

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.08.2019

CORAM

THE HON'BLE MR.JUSTICE M.GOVINDARAJ

CRP (PD) NO.3078 OF 2018
AND
CMP NO.17787 OF 2018

J.Jayanthi

...

Petitioner

VS.

1.N.Sekaran
2.N.Sudhakaran
3.Kannammal

D.Prabavathy (died)

4.V.Jhansi Rani
5.R.Jayaprakash
6.M.Damodaran
7.M.Mathivanan
8.N.Suryakala
9.N.Kasishah
10.G.Robinson
11.Subha Sundararajan
12.M.Hariharan
13.P.Devarajulu
14.Sridevi
15.Sabitha
16.Lavanya

...

Respondents

PRAYER: Civil Revision Petition filed under Article 227 of the Constitution of India against the fair and decreetal order dated 13.04.2018 in CMA No.11 of 2017 confirming the order and decreetal order dated 28.08.2017 in I.A.No.514 of 2013 in O.S.No.118 of 2013 on the file of the District Munsif, Tiruvallore.

For Petitioner : Mr.A.R.L.Sundaresan
Senior Counsel for
M/s.A.L.Ganthimathi

For Respondents : Mr.T.V.Ramanujun
1, 2, 5, 14, 15, 16 Senior Counsel
and 17 for Mr.J.Thilagaraj

ORDER

Aggrieved over the dismissal of the appeal filed by the appellant / second defendant / petitioner herein against grant of injunction in favour of the plaintiffs/respondents 1 to 4 herein, the petitioner has preferred this Civil Revision Petition.

2. The petitioner is the second defendant in the suit. The respondents 1 to 4 / plaintiffs filed a suit in O.S.No.118 of 2013 before the District Munsif, Tiruvallur, for permanent injunction. Pending trial, the Trial Court granted an order of interim injunction on 28.08.2017. Aggrieved over the same, the second defendant / petitioner herein, preferred an appeal and the Appellate Court

confirmed the order of the Trial Court granting injunction, against which, the present Civil Revision Petition is filed.

3. According to the petitioner, the Court below has failed to consider that she has purchased the properties by way of registered sale deeds from the original owners in the year 1992 and joint patta was also issued in 2001. Thereafter, the first defendant/first respondent herein, as a lawful power of attorney has sold the property to the second defendant, who is the petitioner herein. The first defendant/first respondent obtained lay out approval and thereafter, it was sold to respondents 5 to 10. They have also constructed an office in the suit property and they are in possession of the same. But on the other hand, the plaintiffs/respondents 1 to 4, were not in possession. However, the Trial Court relying on Ex.P1-Rokka Patta and the SLR copy filed by them, granted an order of injunction. The Lower Appellate Court also without assigning proper reasons, has dismissed the appeal preferred by the petitioner. Since the petitioner has *prima facie* shown title and possession of the property, interim injunction ought not to have been granted in favour of the respondents.

4. Per contra, the learned counsel appearing for the respondents would contend that admittedly the properties were purchased in the year 1992, whereas patta was granted in favour of the petitioner vide proceedings dated 30.11.1991 of the Assistant Settlement Officer. For the properties purchased in the year 1992, patta granted in the year 1991 by itself expose the fraudulent activity committed by the respondents, indulging in land grabbing activities. It is further exposed by the source of title relied on by the petitioner viz., decree in O.S.No.305 of 1990. The said suit was filed by one Munusamy against one Rajaram who were not having any title over the property, for permanent injunction, in which, the Trial Court has granted injunction to an extent of 0.48 cents of land. But, by using the decree, the said Munusamy / father of the 6th respondent herein, has sold 109 cents to the respondents 7 to 12 herein. Further, on a perusal of the records sent by the Panchayat for approval of the plots, it is seen that the approval sought for is only 0.58 cents whereas approval is granted to an extent of 1.66 acres.

5. To sum up, the entire proceedings is tainted with fraud and illegal act of the revision petitioner. Therefore, the Rokka patta

issued by the Thiroor Mitta Zamindar namely Raja Ramadev Rao Bahadur should be treated as document of title and the corresponding SLR which shows correlation between 1911 and S.No.202/3 with respect to the suit property establishes title. All the fraudulent transactions subsequent to them are null and void and therefore, *prima facie* case is lies in favour of the respondents herein and the Court below has rightly granted an order of interim injunction. Further, the certificate issued by the Village Administrative Officer as to possession as on date will also amplify that the balance of convenience in favour of the respondents and if injunction is not granted, they will be put to irreparable hardship.

6. I have heard the submissions made on either side and perused the materials available on record.

7. The petitioner traces the title through the decree passed in O.S.No.305 of 1990, wherein injunction was granted in favour of the original vendor, namely Damodaran, son of Late Munusamy, the sixth respondent herein, to an extent of 0.48 cents. The injunction suit was filed against one Rajaram. But beyond the decree obtained in

O.S.No.305 of 1990, the said Damodaran was not having any document of title.

8. Even though the learned Senior Counsel appearing for the petitioner would vehemently contend that 0.48 ares were wrongly typed as 0.48 cents, which is equivalent to 1.19 acres, he could not produce any other document of title, but relied on the patta granted by the Revenue Department. As contended by the learned counsel for the respondents, grant of patta was made pursuant to the proceedings dated 30.11.1991 of Assistant Settlement Officer.

9. Curiously, patta was not granted in favour of the said Damodaran. But, it was granted in favour of the future purchasers that is to say the person, who purchased the properties by registered sale deeds dated 02.02.1992. Further, Ex.R31, patta issued in the year 2013 reads the extent of land as 0.48 ares. There is no explanation as to how 0.48 cents has become 0.48 ares and there is no corresponding records anterior to the order of the Assistant Settlement Officer in proceedings dated 30.11.1991 to show that the patta was granted in favour of the original vendor to an extent of 0.48 ares.

