



W.P.No.14635 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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ORDERS RESERVED ON : 07.11.2023

ORDERS PRONOUNCED ON : 01.12.2023

CORAM:

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

W.P.No.14635 of 2017

and

W.M.P.Nos.15873 & 15874 of 2017

A.E.Giridharan

...Petitioner

-Vs-

- 1.The Additional District Magistrate-cum-District Revenue Officer,
Coimbatore - 641 018.
- 2.The Special Deputy Collector (Revenue),
Coimbatore.
Having office at Trichy.
- 3.The Tahsildar & Tenancy Record Officer,
Pollachi - 642 001.
- 4.S.Uma Maheswari
- 5.A.E.Srinivasan

...Respondents

Prayer: Writ petition filed under Article 226 of the Constitution of India praying for issuance of a writ of certiorari calling for the records relating to the order dated 24.03.2004 of the 3rd respondent/Tahsildar & Tenancy Record Officer, Pollachi-642 001 in T.R.No.5 of 2004 as confirmed by the



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order dated 19.04.2013 of the 2nd respondent/Special Deputy Collector (Revenue), Coimbatore, at Trichy in A.P.No.15 of 2010 and that of the order dated 05.07.2016 of the 1st respondent/Additional District Magistrate Cum District Revenue Officer, Coimbatore, in Ni.Mu.2003/2014/E1 quash the same.

For Petitioner : Mr.A.S.Vijayaragavan
For R1 to R3 : Mr.V.Veluchamy
Additional Government Pleader
For R4 & R5 : Mr.R.Kannan

ORDER

The writ petition is filed for issuance of a Writ of Certiorari by quashing the order of the 3rd respondent/Tahsildar & Tenancy Record Officer, Pollachi-642 001, dated 24.03.2004 in T.R.No.5 of 2004, and the same is confirmed by the 2nd respondent/Special Deputy Collector (Revenue), Coimbatore, at Trichy, by order dated 19.04.2013 in A.P.No.15 of 2010 and that of the order dated 05.07.2016 of the 1st respondent/Additional District Magistrate Cum District Revenue Officer, Coimbatore, in Ni.Mu.2003/2014/E1.

2. The case of the petitioner is that the 5th respondent is the brother of the petitioner. The 5th respondent obtained his signatures in unfilled



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papers and also executed Power of Attorney from the petitioner using the signed unfilled papers, which was covered up as Power of Attorney as the petitioner executed a Power of Attorney in favour of the 5th respondent and he came to know the same only in the year 2009. Later, he cancelled the same in the year 2009. Further, he got the job in U.A.E. in the month of August, 1992. The petitioner executed a Registered Power of Attorney dated 19.08.1992 as requested by the 5th respondent, authorising him to do all such things. The petitioner was not aware of the existence of an earlier Power of Attorney, since he did not raise any objection, nor he cancelled it. The petitioner returned back from U.A.E in the year of 1993. In the year 1994, he got employment and living in Coimbatore.

3. The father of the petitioner died on 23.12.2003. The 5th respondent misused the said Power of Attorney dated 19.08.1992. Settlement was executed by the 5th respondent in favour of his wife, who sold the 10 acres of petitioner's land.

4. The petitioner requested the 5th respondent to account for the income realised from his property and the expenditure incurred by him. He requested the 5th respondent to put the petitioner in possession of all his



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the 5th respondent's son, by name Balaji. The petitioner came to know about the encumbrance created by respondents 4 and 5 and further the Sale Deed dated 14.10.1999 was executed by the 5th respondent, by misusing the Power of Attorney given by the petitioner.

5. Only from the recitals of the sale deed dated 14.10.1999, the petitioner came to know about the said Power of Attorney dated 22.08.1983 and immediately he issued the notice to 5th respondent. From the reply, the petitioner came to know about the order of the 3rd respondent/The Tahsildar & Tenancy Record Officer, Pollachi, in Tr.No.5 of 2004 dated 24.03.2004. Therefore, he preferred the Appeal in A.P.No.15 of 2010 before the 2nd respondent/The Special Deputy Collector (Revenue) Coimbatore at Trichy against the said order dated 24.03.2004 of the 3rd respondent. The same was dismissed by the 2nd respondent on 19.04.2013. Later, on 28.01.2014, the petitioner filed the Revision before the 1st respondent/learned Additional District Magistrate-cum-District Revenue Officer, which was dismissed by the 1st respondent on the ground of limitation on 05.07.2016. Therefore, the writ petitioner preferred the present writ petition for quashing the above orders of respondents 1 to 3.



