



W.P.No.38092 of 2005

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.08.2022

CORAM

THE HONOURABLE MR. JUSTICE N. ANAND VENKATESH

W.P.No.38092 of 2005
and W.M.P.No.40733 of 2005

Shanthi Bai

... Petitioner

Vs.

1.The Special Commissioner and
Commissioner for Land Administration,
Chepauk, Chennai – 600 005.

2.The District Collector,
Rajaji Salai, Chennai – 1.

3.The Tahsildar,
Egmore-Nungambakkam Taluka,
Chennai – 600 008.

4.Asha Bi

... Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, calling for the records of the respondents, relating to the order of the 1st respondent in D.Dis.K4/7913/2001 dated 10.10.2005 and quash the same.



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For Petitioner : Mr.S.Balasubramanian

For Respondents : Mr.U.Baranidharan
Additional Government Pleader
for R1 to R3

M/s.S.T.Deiveegarajan
C.D.Sugumar for R4

ORDER

This writ petition has been filed challenging the proceedings of the 1st respondent dated 10.10.2005.

2.The case of the petitioner is that she has purchased the subject property under registered Sale Deed dated 09.02.1983 and was also granted patta by the 3rd respondent in Patta No.1282. The petitioner was in possession and enjoyment of the property and she was also paying the necessary tax and charges to the statutory authorities.

3.The 4th respondent filed a suit in O.S.No.8073 of 1997 against the petitioner seeking for the relief of permanent injunction. The 4th respondent was relying upon certain documents viz., Patta No.100, Adangal, Tax receipts etc., in order to show her right over the property.



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Thereafter, yet another suit was filed by one Vijayakumari in O.S.No.4233 of 1998 who also claimed the relief of permanent injunction based on an agreement of sale that is said to have been executed in her favour by the 4th respondent. That apart, three more suits were filed in O.S.No.2573 of 2002, O.S.No.3123 of 1998 and O.S.No.645 of 2002. All these suits were pending before the competent Civil Court.

4.The 4th respondent in the meantime, filed a petition before the 3rd respondent and based on the same, the patta that was granted in favour of the petitioner was cancelled. Aggrieved by the same, the petitioner filed an appeal before the 2nd respondent and the 2nd respondent set aside the order passed by the 3rd respondent through proceedings dated 16.08.2000. Consequently, the 2nd respondent ordered for the restoration of patta and directed that the party should only approach the Civil Court to decide their right and title over the property. The 4th respondent challenged the order of the 2nd respondent before the 1st respondent by filing a revision petition. The 1st respondent through the impugned proceedings dated 10.10.2005, allowed the revision petition and had set aside the order passed by the 2nd respondent. Aggrieved by the same, the present writ petition was filed before this Court.



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5. When the matter came up for final hearing on 09.06.2022, this Court passed the following order:

The learned counsel for the petitioner submitted that the substantial suit was filed in O.S.No.12162 of 2010 and it is now at the stage of passing final Judgment. The final judgment in the suit will have a bearing while, deciding the issue involved in this writ petition. Hence, this Court deems it fit to keep this writ petition pending till the final judgment is passed.

Post this case under the same caption on 04.07.2022.

6. Thereafter, the matter came up for hearing on 01.08.2022 and this Court passed the following order:

The judgement that was passed in O.S.No.12162 of 2010 on 30.06.2022 is yet to be made ready. It is brought to the notice of this Court that all the documents including the impugned order which is the subject matter of challenge in this writ petition, were marked as Exhibits and after considering all the documents, the Trial Court had decreed the suit in favour of the petitioner. The natural consequence of such a decree would be that the order passed by the Special Commissioner and the Commissioner of Land Administration dated



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10.10.2005 must yield to the decree passed by the competent Civil Court. As a consequence, the right and title of the petitioner over the subject property will stand established and the patta has to be transferred in favour of the petitioner.

