentioned property in favour of his son J.R.Arunkumar, then minor, the first defendant in O.S.No.4312 of 2007 and the said deed registered as document No.41 of 1965, on the file of the Sub Registrar, Pallavaram and the said property was managed and administered by his mother and natural guardian. On attaining majority, the said J.R.Arunkumar secured possession and continued enjoyment of the said property.

6.3. The said J.R.Arunkumar and his two sons Sathyanathan and Sadanathan as joint owners entered into an agreement to sell with the second defendant in O.S.No.4312 of 2007 viz., S.Murugesan. When the dispute arose between them, the said S.Murugesan filed a suit for specific performance in C.S.No.196 of 2004 on the file of this Court and the said suit was decreed on compromise. The nominee of the said S.Murugesan, one M.Kangeyan, the defendant in O.S.No.4689 of 2007, paid the balance sale consideration and purchased the said property. The complaint given by the Power of Attorney is under investigation and it is ending. Through the sale deed dated 11.07.2007 registered as document No.6435 of 2007, on the file of the Sub Registrar Sembium, the said M.Kangeyan has become the owner of the property in question

from the day on which he is in possession and enjoyment of the property. Pending suit and agreement, the said J.R.Arunkumar had improved the property and he is in continuous possession from the date of agreement.

6.4. All the documents relating to declaration under Act XXVI of 1948 enquiry by the settlement officer, patta granted, etc., are false even to the knowledge of the first respondent/plaintiff. The interim order granted by this Court is not binding on the real owner of the property. The first respondent/plaintiff is having title from 1904, whereas the second respondent/defendant shall lay their hands on the documents from 1895 onwards continuously. It is not out of place to submit that the first respondent/plaintiff had filed two applications one for impleading the proposed defendants Satyendran, Sadanandan and M.Kangeyan under Order 1 Rule 10 of C.P.C. in the suit in O.S.No.4312 of 2007 by filing an I.A.No.6547 of 2009 in O.S.No.4312 of 2007 and another application in I.A.No.6548 of 2009 in O.S.No.4312 of 2007 for making the amendment for plaint under Order VI Rule 17 of C.P.C.

6.5. Both the applications were allowed by the trial Court and the said orders were challenged before this Court in C.R.P.(PD)Nos. 89

and 90 of 2010 and this Court by an order dated 03.10.2012, disposed off the said revision petitions by observing that the title of Kangeyan viz., the second respondent herein was very much protected on the basis of Doc.No.6435 of 2007 dated 11.07.2007 on the file of the Sub Registrar Office, Sembiam. The SLP filed against the order of this Court in S.L.P.Nos. 5738 & 5739 of 2013 were disposed of on 15.02.2013. In this circumstances, the application filed by the petitioner to implead him as a party to the proceedings is liable to be dismissed.

7. Based on the above said pleadings, the learned V Assistant Judge, City Civil Court, Chennai, after hearing the arguments advanced by either side, by an order dated 07.11.2013, dismissed the application filed by the petitioner temple. Only in the said circumstances, the petitioner temple is before this Court with the present Civil Revision Petition.

8. Today when this petition is taken up for hearing, the learned counsel appearing for the petitioner would contend that the register maintained by the temple authorities would establish the fact that the temple authorities are the owners of the property. Hence, it is necessary to implead the temple authorities as a party to the

proceedings, since the suit has been filed in respect of the property owned by the temple.

9. On the other hand, the learned Senior Counsel appearing for the second respondent would contend that already the petitioner filed a suit before this Court in C.S.No.284 of 2013, in respect of the title and hence he is not a necessary party to decide the issue raised in the suit filed by the first respondent.

10. The arguments advanced by the learned counsel on either side are considered.

11. It is not in dispute that the petitioner/third party filed a suit before this Court in C.S.No.284 of 2013 for declaration of title in respect of the suit schedule property and also for permanent injunction. They have also filed an application in Appl.No.2243 of 2013 in C.S.No.284 of 2013 to implead the parties including the respondents 1 & 2 herein along with three others.

12. Now on going through the impugned order, the learned V Assistant Judge, City Civil Court, Chennai, has categorically mentioned

as the present suit has been filed for permanent injunction and therefore, the impleadment of third party, who has already filed suit before this Court becomes unnecessary. Further she has held that now the case is in a part heard stage and is posted for defendant's side evidence. Therefore impleading a third party is not at all necessary and ultimately the application was dismissed by the Court below.

13. In fact, the present suit has been filed by the first respondent as against the second respondent only for the injunction simpliciter. It is settled proposition, if the suit is filed for the relief of injunction, the plaintiff has to establish that the suit property is in his lawful possession and the defendant is tried to interfere with his peaceful possession. For availing the said remedy, he has to prove the lawful possession only and the issue of title will not be arisen directly and substantially.

14. In this occasion, it is necessary and useful to see the judgment reported in **AIR 1999 Andh.Pra.188** in the case of **Anathula Sudhakar Vs. P.Buchi Reddy (dead) by L.Rs. & ors.**, in which our Hon'ble Apex Court has held as follows :-

17. (a).....

(b) As a suit for injunction simpliciter is concerned only with possession, normally the issue of title will not be directly and substantially in issue. The prayer for injunction will be decided with reference to the finding on possession. But in cases where de jure possession has to be established on the basis of title to the property, as in the case of vacant sites, the issue of title may directly and substantially arise for consideration, as without a finding thereon, it will not be possible to decide the issue of possession."