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6. The case of respondents 4 and 5 / private respondents is that the 4th respondent is the wife of the 5th respondent. He further submitted that the 5th respondent's father, late Shri.A.V.Elli Chettiar, had three sons, three daughters and one brother, who was older than the 5th respondent. The petitioner is younger than the 5th respondent. The father of the 5th respondent was an Agriculturist and was looking after Agriculture from his young age. After the demise of his father Shri.E.Venkatrama Chettiar, who was the grandfather of the 5th respondent and that the father of 5th respondent was cultivating his share of lands allotted to him under a registered family Partition Deed dated 28.06.1951, between him and his younger brother, late A.V.Ramanathan Chettiar.

7. Even in the year 1960, the father of the 5th respondent was running a fertilizer, pesticide and Agriculture input shop in Anaimalai Village and his shop was the only shop in entire region of about 30 villages. He had done very good business. Since his father was unable to concentrate fully in the field of Agriculture, he leased out his entire land in Anaimalai Village to third parties. On 10.03.1971, a Partition Deed was executed and registered by dividing the properties among their father,



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mother, and three sons, including the 5th respondent. Since the writ petitioner and the 5th respondent were minors at the time of the partition, they were studying at School, and the entire lands were also looked after by his father and his elder brother, one Venkataraman. His elder brother did not pursue his higher education and he discontinued his studies and was helping his father in both business and Agriculture operations. His elder sister, Revathi completed M.B.B.S and the other two sisters completed S.S.L.C.

8. Further, the 5th respondent did his graduate in Loyola College in Chennai and subsequently, he did his B.Sc. (Agriculture) in Tamil Nadu Agricultural University, which he joined in 1974 and completed the course in 1978. In the year 1976, the entire fertilizer and pesticide shop run by his father and his father's business, was destroyed in a major fire accident. Due to that, his father sustained huge financial loss. After that, his elder brother became spend-thrift and indulged in some unwanted activities, like gambling. Therefore, his family suffered huge financial loss and he became indebted. His father was also litigating with the lessees to get back the possession of all the lands in Anaimalai Village which were leased out.

Since his father and elder brother were reluctant to attend their



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Agricultural activities, they ended up loss in business. Since the 5th respondent was an Agricultural graduate, his father asked him to take care of the Agricultural activities and also take care of the litigation of the lease-hold lands. The major portion of their lands were only dry lands and the income from them was insufficient to maintain their family. Due to that, they incurred debts and also found it difficult to meet out the marriage expenses of their sisters and also for the petitioner's education expenses. Since the 5th respondent was educated in the Agricultural field, he started an agro- service centre with loan obtained from SBI in 1980 and purchased a Tractor with implements, and also hired Tractors from others and started hiring them to needy farmers. He also arranged for sale of seed farms, offered consultancy services to needy farmers in developing high-tech farms, and also started a Government approved nursery to supply quality seedlings. He worked very hard, and his business brought success. The income earned from the Agricultural lands, was spent for their family expenses and the marriage expenses of their brothers and sisters.

9. It is further argued by the learned Counsel for Respondents 4 and 5 that after completion of the petitioner's Post-Graduation, he stayed with the 5th respondent and was looking for a good job. He was not interested in



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Agriculture. He got a job in Mumbai in the year 1983. Since his father asked the writ petitioner to register a general Power of Attorney in the name of the 5th respondent to look after his lands and also to attend the litigations regarding the lease-hold of his shares of Anaimalai lands on his behalf in his absence, in the year, 1983, the petitioner executed a Power of Attorney in favour of the 5th respondent, who was taking care of the property. Now, he is falsely denying that the Power of Attorney was created by the 5th respondent using his signed unfilled papers. Therefore, the petitioner's claim is false.

