

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.10.2019

CORAM :

THE HONOURABLE DR.JUSTICE ANITA SUMANTH

W.P.No.5704 of 2017
and
WMP.Nos.6088 & 6089 of 2017

K.Kamalam

... Petitioner

Vs.

1. The Principal Secretary to Government,
Municipal Administration and Water Supply Department,
Secretariat,
Chennai - 600 009.

2. The Commissioner,
Corporation of Coimbatore,
Coimbatore.

3. The Assistant Commissioner,
Central Zone,
Coimbatore Corporation,
Coimbatore.

4. C.Santhakumari

5. C.K.Padmavathy

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, for the issuance of Writ of Certiorari, calling for the record of the proceedings of 3rd Respondent dated 12.12.2012 bearing Na.Ka.No.89/2012/A5 and subsequent proceedings dated 03.03.2016 bearing Nos.9086/201/A6 (ma) & 9086/2014/A6 (ma), quash the same and consequently direct the 2nd and 3rd Respondents to revive the property tax assessment Nos.83272406 & No.272406 in respect of Door No.89-92, 93, 94, 95 Chellappa Lane Edayar Street, Coimbatore - 641 001 owned by the Petitioner, by accepting the tax payment.

(Prayer amended in WMP.No.33154/17 by this Court on 31.08.2018)

For Petitioner : M.Raja for Mr.R.Ragavendran

For Respondents : Mr.R.Prathap Singh
Government Advocate (for R1)

Mr.K.Magesh
Standing Counsel (for R2 & R3)
M/s.R.Radha Pandian (for R4 & R5)

ORDER

The petitioners' case is that land admeasuring 18 Anganam comprised in Old T.S.No.241, New T.S.No.271 situated at Chellapillai Lane, Edayar Street, Coimbatore was owned and possessed by her great grandfather, one Chellappa Pillai. On the demise of the said Chellappa Pillai, the land has devolved upon his two sons who had partitioned the land, according to the petitioner, equally, under a deed of partition into nine (9) anganams each. One of the brothers is stated to have sold part of the land measuring 5 cents to the petitioners' grandmother under a deed of sale dated 12.03.1926. Pursuant to the partition, the family of the petitioner is stated to have been in absolute possession and enjoyment of their portion (9 anganams) without any hindrance.

2.As far as the second brother is concerned, he had three sons, one among them being the grandfather of the petitioner. The remaining 9 anganams of land are said to have been partitioned to their three names, each obtaining 3 anganams. One of the brothers had executed a mortgage deed on 01.12.1919. The mortgagee, in turn mortgaged the land to the petitioners' grandfather and upon failure of the party to redeem the mortgage, the 3 anganams are also said to have devolved on the petitioners' grandfather. One of the other brothers is said to have released his share of 3 anganams under a Release Deed dated 16.02.1902 in favour of the petitioners' grandfather. Thus, upon consideration of the aforesaid, the remaining 9 anganams are also said to have vested absolutely in the petitioners' grandfather. The petitioners' grandfather had, according to him, permitted one of his nephews to reside as a tenant in a portion of the land, but he had dubiously and illegally attempted to take possession of the land.

3.Thus, on account of disputes that arose between the family members, O.S.No.499 of 1970 came to be filed before the District Munsif Court, Coimbatore, praying for a permanent injunction against the petitioners' father in respect of the property in question. The suit was allowed and the challenge of the defendants against the said judgment in A.S.No.40 of 1976 before the Sub Court, Coimbatore was allowed by judgment and decree

dated 04.07.1977. The same came to be challenged by way of Second Appeal in S.A.No.2329 of 1977 before the Madras High Court, which appeal came to be allowed on 25.03.1981. Civil Appeal No.3218 of 1981 filed before the Supreme Court by the petitioners' father was dismissed on 04.09.1992.

4.O.S.No.1191 of 1993 came to be filed by the petitioners' father before the Principal District Munsif Court, Coimbatore, seeking a declaration to the effect that the suit schedule property belongs to him and seeking consequential possession of the same. The suit was dismissed on 10.12.2003 as against which the petitioner, being the legal heir, preferred an appeal in A.S.No.44 of 2004 before the District Court, Coimbatore, which came to be dismissed by judgment and decree dated 29.10.2005. A Second Appeal in S.A.No.738 of 2006 was also dismissed by judgment and decree dated 25.06.2012. Though the petitioner states that a review petition (S.R.No.81057 of 2012) has been filed, it is unnumbered as yet. Thus, as on date, the prevailing position is that the declaration sought for by the petitioner/her father has been dismissed and this order has attained finality.

