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C.R.P.No.2022 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.01.2023

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THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

C.R.P.No.2022 of 2020

and

C.M.P.No.12669 of 2020

Sri Ambal Mills Ltd.,
Rep.by Director C.D.Menon,
Having Office at Door No.89,
Rathnasabapathy Street,
Saibaba Colony,
Coimbatore.

.. Petitioner

Versus

Arulmighu Kariakaliamman Thirukoil,
Kalipalayam, Samalapuram,
Palladam Taluk,
Represented by Fit Person and Executive Officer,
Arulmighu Visweswaraya Swamy and Veerar
Raghava Perumal Thirukoil,
Tirupur.

.. Respondent

PRAYER : This Civil Revision Petition is filed under Article 227 of the Constitution of India, to set aside the fair and final order dated 11.02.2020 made in I.A.No.477 of 2019 in O.S.No.34 of 2019 on the file of the Court of Subordinate Judge, Palladam.



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For Petitioner : Mr.P.Muthukrishnan

For Respondent : Mr.K.Ashok Kumar

ORDER

This Civil Revision Petition has been filed against the fair and final order dated 11.02.2020 made in I.A.No.477 of 2019 in O.S.No.34 of 2019 on the file of the learned Subordinate Judge, Palladam.

2. The suit in O.S.No.34 of 2019 has been filed by the respondent/plaintiff for declaration and recovery of possession of lands in Survey Nos.700 and 701/1, measuring an extent of 0.95 acre and 1.85 acres respectively.

3. It is the case of the petitioner/defendant that the respondent/plaintiff has not filed any document to prove that they have got any right or title or interest over the suit property. The property in question, belonging to M/s.Arulmighu Kariakaliamman Temple, Kalipalayam, Samalapuram Palladam Taluk was sold to petitioner/defendant in the year 1962. The respondent/plaintiff has filed the copy of computerized Chitta alleging that the Patta has been issued by



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the Tahsildar, Palladam, which has been a mistake extracted from the old

records without considering or changing the same on the strength of a

valid enforceable sale by the Government of Tamil Nadu with approval of

HR & CE Department by way of sale consideration of Rs.10,001/- as early

as in the year 1962 and the same was deposited in favour of the said

Temple and F.D. receipt was subsequently lodged with the Commissioner,

HR & CE Department, based on the Government Order in

G.O.Ms.No.4961, Revenue Department, dated 17.11.1961. The Settlement

Tahsildar granted Ryotwari Patta in the year 1968 based on the said

Government Order. The lands are in possession and enjoyment under

petitioner/defendant from the date of purchase in the year 1962. There was

some error committed while updating the Register and appeal has been

preferred before the District Revenue Officer and the said error was

rectified and Patta was restored in the name of said Sri Ammal Mills Ltd.

Taking advantage of the error in the patta, some local elements filed a suit

before the Sub Court, Palladam, claiming right over the lands in question

in favour of the said Temple in the years 2008, 2011 and 2013 and the

suits in O.S.Nos.238, 240 and 241 of 2018 were dismissed by the Sub

Court, Palladam in the year 2019 itself. When there is no document to



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prove that the lands belong to them, the said Temple has filed a suit in

O.S.No.34 of 2019, which has to be rejected stating that no cause of action arises as per the sale and also on the orders passed by the Revenue Officials and petitioner/defendant prayed that the same has to be rejected on the ground that the petitioner is absolutely a stranger to the proceedings. The respondent/plaintiff has filed the suit after 51 years from the date of order being passed by the Settlement Tahsildar on 30.11.1968 and 58 years from the date of Government Order and the sale deed. Further, the petitioner/defendant is in uninterrupted possession and enjoyment of the suit property for more than 58 years and it has to be considered by this Court and the suit has to be rejected on the above said grounds.

4. The learned counsel for the respondent/plaintiff submitted that the said Temple has various lands and they are doing Poojas for the said Temple, from the income derived from the suit property and as per the Records, the lands stand in the name of the said Temple. The Settlement Tahsildar came to knowledge about the lands belonging to the said Temple and without giving any notice to the said Temple and no enquiry



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conducted, had given a Patta in S.R.No.489/67 under the Tamil Nadu

Minor Inams (Abolition and Conversion into Ryotwari) Act, 1963

(hereinafter referred to as 'the Act' for short), Palladam Taluk dated

30.06.1967. As per the Act, the revision petitioner/Mills was in possession

for a continuous period of 60 years, immediately before 1st day of April

1960 and such person shall, with effect from the appointed day, be entitled

to a Ryotwari Patta in respect of that land. But the petitioner has not

proved by producing documents to show that they are in continuous

possession for the period of 60 years and all the procedures for issuing

Ryotwari Patta were not followed and as per Section 11(2)(a)(ii) of the

Act, the authority concerned has not sent any notice to the HR & CE

Department or the said Temple for any enquiry. But the petitioner has

obtained sale deed in respect of the subject property on 23.06.1962.