2. Before passing final orders in this writ petition, this Court deems it fit to peruse the judgement passed in O.S.No.12162 of 2010. Post this case under the caption for passing final orders on 22.08.2022.

7.Heard Mr.S.Balasubramanian, learned counsel appearing on behalf of the petitioner, Mr.U.Baranidharan, learned Additional Government Pleader appearing on behalf of the respondents 1 to 3 and M/s.S.T.Deiveegarajan, learned counsel appearing on behalf of the 4th respondent.

8.When the matter was taken up for hearing today, the common judgment that was passed in all the suits was placed before this Court. For proper appreciation, the relevant portions in the judgment are extracted hereunder:

14.41.It is contended on behalf of the defendants that the challenges that are put forth by the plaintiff with respect to the SLR Patta 100, that it is in the printed form as the forms



were printed in the Government press only in the year 1982 and personal assistant to the collector is not competent and there is no VAO post before 05/03/1980, are irrelevant cannot be considered to be specific denial and does not shift the burden upon the plaintiff to establish that the SLR Patta 100 is not genuine. In short the burden is heavily on the defendants to prove that Ex A4, the Adangal & Patta 100, Ex A7, the ULT Payment receipt Ex A8, Patta in the name of Kareema bee, Ayesha bee, mymen bee pertaining to fazli 1391 is genuine. But there is absolutely no evidence produced by the defendants in this regard. The defendants have not even chosen to examine the settlement commissioner or the Tahsildar, or any other officer of the Revenue department to prove the genuinity of the ExA4, A7, A8. Per contra ExB2 is an incomplete document as it is not accompanied by the documents, whose copies are said to be enclosed except Ex B3, the A Register. Ex B3 reveals the initial of Nooruddin sahib as "j" with respect to Patta No100 pertaining to S.No 52 along with Natesa Gramani, whose name is found in ExA3, the sale deed dated 13.11.1961, and with whom Kalki Anantha Narayanan is said to have exchanged land by deed dated 16/02/1956, and S.No 53/1 along with Thayaramma and not 53/2, which is admittedly the suit property. There is no explanation for "j" initial found in Ex B3, when the name of the father of noorudin Sahib the father of defendants No land Mymen bee, is found to be Ameenudin Sahib, as evident from ExA2, the sale deed dated 02/01/1945 in favour of Noorudin



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Sahib. Similar is the fate of Ex B8, copy of settlement Adangal in Sno 53/2 and Ex B9, chitta for S.No52 part in the name of "j" Noorudin Sahib s/o Jalaludeen Sahib. In addition Ex B9 is with respect to S.No 52 Part, which is not the suit property. There are no other documents produced to correlate the suit property with Noorudin Sahib or his Legal Heirs or 13th defendant. Therefore the documents relied upon by the defendants are not substantiated to be pertaining to the suit property or the defendants or Noorudin Sahib. Henceforth they cannot be held to prove the title of Nooruddin sahib to the suit property, especially when Revenue officials certified that Koyambedu Village settlement patta and SLR for Khandam not available in their department. As a consequence the documents marked as ExA4, A7, A8 and relied on by the defendants to establish their Title are held not to be proved to be genuine, as the questions raised by the plaintiff with respect to the above remain unanswered. Therefore the Title of the defendants more particularly, the 13th defendant with respect to the suit property remains unproved. The evidence of 13th defendant as DW1 does not aid her in any way to substantiate her rights to the suit property.

14.42.On the other hand, the sale deed dated 09.02.1983, admittedly executed by Kanniammal, the plaintiff in the suit in O.S.1074/1982 in favour of the plaintiff ExA10 tracing its route through Ex A1, the sale deed dated 14/03/1913 in favour of Murugammal, admittedly purchased



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the property from Varadaraju Naidu substantially prove her Title to the suit property. Consequently the plaintiff's Title to the suit property stands established. While so and when the defendant have not established title of Noorudin Sahib with respect to the suit property, then the defendants 1,3 to 11 do not become entitled for the suit property as Legal heirs of Noorudin Sahib. Having held so the defendants do not become entitled to deal with the property in any manner known to law, including sale of the suit property. As such the sale agreement and sale deed dated 16/07/2010 executed by the defendants 1, 3 to 11 in favour of the 13th defendant and marked as ExA50 cannot be held to be validly conveying the Title of the suit property to the 13th defendant. Therefore, the plaintiff having established Title and possession of the suit property, she becomes entitled to the reliefs sought for by her. Therefore the points are answered accordingly.