10. Be that as it may, the decree was shown as a source of title in an injunction suit. The injunction suit was filed only for protecting possession from the disturbance of the third parties. But neither of them produced evidence of title and hence the decree obtained will not automatically confer title on the petitioner. On the other hand, the respondents relied on the Zamin Rokka patta No.99 for an extent of 1.66 acres corresponding to Paimash No.1911 for an extent of 0.58 ares. The Rokka Patta was not at all challenged till date. The corresponding SLR extract which correlates Paimash No.1911 and Paimash No.1911/2 in S.No.202/3, classifies the property as Pananthope owned by Nagaih Naidu and others. Normally, when an assignment is made in favour of the parties, it will be treated as document of title. As long as it remains in-tact and patta is granted in consonance with the said document or title, it shall be presumed that the person holding Zamin Rokka Patta and SLR, has title to it. An argument was advanced before the Lower Court that in view of the Madras Estate Act, patta was allotted to ryots. But in the instant case, no such ryotwari patta has been produced to prove the same, much less in favour of the father of the vendor. Further, the President of the Panchayat, against whom, the sixth respondent's father Late

Munusamy filed a suit, has recommended for grant of lay out approval to an extent of 0.54 cents. Even assuming there is a typographical error in typing 0.48 ares as 0.48 cents, the recommendation should not have been for 0.54 cents. More so, approval was granted for 1.66 acres, which shows that as contended by the learned counsel for the respondent, all the documents are tainted with frauds and that is why, the Hon'ble First Bench of this Court, while disposing of W.A.No.2690 of 2012, dated 03.12.2012, has observed as under:

"3.In our view, the said submission is wholly misconceived for the reason that if the parties move the Civil Court for adjudication of the title in respect of the property in question, the Civil Court shall not be prejudiced by any of the order passed by the revenue authorities while adjudicating the claim."

11. In effect, the Hon'ble First Bench of this Court, has issued a direction to ignore the orders passed by the Revenue Authorities, while adjudicating the claim of the parties. The order passed by the Assistant Settlement Officer, on its face, is not reliable. The respondents have produced the document of title whereas the

documents produced by the petitioners / defendants starting from 1992 will not outweigh the documents produced by the respondents / plaintiffs. After consideration of the essential ingredients of *prima facie* case, balance of convenience and irreparable hardship, the Trial Court has granted interim injunction in favour of the defendants. The documents relied on by the defendants are of recent origin and does not trace any title anterior to Ex.B1. Therefore, the discretion exercised by the Court below under Order XXXIX Rules 1 and 2 of the Code of Civil Procedure is very much sustainable and does not require any interference.

12. In fine, the Civil Revision Petition is dismissed. No costs. Consequently, connected civil miscellaneous petition is closed.

सत्यमेव जयते

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Index : Yes/No
Internet : Yes/No
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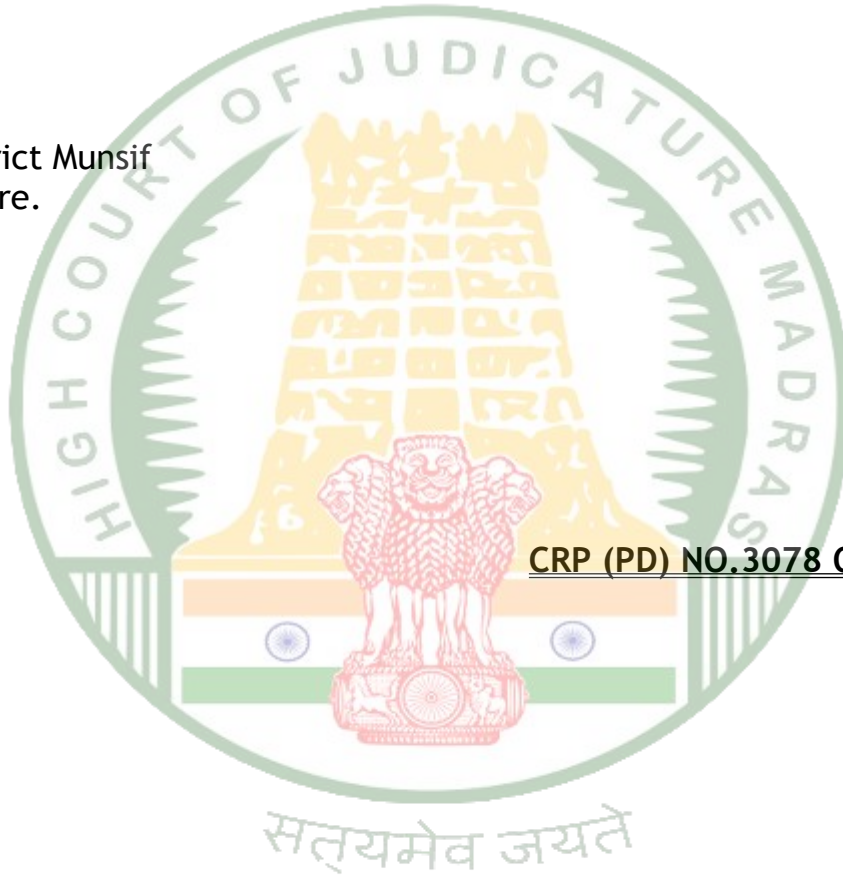
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M.GOVINDARAJ, J.

TK

To

The District Munsif
Tiruvallore.



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