Therefore, the petitioner has no right or title over the property and they are

also not in possession of the same. While that being the case, the

Settlement Tahsildar, Gopichettipalayam has issued a Patta on 30.06.1968

wrongly, which has to be set aside. He further submitted that the Poosari

of the said Temple, i.e., Natchipandaram has been given a right only to

safeguard the subject property and not to sell it to any third party. The



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petitioner/Mills is not functioning and namely, one Mr.C.D.Menon, who is the Director of the petitioner/Mills tried to sell the property by forming lay-outs and no taxes have been paid by the petitioner to the Government after issuance of the patta. He further submitted that the petitioner/defendant has no right to sell those properties and all the procedures have not been followed while issuing patta or giving sale deed in favour of the petitioner/Mills. He also submitted that, in the suit, the revision petitioner/defendant has to establish his case on the right over the said lands and therefore, he prayed to dismiss the Civil Revision Petition.

5. Heard the learned counsel for the petitioner/defendant as well as the learned counsel for the respondent/plaintiff and perused the materials placed on record.

6. On going through the averments, it is seen that the trial Court in I.A.No.477 of 2019 dated 11.02.2020 had elaborately discussed the issue and came to a conclusion that the factum of limitation and cause of action could be decided only after full-fledged trial of the case based on the evidence. Both the cause of action and the limitation are mixed



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question of facts. Whether the plaint discloses a cause of action is a question of fact which has to be gathered on the basis of the averments made in the plaint and taking those averments to be correct. Further, the plaint cannot be rejected on that ground when *prima-facie* case is made out regarding the cause of action as the suit could be tried and disposed of on merits.

7. On a further perusal of the documents, it is found that G.O.[Ms].4961, Revenue Department, dated 17.11.1961, has been relied on the petitioner at Page No.1 in the additional typed set of papers filed by him, stating that in Para No.1 of the said Government Order, the lands belonging to Sri Kariakaliamman Temple, Samalpuram, Palladam Taluk, Coimbatore District, bounded on the West by Ambal Mills, on the North by Palani Andavar Ginning factory, on the East by Annur Karnampatti Road and on the South by the land belonging to the above Temple in favour of Ambal Mills, Ottarpalayam Village Kasba, Palladam Taluk, Coimbatore District, for a sum of Rs.10,001/- (Rupees ten thousand and one only). Further, it is also seen that in Para No.3 of the said Government Order, the lands belonging to Sri Kariaperumal Temple



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mentioned in Para No.1 above to Ambal Mills, Ottarpalayam Village, Palladam Taluk, Coimbatore District, for a sum of Rs.10,360/- (Rupees ten thousand three hundred sixty only) which being the market value of the lands and invest the sale proceeds for augmentation in long term deposits as per the Rules. There were some discrepancies in the said Government Order itself and the same had not been noticed and in the preamble portion of the said Government Order, it is seen that Kariaperumal Temple's lands were sold to Ambal Pillai and that has been scrolled out and the name of the Mills has been written and that there are so many discrepancies found in the said Government Order.

8. Therefore, this Court is of the view that the said Settlement Tahsildar issued patta without looking into all the above aspects, and without issuing any notice to the HR & CE Department or the Temple and having not followed the procedures. Hence, this Court is of the view that all those aspects have to be gone into detail before the trial Court while conducting trial. As such, there is no illegality or irregularity in the order passed by the trial Court and hence, this Court is inclined to dismiss the Civil Revision Petition.



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9. Accordingly, this Civil Revision Petition is dismissed.

Consequently, the connected Miscellaneous Petition is closed. No costs.

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Index: Yes/No

Speaking order/Non-speaking order

Neutral Citation: Yes/No

To

1. The Subordinate Judge, Palladam.

2. The Section Officer,
V.R. Section,
High Court, Madras.



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V.BHAVANI SUBBAROYAN,J.

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