



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.02.2022

CORAM:

THE HONOURABLE MR.JUSTICE C.SARAVANAN

W.P.No.24204 of 2021

and

W.M.P.Nos.25529 to 25531 of 2021

L.Thanapal, M/70
S/o.late K.Lazarus Nadar
48, SDN Colony
Gobichettipalayam
Erode District.

....Petitioner

-Vs.-

1.The Administration General and
Official Trustee of Tamilnadu,
City Civil Court Additional Building
1st Floor, AG & OT Office
High Court Complex
Chennai - 600 104.

2.The Commissioner
Gobichettipalayam Municipality
Gobichettipalayam
Erode District.

.....Respondents

Prayer :- Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus to call for the records relating to the impugned order in Na. Ka. No.1133/2020/AGHC dated 05.08.2020 passed by the 1st respondent, quash the same and consequently direct the respondents to restore the property tax and mutation entries in the name of the petitioner by considering his representation dated 05.09.2020 and 28.10.2021.

For Petitioner : Mr.N.Manoharan

For Respondents : Mr.E.V.Chandru, for R1
No Appearance for R2



ORDER

The petitioner has challenged the impugned proceedings of the first respondent dated 05.05.2020 calling upon the petitioner to show cause as to why the petitioner should not be called upon to surrender the property or in the alternative enter into an agreement as a tenant with the first respondent.

2.It is the specific case of the petitioner that the petitioner purchased the property from one Chakkarai Gounder vide registered document no.650/1989, dated 14.06.1989. It is the further case of the petitioner that the property in question viz., New Door No.187 (Old No.54), Kutcheri Street, Gobichettipalayam, Erode District was the ancestral property of Chakkarai Gounder along with his father. Though there was a partition between the family members of Chakkarai Gounder, when the partition deed came to be registered on 24.05.1989 vide document no.320/1989, this property was never in contemplation of purchase by the testator namely Rajammal @ Chinnammal, who executed a joint will along with her Husband Palaniappa Chettiar on 27.09.1968, registered as document no.76/1968.

3.It is submitted that the said Rajammal @ Chinnammal purchased few properties in the year 1956 from one Ganapathy Achari vide sale deed dated 06.12.1956 registered as Document No.2953/1956 within the jurisdiction of Sub-Registrar, Gobichettipalayam. It is submitted that by mistake or oversight, the aforesaid property which was purchased in the year 1989 by the petitioner was included in the registered Will dated 27.09.1968 and that the property in question was never in possession of the testator viz., Rajammal @ Chinnammal and that the property was in possession of the family members of the petitioner's vendor Chakkarai Gounder for more than 40 years prior to the year 1989.

4.The learned counsel for the petitioner further submits that in the suit filed in the year 1981 by the members of the Hindu Community namely, Senniyappan Chettiar and G.K.Jayajothi Murugan in O.S.No.76 of 1981 also, there was no reference to the property in question purchased by the petitioner vide document no.650/1989 dated 14.06.1989. The learned counsel for the petitioner has also drawn the attention to the proceedings of the Joint Commissioner/Executive Officer, HR & CE, dated 05.12.2015, wherein also there is no reference to the property purchased by the petitioner in the year 1989 vide document no.650/1989 on 14.06.1989 from the petitioner's vendor namely Chakkarai Gounder.



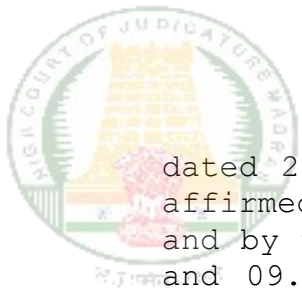
5.It is submitted that since the property never belonged to Rajammal @ Chinnammal, the mention of property at Door No.54 purchased by the petitioner along with the property at Door No.51-55, Kutcheri Street was a mistake in the registered Will dated 27.09.1968 and the petitioner was never put to notice about the same in the proceedings before the Trial Court or before this High Court in the First Appeal Nos.606 and 851 of 1989.

6.The learned counsel for the petitioner further submits that though the Will dated 27.09.1968 has been stated to be a genuine Will and affirmed both by the Division Bench in First Appeal Nos.606 and 851 of 1989 and by the Hon'ble Supreme Court in Civil Appeal Nos.5924-5926 of 2005 and Civil Appeal No.6469 of 2005 reported in (2017) 13 SCC 15, the fact that the property in question was never purchased by the testator viz., Rajammal @ Chinnammal remain undisputed.

7.The learned counsel for the petitioner submits that after filing of the Writ Petition on 02.11.2021, the petitioner came to know that the learned Subordinate Judge, Gobichettipalayam in O.S.No.76 of 1981 vide order dated 28.04.2018 in I.A.No.413/2017 has included the property purchased by the petitioner. It is submitted that the impugned proceedings in terms of the impugned notice/order is unsustainable and therefore, submits that the impugned notice/order dated 05.08.2020 is liable to be quashed.