10. The 4th respondent is the wife of the 5th respondent. She is a B.Com Graduate and a working woman. After marriage, she was interested in Agriculture and visited the lands periodically. In the year 1995 itself, she attended the training programmes for women Farmers conducted by the State Agricultural Department and obtained a certificate from The Tamil Nadu Women in Agriculture (TANWA) scheme of the Government for women Farmers, attended many training programmes and became a knowledgeable Farmer. Since 5th respondent had very better experience in leasing the land to third parties, he leased out 4 acres of dry land of the petitioner to the 4th respondent, who is the wife of the 5th respondent and



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executed a registered Lease Deed in his name as a Power Agent. The petitioner also knew about the same, since he had periodically visited 5th respondent to collect his rental income from the Agricultural lands. The petitioner had also admitted these facts in his Vardhamana letter, dated 27.12.2006. Now, the petitioner cannot deny the same, and the signature of the Power of Attorney admits that the 5th respondent leased out the property in favour of the 4th respondent. Now, he has also received rent and he has also executed the Vardhamana letter. Therefore, he cannot be estopped from denying the facts against the documentary evidence.

11. Learned counsel for the petitioner submitted that the petitioner never executed Power of Attorney in favour of the 5th respondent. Actually, he got the job in U.A.E. in the month of August, 1992, and he returned back from U.A.E in the year of 1993. As the petitioner's employer demanded the Solvency Certificate of the petitioner, he requested the 5th respondent to arrange for the necessary Certificate. Utilising that opportunity, the 5th respondent had obtained his signatures in unfilled papers and got the Power of Attorney from the petitioner. The petitioner was not aware that he was actually executing the Power of Attorney in favour of the 5th respondent. He came to know about the existence of the



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Power of Attorney only in the year 2009 and taking advantage of that Power of Attorney, the 5th respondent leased out 4 acres of dry land of the petitioner to the 4th respondent, who is none other than the wife of the 5th respondent and executed a registered Lease Deed in her name as a Power Agent of the petitioner.

12. The learned counsel for the petitioner further submitted that if any Lease Deed was executed for the purpose of Agriculture it can be registered under the Tamil Nadu Agricultural Land (Records of Tenancy Rights) Act, 1969. The Statutory Authorities of respondents 1 to 3 failed to consider the same, and they also failed to appreciate the evidence and they registered the 4th respondent as an Agricultural tenant. The agreement executed by the 5th respondent in favour of the 4th respondent is not valid, and also the said Lease Deed cannot be registered as an Agricultural tenant in the above said Act.

13. The learned counsel for the petitioner placed reliance on the decision of the Hon'ble High Court of Madras reported in **1977 (III) CTC 739** in the case of ***Pichai Ammal Vs. The District Revenue Officer, Trichy and Others, 1999 (I) CTC 566*** in the case of ***Jayarama Naidu Vs.***



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Meenakshi Ammal and another and (2005) 1 MLJ 411 in the case of

M.Chinnasamy Vs. Tenancy Record Officer-cum-Tahsildar, Udumalpet and Others.

14. The learned counsel for the petitioner further submitted that the Authorities shall give full opportunity for all the parties, not only to file the petitions seeking inclusion of their name in the record of tenancy, but also to hear them properly. He further submitted that before registering the Agricultural tenancy under the Tamil Nadu Agricultural Land (Records of Tenancy Rights) Act, the petitioner and the 4th respondent (tenant) under the Act, were not served with any notice. The petitioner was the owner of the property. The Power of Attorney was not given to lease out the property and was not given for appearing before the Tahsildar for enquiry. Therefore, the impugned order of the 1st respondent is not valid, and the petitioner was also not heard and there was no serve of notice.

15. Under the above facts and circumstances, the 2nd respondent had not, on proper appreciation of evidence, dismissed the Appeal and the 3rd respondent had not re-assessed the evidence in Revision. Therefore, the impugned orders of respondents 1 to 3 are liable to be set aside.



