



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 26.09.2024

CORAM

THE HONOURABLE MR. JUSTICE S.S.SUNDAR

AND

THE HONOURABLE MS. JUSTICE R.N.MANJULA

REV.APLC.No.127/2022

S.Jayalakshmi

..

Appellant

Verus

1.Arulmigu Vengeeswarar Alagar
Perumal and Nagathamman Devasthanam
represented by its Trustee
Vadapalani, Chennai 600 026.

2.The Assistant Commissioner/Executive
Officer, Arulmigu Vengeeswarar Alagar
Perumal and Nagathamman Devasthanam
Office at Arulmigu Vadapalani Andavar
Temple, Vadapalani, Chennai 600026.

..

Respondents

****R2 suo motu impleaded vide order dated 10.02.2021.**

Prayer:- Original Side Appeal filed under Section 14 read with Order 47 Rule 1 of CPC to review the order dated 16.07.2021 in OSA.No.293/2019, recall the same and thereby to set aside the order in Application No.5053/2018 in CS.No.77/2016.



WEB COPY



For Appellant : Mr.K.V.Babu

ORDER

[Order of the Court was made by S.S.SUNDAR, J.,]

(1) This review application is filed to review the order dated 16.07.2021 made in OSA.No.293/2019 and to set aside the order in A.No.5053/2018 in CS.No.77/2016.

(2) The review petitioner filed a suit in CS.No.77/2016 with the following prayers:-

[1] To set aside the decree obtained in OS.No.137/1995 dated 27.10.1998 on the file of the V Assistant City Civil Court, Chennai by the defendant in respect of the suit property for the reason it was obtained by committing fraud upon Court ;

[2] To declare the plaintiff as the absolute owner of the plaint schedule property on the basis of the "Mannaivari Thoraiya Patta" issued in Form IV by the Special Tahsildhar, Mambalam Guindy Taluk, Chennai 600 078 in respect of the suit property in favour of the plaintiff ;

[3] For permanent injunction restraining the



WEB COPY



defendant or his agent or his henchmen or anybody claiming under him, from interfering with the peaceful possession and enjoyment of the plaint schedule property by the plaintiff ; and

[d]to award the cost of the suit.

(3)The respondents who are defendants in the suit, filed an application in A.No.5053/2018 in CS.No.77/2016 to reject the plaint under Order 7 Rule 11 of CPC on the ground that there is no cause of action to file the suit and the suit is barred by *res judicata*. Originally, the subject matter of the suit, namely, the property comprised in T.s.No.22/1 [Old s.No.37/7], bearing Door No.71, Eswaran Koil rear side, Vadapalani, Kodambakkam Village, admeasuring to an extent of 3700 sq.ft., with some more extent, was leased out by Vengeeswarar Devasthanam to one Mr.M.Krishnasamy Mudaliar by a registered document of lease dated 11.02.1955. There is no dispute that under this document, only a vacant land was leased out. Later, the petitioner herein purchased the leasehold right from Mr.M.Krishnasamy by a document dated 21.11.1988 admitting the title of Vengeeswarar Devasthanam. It was thereafter, the 1st respondent herein issued a notice dated 01.06.1994 to the review petitioner terminating the lease. Thereafter, the 1st respondent filed a suit in OS.No.137/1995 on the file of V Assistant Judge, City Civil Court, Chennai, for ejectment from the demised



WEB COPY

premises. An ex parte decree for eviction was passed on 27.10.1998.

Thereafter, an execution petition in EP.No.787/2005 was also filed by the 1st respondent. The petitioner filed a petition to set aside the ex parte decree along with an application in IA.No.14959/2005 under Section 5 of the Limitation Act to condone the delay of 2370 days in filing a petition to set aside the ex parte decree in OS.No.137/1995. The Trial Court dismissed the said application giving valid reasons. Thereafter, the petitioner preferred a revision in CRP.No.1731/2006 challenging the order dismissing the application filed by the petitioner in IA.No.14959/2005. This Court after elaborately considering the merits of the case, found that the petitioner deserve no indulgence pointing out her conduct all along. The petitioner though filed a Special Leave Petition in SLP.No.10575/2007, the same was dismissed by Hon'ble Supreme Court vide order dated 06.09.2007.

