

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 24.11.2020

Pronounced on : 30.11.2020

CORAM

THE HONOURABLE MR. JUSTICE N. ANAND VENKATESH

W.P.No.20944 of 2019

and WMP No.20129 of 2019

Ramasamy nadar ...Petitioner

Vs.

1. The Joint Commissioner,
Hindu Religious and Charitable Endowment department,
119, Nungambakkam High Road,
Chennai 600 034.
2. The Executive officer,
Arulmighu Vedapureeshwarar Temple,
Thiruvothur, Cheyyar Taluk,
Thiruvannamalai District.
3. District Registrar,
Cheyyar, Thiruvannamalai District ...Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus to call for the records of the 1st respondent in respect to OM No.19671/2019-2/V2 dated 12.04.2019 and consequential order on the file of 3rd respondent in proceedings No. 964/A1/2019 dated 25.05.2019 and quash the same as illegal, incompetent and without jurisdiction and further direct the respondent to register the sale deed presented by the petitioner in respect to survey no.29/1A1, Thiruvathipuram, Thiruvannamalai District.

For Petitioner : Mr.V.Raghavachari

For Respondents: Mr.M.Karthikeyan
Special Government pleader
for 1st respondent
Mr.V.Srikanth
for 2nd respondent
Mr.T.M.Pappiah
Special Government Pleader
3rd respondent

ORDER

The present writ petition has been filed challenging the impugned check slip confirmed by the 3rd respondent, dated 20.05.2019 and for a consequential direction to the 3rd respondent to register the sale deed presented by the petitioner with respect to the subject property.

2. The Brief facts of the case are as follows:

The subject property situated in S. 29/1A1 measuring an extent of 4.98 acers, originally belonged to one Bheema Rao and Narahari Rao. They have sold this property to one Dharma Gounder through a registered sale deed dated 10.06.1950. The property thereafter vested on the legal heirs of the Dharma Gounder. The petitioner purchased the subject property through a registered sale deed dated 05.02.1986. Certain other portions were also sold in favor of the brothers of the petitioner.

3. The 2nd respondent temple filed a suit against the petitioner and his brothers in O.S No. 187 of 2002 for the relief of possession and to declare the approval granted by the municipality, in favour of the petitioner and others as illegal. This suit was dismissed for default. Thereafter, an application was filed in IA No. 1048 and 1049 of 2008 for restoration of the suit and to condone the delay in filing the petition to restore the suit and the same came to be dismissed by an order dated 12.10.2010.

4. There were certain other properties available in the very same survey No. 29/1, wherein Bheema Rao had sold the same in favour of one Mr. Kuttiyappan in the year 1959. The 2nd respondent temple asserted the title over the property on the ground that Bheema Rao's family do not have any right over the property and they cannot sell the property. This became a subject matter of dispute before the Civil court in the year 1964. Ultimately, the matter reached this Court in SA No. 430 in 1976 and this Court decided the case in favour of the said Kuttiyappan. Thereby, the claim made by the 2nd respondent temple stood rejected by the competent Civil Court. These proceedings are heavily relied upon by the petitioner and the petitioner claims that the 2nd respondent temple cannot again and again ascertain their right over the property and prevent the owners of the property from dealing with the same.

5. The petitioner presented a sale deed for registration before the concerned Sub-Registrar and the concerned Sub-Registrar refused to register the sale deed based on the

objections given by the 2nd respondent temple. The impugned check slip issued by the concerned sub-registrar came to be confirmed by the 3rd respondent and aggrieved by the same, the present Writ petition has been filed before this Court.

6. The 2nd respondent has filed a counter affidavit in this case and the relevant portions in the counter affidavit are extracted hereunder :-

9. I am advised to submit that, such endeavour was not correct, as there was no effort to find out the correctness of the first Appellate Court granting the plaintiff's claim pleaded by them in the suit. Upon remand, the first Appellate Court found that the Plaintiff's Predecessor-in-Title were not trustees of the temple and such findings was sent to the Hon'ble High Court in the pending S.A.No.430/1976. The Hon'ble High Court only on the said limited question, held that since the predecessor-in-title of the Plaintiff were not trustees of the Temple, they would have acquired title to the property by adverse possession. Upon such assumption, the 2nd appeal filed by the trustees of the Temple was dismissed confirming the decree passed by the lower Appellate Court in A.S.No.419/1966 filed by the said K.R.Kuttiappan. Thus, the said judgement and Decree which the petitioner claims, had settled the dispute concerning the property allegedly purchased by them of an extent of 4.98 Acres, comprised in Survey no.29/1 is incorrect. Such assertion of the petitioner is patently erroneous and cannot be accepted vis-a-vis relief sought for in the above writ petition for the following reasons :-