8.Opposing the prayer, the learned counsel for the first respondent/AG & OT submits that the impugned proceedings is merely a show cause notice and therefore, the Writ Petition is premature and liable to be dismissed. That apart, it is submitted that after the impugned notice was issued, the petitioner replied to the same and further took time for producing the documents and therefore, the Writ Petition filed after seeking time for responding to the impugned notice is also liable to be dismissed as without jurisdiction.

9.It is submitted that the petitioner has to first participate in the proceedings and in any event, no final decision has been taken on the aspect, as the petitioner has been only called upon to furnish the documents to substantiate his rights. That apart, the learned counsel for the first respondent submits that the first respondent has been given right over the property in question under Section 25 of the AG & OT Act, 1963. It is submitted that the genuineness of the Will



dated 27.09.1968 has never been in question and the same stands affirmed and approved both by the Division Bench of this Court and by the Hon'ble Supreme Court in their order dated 07.04.2005 and 09.03.2017 respectively in First Appeal Nos.606 & 851/1989 and Civil Appeal Nos.5924-5926 of 2005 and Civil Appeal No.6469 of 2005 reported in (2017) 13 SCC 15 in the case of K.S.Palanisami (Dead) Through LR's v. Hindu Community in General and Citizens of Gobichettipalayam and Others.

10.The learned counsel for the first respondent also relied on the decision of the Division Bench of this Court in the case of AG & OT v. State of Tamil Nadu and Others reported in 2008 (4) MLJ 680, wherein a reference was made to the decision rendered in P.Alwar Chetty v. P.Chidambara Mudali & 6 Others reported in 1915 (Vol.38) ILR (Mad) 1134.

11.I have considered the arguments advanced by the learned counsel for the petitioner and the learned counsel for the first respondent.

12.The impugned notice which has been stated to be an order in the affidavit appears to be only a show cause notice. It merely calls upon the petitioner to substantiate his rights. There is no finality in the aforesaid notice, though notice seems to proceed on the assumption that the property indeed belonged to the testator Rajammal @ Chinnammal who executed a joint Will along with her Husband Palaniappa Chettiar on 27.09.1968, registered as Document No.76/1968 by including the properties at Door No. 51 to 54, Kutcheri Street, Gobichettipalayam.

13.The petitioner responded to the same and sent a reply dated 05.09.2020 and another representation was sent through his son on 27.10.2021. The issue has not attained finality. However, the petitioner has rushed to the Court perhaps on account of the fact that the impugned notice has been issued by the first respondent/AG&OT. Be that as it may, there are records to indicate that the petitioner may have been in possession of the property since 1989 and that this property was not the part of the suit filed in O.S.No.76 of 1981 before the Subordinate Court, Gobichettipalayam.

14.The document filed in support of the petition also prima facie indicate that the property was only shown as a neighbouring property in the schedule when the property was purchased in the year 1956 by Rajammal @ Chinnammal from one Ganapathy Achari vide sale deed dated 06.12.1956 registered as



document no.2953/1956. Whether the property was subsequently purchased by Rajammal @ Chinnammal or not cannot be decided in this proceedings. The petitioner could have moved a proper application before the Trial Court in O.S.No.76 of 1981 as a third party and obtained suitable orders in this regard. This matter would however require proper adjudication on facts and the Trial Court is competent to decide the same.

15.As far as the first respondent is concerned, the impugned action appears to be in line with the directions of the Hon'ble Supreme Court dated 09.03.2017. The said order calls upon the respondent to identify, protect and manage the trust property.

16.Under these circumstances, the proceedings in the impugned notice is directed to be kept in abeyance for a period of six months from the date of receipt of a copy of this order. Meanwhile, the petitioner is given liberty to move appropriate application before the Trial Court within 30 days from the date of receipt of a copy of this order for obtaining suitable directions/clarifications to establish his rights over the property. The petitioner is also given liberty to file appropriate applications for letting in evidence in support of his claim. The Trial Court shall decide the issue one way or the other preferably within six months from the date of receipt of a copy of this order.

17.All further proceedings will be subject to the order to be passed by the Trial Court in O.S.No.76 of 1981 in the proposed application to be filed by the petitioner. It is made clear that if the petitioner fails to move an appropriate application before the Trial Court within a period of 30 days from the date of receipt of a copy of this order as ordered above, the respondents are at liberty to proceed further in accordance with law.

18.In fine, Writ Petition stands disposed of with the above observations. Consequently, connected miscellaneous petitions are closed. No costs.

Sd/-

Assistant Registrar(CS-V)

//True Copy//

Sub Assistant Registrar

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To

1.The Administration General and
Official Trustee of Tamilnadu,
City Civil Court Additional Building
1st Floor, AG & OT Office
High Court Complex
Chennai - 600 104.

2.The Commissioner
Gobichettipalayam Municipality
Gobichettipalayam
Erode District.

+1cc to Mr.N.Manokaran, Advocate SR.No.6995

+1cc to Mr.E.V.Chandru @ E.Chandrasekaran, Advocate SR.No.6384

W.P.No.24204 of 2021

GSM(CO)
GN(28/02/2022)