5.The balance of the nine anganams, according to the petitioner, were the subject matter of O.S.No.228 of 1993 (re-numbered as O.S.No.3471 of 2004) before the Sub Court, Coimbatore, wherein some of the other legal heirs of the brothers sought partition. The suit was decreed by judgment and decree dated 15.06.2007 granting partition and allotting 1/3rd share each to the legal heirs of the three brothers. The petitioner challenged the aforesaid judgment in appeal in A.S.No.91 of 2007 before the Additional Sub-Judge, Coimbatore and the appeal came to be allowed by judgment and decree dated 22.06.2010 with an observation that the legal heirs of late Nagappa Pillai and late Karuppannan pillai (the two other brothers of the petitioners' grandfather) would have no right, interest on title over the suit property and the petitioner alone would have absolute right thereto. This judgment has become final.

6.The petitioner also filed a suit in O.S.No.2132 of 2010 before the learned I Additional District Munsif, Coimbatore seeking permanent injunction restraining the defendants from disturbing her possession and enjoyment of the property in question that came to be allowed on 21.07.2016.

7.According to the petitioner, baring three (3) anganams that are subject to litigation the balance vest solely in her. This is seriously objected to by the private respondents, R4 and R5 who claim that they are entitled to the ownership of the property in question.

8.The land in question is assessed to property tax in assessment No.272406 and the petitioner has been remitting the tax to the 2nd respondent, consistently. While this is so, the petitioner came to know that proceedings for transfer of patta and of the property tax assessment had been initiated by the respondents pursuant to which the assessments had stood transferred to the name of R4 and R5. The aforesaid transfer, according to her, was without even the issuance of notice to her. Thus the present writ petition.

9.Though a counter has been filed by the official respondents as well as R4 and R5, there is no clarity with respect to the following issues:

(i)What constituted suit schedule property in the multiple suits filed by the parties.

(ii)The present status of the suits.

(iii)As a result of the litigation, what is the apportionment of properties among the family members.

10.The above constitute disputed questions of fact and I thus have no intention of delving into the same in a writ petition under Article 226 of the Constitution of India.

11.In any event, it appears quite clear to me that the impugned order dated 03.03.2016 has been passed in violation of the principles of natural justice. Though an initial notice dated 19.02.2015 was issued, no hearing has taken place, after receipt of objection dated 24.04.2015 from R4 and R5 and nor has a copy thereof been supplied to the petitioner.

12.In the light of the aforesaid narration, I am of the view that the interests of justice would best be served if all parties concerned are heard by the 3rd respondent and orders passed thereafter assessing the property in question to property tax upon examination of all relevant facts and documents and after a determination is made as to who the rightful title holder is.

13.For this purpose, the petitioner, R4 and R5 are directed to appear before the 3rd respondent on Thursday, the 7th of November 2019 at 10.30 A.M. No further notice need be issued in this regard. After hearing the parties and considering all materials/evidences/details of proceedings/suits that may be

presented before the 3rd respondent, an order of assessment will be passed in regard to the properties under assessment, on merits and by way of a speaking order. This exercise shall be completed within a period of four weeks from 07.11.2019. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

vs

To

1. The Principal Secretary to Government,
Municipal Administration and Water Supply Department,
Secretariat,
Chennai - 600 009.
2. The Commissioner,
Corporation of Coimbatore,
Coimbatore.
3. The Assistant Commissioner,
Central Zone,
Coimbatore Corporation,
Coimbatore.

+1 cc to M/s.R.Murali, Advocate, S.R.No.87825

+1 cc to M/s.R.Radhapandian, Advocate, S.R.No.87799

+1 cc to M/s.K.Magesh, Advocate, S.R.No.87700

+1 cc to the Government Pleader, S.R.No.88695

W.P.No.5704 of 2017
and
WMP.Nos.6088 & 6089 of 2017

JP(CO)
SSM(04/11/2019)