a) Admittedly, the property which fell for consideration in O.S.No.133/1964 was of an extent of 1.60 Acres alleged to have been in possession of the said plaintiff Mr.K.R.Kuttiappan. However, the petitioner's claim is for an extent of 4.98 Acres, comprised in Survey no.29/1A1. The claim of the said plaintiff is peronal in nature to the said K.R.Kuttiappan vis-a-vis temple and the same cannot be extended to the petitioner by virtue of the Decree passed in A.S.No.419/1966. The decree of declaration of title through adverse possession is confined to the said plaintiff k.R.Kutiappan to the said 1.60 Acres, and the same could not by any stretch of imagination, be extended to encroachers or occupiers of the neighbouring property. Therefore, by any stretch of imagination, the Decree passed in favour of the said K.R.Kuttiappan cannot in any way enure to the petitioner for claiming title to the lands comprised

in Survey No.29/1A1. Therefore, on this score also, the relief claimed by the petitioner cannot be granted and the writ petition has to be dismissed. As submitted earlier, the petitioner has not even filed the Sale Deed dated 05.02.1986.

(b). I submit that, O.S.No.187/2001 referred to in para-4 of the affidavit under reply was filed by the Temple for possession. However, the Executive officer, during the relevant point of time had been on maternity leave and hence, the suit could not be prosecuted resulting in dismissal of the same. As pointed out, the said suit is only for recovery of possession and not for any declaration of title in favour of the Temple. Therefore, the said averments in para-4 of the affidavit under reply does not in any way support the case of the petitioner.

(c) I reiterate and submit that the averments in Para-3 of the affidavit under reply is not supported by any materials. The claim of the petitioner that the revenue authorities had erroneously passed an order dated 04.06.1971 is not placed before this Hon'ble Court. Though the petitioner has claimed that in the Appeal, the Appellate Authority had ended in favour of the petitioner's vendors, the said proceedings is also not before this Hon'ble Court to verify the correctness of the pleadings in Para-3 of the affidavit under reply.

(d) I submit that admittedly the Trial Court in O.S.No.133/1964 gave finding that the Temple Vadapureeswarar was included in Col.12 of the "B" Register maintained by the authorities.

(e) The petitioner has extracted the judgement made in S.A.No.430/1976 High Court, Madras, however nothing could be made out to substantiate his case for claiming title over the said lands.

(f). As submitted earlier, the said judgement is rendered in the case of K.R.Kuttiappan and does not in any way help the case of the petitioner. Further, the statement in Para-8 of the affidavit under reply to the extent that the Said order of the Hon'ble Court in S.A.No.430/1976 is conclusive so far as the title of the Temple is concerned is not correct. The other averments made therein in para-8 of the affidavit under reply insofar as the claim to extend the order of the Hon'ble Court to the case of the petitioner is not acceptable and is not correct in law.

10. I submit that, but for the speculative averments made in the affidavit under reply in support of the above W.P. There is nothing on record to substantiate the claim of title made by the petitioner in respect of 4.98 acres, comprised in Survey No.29/1A1. As such, this respondent being the guardian of temple properties, in order to safeguard the interest of the Temple, through his letter addressed to the Sub-Registrar, Cheyyar, recording his objection for entertaining any Sale Deed in respect of the lands comprised in Survey No.29/A1.

7. Heard Mr. V. Raghavachari, learned counsel for the petitioner and Mr.M.Karthikeyan, learned counsel for 1st respondent HR &CE, Mr. V. Srikanth, learned counsel for 2nd respondent and Mr.T.M.Pappiah, learned Special Government Pleader for 3rd respondent.

8.It is seen from records that a competent Civil court has gone into the title of the 2nd respondent temple in Survey no. 29/1. The findings of the Appellate Court at paragraph 10 made in AS No. 419 of 1966 has a lot of relevance and hence, the same is extracted hereunder.

10. But that conclusion does not necessarily mean that the plaintiff's vendor and his family members were the trustees of the suit temple. As mentioned earlier, the oral evidence adduced on that question is meagre. The name of the suit temple originally written in some of the records had subsequently been ordered to be deleted. It means that the trust was not made directly in favour of the suit temple. After carefully going through the averments made in the written statement, I find that it is nowhere stated therein that the plaintiff's vendor and his forefathers were the trustees of the suit temple. Considering the averments made in the written statement as a whole, my impression is that the defendants contended in the written statement that a trust was created in respect of the suit survey number conferring certain benefits on the suit temple and that the plaintiff's vendor and his forefathers were in possession of the property only as trustees of that trust. Only at the time of trial, D.W.1 has deposed for the first time that one of the forefathers of the plaintiff's vendor was the trustee of the suit temple. As pointed out earlier, the forefathers of the plaintiff's vendor were in possession of the suit survey number as trustees of a trust for which the suit survey number was endowed.