15. Further in the same judgment it was observed by our Hon'ble Apex Court as follows :-

17. (a) Where a cloud is raised over plaintiff's title and he does not have possession, a suit for declaration and possession, with or without a consequential injunction, is the remedy. Where the plaintiff's title is not in dispute or under a cloud, but he is out of possession, he has to sue for possession with a consequential injunction. Where there is merely an interference with plaintiff's lawful possession or threat of dispossession, it is sufficient to sue for an injunction simpliciter.

Accordingly, a cloud is raised over the title, necessarily the suit for declaration and possession has to be filed by the plaintiff, if he does not have possession. The said principle reiterated that the petitioner/third party is having duty to file suit for the relief of declaration and injunction as against the respondents 1 & 2, since both of them claimed as they are the absolute owner of the property. In this regard as already observed previously a suit has been filed by the petitioner/ temple authorities in respect of those issues.

16. Coming to the suit pertains to this Civil Revision Petition, the first respondent prayed for the relief of injunction alone and not for the relief of declaration. Further in the plaint, in the cause of action portion, he has stated as follows :-

"14. The cause of action for the suit arose at Chennai within the jurisdiction of this Hon'ble Court where the suit property is situated, in the year 1904, when the sale certificate was registered as document No.1511 of 1904 and issued to plaintiff's predecessor in title, on 04.09.1995 when the Settlement Officer passed order for issuance of patta, on 30.06.2005 when the plaintiff's title and possession was confirmed in O.S.No.6943 of 1995, on 20.07.2007 when the

defendant tried to interfere with the peaceful possession of the plaintiff claiming that he has purchased the property in S.No.6/8 on 21.07.2007, when the power agent given a complaint to the Deputy Commissioner, Anna Nagar, and subsequently when the defendant is threatening to interfere with the possession of the suit property by the plaintiff and subsequently."

So, as per the avernments set out in the plaint, the first respondent/ plaintiff has made allegations as against the second respondent alone and not against the petitioner/third party. So at any point of time, the first respondent/plaintiff has not raised any allegations against the present petitioner. Accordingly, the first respondent/plaintiff did not claim any right over the suit property by way of filing this suit.

17. As far as the Indian Law is concerned, the person in peaceful possession is entitled to retain his possession and in order to protect such possession, he may even use reasonable force to keep out a trespasser. It is the settled possession of a person without title which would entitle him to protect his possession even as against the true owner and therefore for the sole reason, the first respondent filed this

present suit as against the second respondent for the relief of injunction simpliciter. Therefore, the presence of the petitioner is not at all necessary to decide the issue raised in the present suit.

18. Hence, I am of the considered opinion that dismissing the application filed by the petitioner is found correct and there is no material irregularity in the order dated 07.11.2013, made in I.A.No.11516 of 2013 in O.S.No.4689 of 2007 on the file of the V Assistant Civil Court, Chennai, and the same is confirmed. The trial Court is directed to dispose of the said suit without any influence of the observations made in this Order.

19. Accordingly, this Civil Revision Petition is dismissed. Consequently, connected miscellaneous petition is closed. No cost.

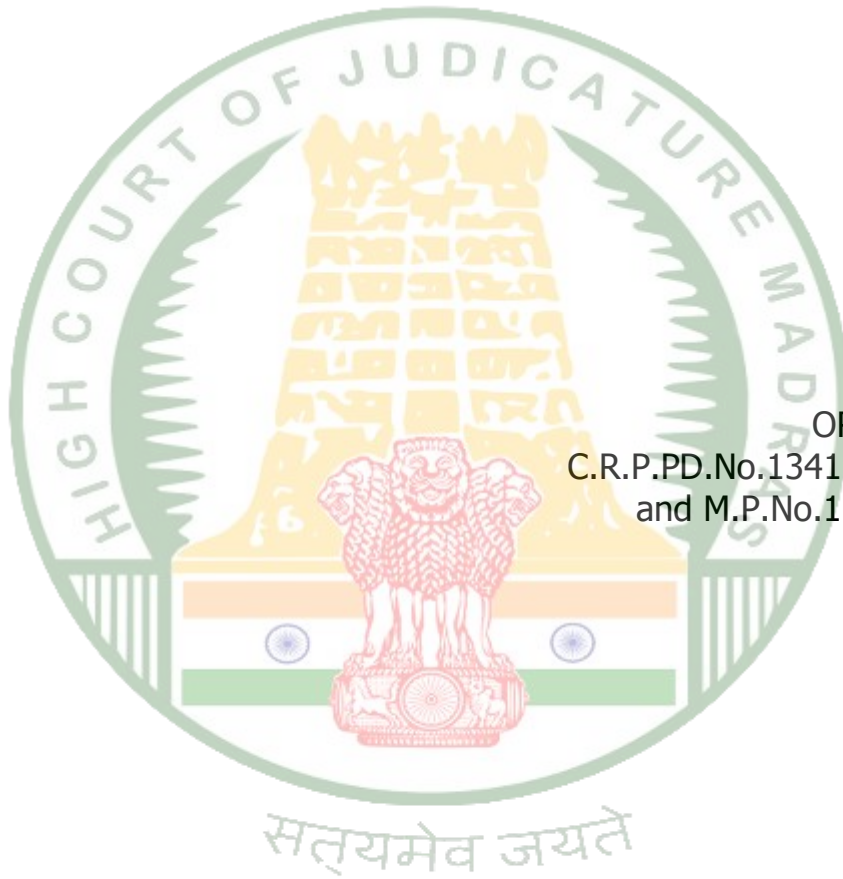
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rts

To
The V Assistant Civil Court,
Chennai.

R.PONGIAPPAN, J
rts



ORDER IN
C.R.P.PD.No.1341 of 2014
and M.P.No.1 of 2014

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