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WEB COPY 16. Learned counsel for respondents 4 and 5 /private respondents

submitted that the petitioner has not denied the signatures in the Power of Attorney and they are also not denying the Power of Attorney. Therefore, as a Power Agent, he leased out the property to the 4th respondent. The 4th respondent is an Agriculturist who is a tenant in the petitioner's land. Now, the petitioner cannot deny the above facts, and the petitioner had also accepted the tenant and also executed the Vardhamana letter. He has also received the rent from the 5th respondent. The Power of Attorney was not challenged before the Court of law in the manner known to law, as he cancelled the Power of Attorney. Only after execution of the Lease Deed in favour of the 4th respondent, the 5th respondent leased out 4 acres of land of the petitioner to the 4th respondent in the year of 1999, and he registered a Lease Deed in her name as a Power Agent. The petitioner also knew the same and he executed the Vardhamana letter, whereas, the petitioner himself stated that he cancelled the Power of Attorney only in the year 2009.

17. The learned counsel for the respondents 4 and 5 further submitted that the petitioner had cancelled the Power of Attorney, dated



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19.08.1992, by Deed of Cancellation, dated 21.08.2000. After execution of the sale deed, dated 14.10.1999 in favour of the 4th respondent in respect of his land in Odaikulam Village through the 5th respondent as his Power of Attorney, the petitioner received the entire sale consideration from the 5th respondent, as he is also knowledge about the Lease Deed executed by the 5th respondent in favour of the 4th respondent, and all the facts were also admitted in the Vardhamana letter dated 27.12.2006. Now the tenant's period is also over. The writ petition has no merits and prayed for dismissal of the same.

18. Heard the learned counsel for the petitioner and the learned counsel for respondents 4 and 5 / private respondents. This Court also heard the learned Additional Government Pleader appearing for the respondents 1 to 3 on the above aspects and perused the materials placed on record.

19. On a perusal of the records, it is seen that the petitioner is the brother of the 5th respondent. They had family properties. After execution of the Partition Deed, the 5th respondent enjoyed the disputed property as Power of Attorney. The petitioner has denied the proceedings regarding



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the execution of the Power of Attorney. Admittedly, it was cancelled only in the year 2009. The registered Lease Deed executed by the 5th respondent in favour of the 4th respondent was earlier to the cancellation of Power of Attorney, and if at all the Power of Attorney is not acted upon, other than the purpose the petitioner has to challenge the Power of Attorney and the transactions of the petitioner in a manner known to law before the appropriate forum. Now, the petitioner has filed the present writ petition challenging the order passed by the respondents 1 to 3 and the other ground now raised is as to whether the tenant/4th respondent is entitled to register as an Agricultural tenant or not as to whether the 3rd respondent has cleared the same and also recorded the same, and that the petitioner is the owner of the property and executed Power of Attorney in favour of the 5th respondent. The 5th respondent is the Power Agent who leased out the property in favour of the 4th respondent for and on behalf of the petitioner. The 4th respondent is an Agriculturist. She entered into Lease Deed and was registered as an Agricultural tenant. There is no doubt that a person who is cultivating the land, can be registered as an Agricultural tenant under the Tamil Nadu Agricultural Land (Records of Tenancy Rights) Act, 1969. Respondents 4 and 5 have clearly stated in their counter affidavit and there is also evidence that the 4th respondent/wife of the 5th



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respondents 1 to 3, there is no perversity. If the petitioner challenges the other aspects of existence of genuineness of the document, he has to work out the remedy in a manner known to law. Now the tenancy period is over and the petitioner has already cancelled the Power of Attorney as to the owner of the property, he shall work out his remedy in the manner known to law to evict the tenant.

20. Under the above facts and circumstances, this Court does not find any merit in this writ. The decisions referred to by the learned counsel for the petitioner do not apply to the facts and circumstances of this case as the facts in both the cases are distinguishable and hence, they are not applicable to the present case on hand.

21. Accordingly, this writ petition stands dismissed as devoid of merits. However, the petitioner is at liberty to workout his remedy in the manner known to law. There shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

01.12.2023

cda

Index : Yes/No



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Speaking/Non-speaking order

Neutral Citation : Yes/No

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To

- 1.The Additional District Magistrate-cum-District Revenue Officer,
Coimbatore - 641 018.
- 2.The Special Deputy Collector (Revenue),
Coimbatore.
Having office at Trichy.
- 3.The Tahsildar & Tenancy Record Officer,
Pollachi - 642 001.



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P.VELMURUGAN, J.,

cda

**Order in
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Order pronounced on 01.12.2023