But the purpose of the trust is not made clear from the documents filed in this case. However, it is clear that the trust has nothing to do with the temple because the name of the suit temple had been specifically deleted from some of the records. Hence I hold that the said bheema Rao, the vendor of the plaintiff and the predecessor-in-interest of that Bheema Rao were not the trustees of the said vedapureeswaraswami Temple at any time.

9. The above judgement was taken on appeal before this Court in SA No.430 of 1976. The relevant portions in the judgement are extracted hereunder :

Now the learned District judge has submitted his findings on 31st August 1979. According to the finding beema Rao, the Vendor of the plaintiff and the presecessor in interest of the said Beema Rao were not trustees of the said vedapureeswaraswami temple. It is true that the findings also says that the properties in question did not belong to the temple, but to some other trust. But, for the purpose of the particular point with reference to which I called for a finding, it is not relevant, because, it is the case of the appellant that the property belonged to the temple. On the assumption that the property belonged to the temple and did not belong to any other trust, if the parties have been in possession for more than the statutory period, they would acquire title to the suit property by adverse possession as indicated by me in any order calling for a finding. In view of the finding now rendered, which finding cannot be said to be erroneous, having regard to the records and the evidence available which did not conclusively establish that Gopala Rao, the predecessors-in-interest of Bheema Rao, was appointed as Trustees of the temple, I have no option but to told that the plaintiff - respondent's predecessors-in-interest had acquired title to the suit property by adverse possession. Consequently, the second appeals fails and it is dismissed. There will be no order as to costs.

10. The 2nd respondent temple had approached the civil court by filing OS 187 of 2002 against the petitioner and two others challenging the approval granted by the local authority and also for the relief of possession. The suit came to be dismissed for default and the restoration petition was also dismissed. This order has become final and even in the counter affidavit filed by the 2nd respondent, it has not been stated as to whether any

steps were taken thereafter to prosecute the proceedings.

11. In the present case, there is a dispute with regard to title over the property that has been raised by the 2nd respondent temple. The earlier proceedings before the competent Civil Court has gone against the trustees as well the 2nd respondent temple. It is seen from the impugned check slip confirmed by the 3rd respondent that a reference has been made to the proceedings of the Settlement Tahsildar dated 04.06.1971. The 2nd respondent did not take note of the fact that the order dated 04.06.1971 was recalled by the appellate authority and the patta came to be issued thereafter in the name of the legal heirs of Dharma Gounder.

12. In the considered view of this Court, the 2nd respondent cannot prevent the petitioner from dealing with the property and if at all, the 2nd respondent is claiming any right or title over the property, the same has to be established only before a competent Civil court. It is not known as to whether the 2nd respondent can once again re-open the issue of title in view of the earlier proceedings that came to an end before the competent Civil court.

13. In view of the above discussion, this Court has no hesitation to interfere with the impugned check slip confirmed by the 3rd respondent through proceedings dated 20.05.2019 and accordingly the same is hereby quashed. It is left open to the petitioner to submit the documents for registration pertaining to the subject property and the same shall be entertained by the concerned Sub-registrar, if it is otherwise in order and the necessary stamp duty and registration fees is paid.

14. This Writ petition is allowed with the above directions. No costs. Consequently, the connected miscellaneous petition is closed.

sd/

ASSISTANT REGISTRAR

/TRUE COPY/

SUB-ASSISTANT REGISTRAR

rka

To

1. The Joint Commissioner,
Hindu Religious and Charitable Endowment department,
119, Nungambakkam High Road,
Chennai 600 034.
2. The Executive officer,
Arulmighu Vedapureeshwarar Temple,
Thiruvothur, Cheyyar Taluk,
Thiruvannamalai District.
3. District Registrar,
Cheyyar, Thiruvannamalai District

+1 CC to M/s.V.Raghavachari, Advocate on payment of
necessary charges SR.NO.38074

+1 CC to THE GOVERNMENT PLEADER SR.NO.38670

Pre-delivery Order in
W.P.No.20944 of 2019

AJS (CO)

TA-19/12/2020



WEB COPY