*14.43.The learned counsel for the defendants further argued that the plaintiff has not entered into the witness box and in her place her power of attorney deposing, cannot be construed to be proper and the evidence of power of attorney cannot be held sufficient and placed reliance upon **Janaki Vasdeo Versus Indus Ind Bank reported in (SC) 2005 2 SCC 217, Chitrakala vs P.Mahesh Mad H.C.2013 (4) CTC 545 and Mohinder Kaur Vs Sant Paul Singh reported in 2019. 9 SCC. 358.***



14.44. In the above referred case laws, the Power of Attorney has spoken as to the facts which are exclusively within the personal knowledge of the litigant. But here in this case the facts are all borne by documents and hence the evidence of PW1, who is the Power of Attorney of the plaintiff cannot be discarded at a threshold. However it shall be scrutinized carefully. A careful perusal of the deposition of PW1 does not render his evidence as unreliable. In other words there is no reason to discard the evidence of PW1. It is pertinent to note that the defendant has examined one sankaran as DW2, in a fragile attempt to establish possession of the suit property, wherein the 1st defendant is alleged to have constructed a compound wall and the same to be guarded by DW2. A copy of Voter ID, Family card and Aadhar card of DW2 has been marked as ExB4 to 6. The evidence of DW2 does not inspire the confidence of this court as there is no supporting document to prove his being watchman in the suit property. At the outset, there is no piece of paper to show any compound wall being constructed by the defendants in the suit property. Per contra, when admittedly the interim injunction obtained by the plaintiff is still in force, there is no explanation how the defendants constructed compound wall in 1992. If done the same should be in violation of the orders of the Court attracting contempt. Therefore the possession of the property has not been established to be with the defendants. On the other hand the plaintiff has produced Property Tax receipts, ULT payment receipts, and water tax receipts as



ExA39&57,A38,A37&58 to prove their possession of the suit property. Further the evidence of PW1 that the plaintiff constructed the compound wall in the suit property has not been denied by the defendant specifically and thus remains proved. The plaintiff's possession in the suit property has been disturbed by the defendants even by way of filing petitions after petitions. While so and when there are numerous cases filed by the defendants individually and jointly in their personal capacity and as power of attorney of the Legal Heirs of the deceased Noorudin Sahib with respect to the suit property, then the arguments proposed by the defendants that there is no cause of action for the suit falls to ground. The balance of convenience is in favour of the plaintiff. The denial of the relief of injunction to the plaintiff would definitely cause irreparable loss to the plaintiff, when compared to the loss caused to the defendant by granting the same. Having held so, this Court does not find any impediment in granting the reliefs sought for by the plaintiff, especially when the plaintiff has established her Title and possession of the suit property.

9.It is clear from the above that, the competent Civil Court has not only found the right and title over the property in favour of the petitioner but also the possession of the property to be in favour of the petitioner. In view of the same, the order of the 1st respondent has to necessarily yield to the Judgment and Decree passed by the competent Civil Court. In view



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of the above, the impugned order passed by the 1st respondent through proceedings dated 10.10.2005, is hereby set aside. There shall be a direction to the 3rd respondent to restore the patta in favour of the petitioner in line with the Judgment and Decree passed by the competent Civil Court.

10.This writ petition is accordingly allowed. No Costs. Consequently, connected miscellaneous petition is closed.

29.08.2022

Internet : Yes
Index : Yes
Speaking Order / Non Speaking Order
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To

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N. ANAND VENKATESH, J.

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