(4) It is seen that a small extent of land measuring about 16.5 sq.m., was acquired by the State Government under Tamil Nadu State Highways Act for the purpose of extension of road. Since the respondents were claiming compensation for the land, the amount was directed to be deposited in Court in terms of the provisions of the statute. It is seen that even in the proceedings before award, the fact that property was originally leased out and the decree that was obtained by the 1st respondent against the petitioner was noted. However, the fact that



the amount is lying in Court deposit is projected to claim title.

(5) Be that as it may, the fact that the property was leased out to the petitioner's predecessors in interest by a registered Lease Deed dated 11.02.1955 is not in dispute. The fact that the 1st respondent filed a suit for eviction and obtained a decree for eviction is also admitted. However, the petitioner herein, after taking possession through the lessee, under a Sale Deed getting only leasehold right admitting the ownership of temple, started claiming title on the ground that the original classification of the land is 'natham' and she being in possession of the property, got patta under 'Natham Settlement'. It is on the basis of patta alleged to have been issued to the petitioner, she claimed title to the property. On the strength of such claim, the petitioner filed the suit in CS.NO.77/2016 to set aside the decree in OS.No.137/1995 and to declare the plaintiff as the absolute owner of the suit property and for consequential reliefs. In view of the admitted facts and the prior proceedings, respondents filed an application in IA.No.5053/2018 for rejection of plaint on the ground that there is no cause of action for filing the suit and that the suit is barred by principles of *res judicata*.

(6) The learned Single Judge of this Court, vide order dated 26.07.2018, allowed the application. It is pertinent to mention that the learned Single Judge finding that the petitioner had obtained only the leasehold right and admitted tenancy, held that mere obtaining patta subsequent to the proceedings, will not confer



WEB COPY

any title to the petitioner to claim right over the property as against the temple.

The learned Judge found that the decree which has become final even in the year 1988 cannot be reopened, even though it is an *exparte* decree.

(7) Referring to the judgment of Hon'ble Supreme Court in the case of *M/s. Sardar Estates Vs. Atma Ram Properties Private Limited [2009 [6] SCC 609]*, learned Single Judge allowed the application by recording the fact that the petitioner, who had purchased only the leasehold right and became a tenant in respect of the property under the respondents, cannot file a suit to circumvent the judgment and decree by a new plea.

(8) The order of learned Single Judge was challenged by the petitioner before this Court in a further appeal in OSA.No.293/2019 and the Division Bench also dismissed the said appeal vide judgment dated 16.07.2021. Aggrieved by the same, the present review application is filed reiterating the same contentions that was raised before the learned Judge.

(9) From the sequence of events narrated above, this Court finds that the petitioner who has purchased the leasehold right under the Sale Deed in the year 1988, is estopped from setting up title in herself in view of Section 116 of Indian Evidence Act. The petitioner has suffered a decree in OS.No.137/1995 and by virtue of the decree, the petitioner was expected to surrender possession. Even



WEB COPY

though the execution petition filed by the respondents is pending from the year 2005, for the past 26 years, the 1st respondent is unable to take possession in view of the proceedings to set aside the judgment and decree by filing an application under Section 47 of CPC. The petitioner produced before this Court, a rough patta issued by Special Tahsildar under 'Natham Settlement'. The document is in the year 2013 after the decree in the suit in OS.No.137/1995. Therefore, the fact that the petitioner is in possession of the property, is not in dispute. However, she took the property only on the basis of the Sale Deed obtained by the petitioner which is in respect of leasehold right of her vendor. The fact that the property belongs to the 1st respondent/temple had been acknowledged by the petitioner when she purchased the property and continue to be in enjoyment of the same. However, the petitioner, on the strength of her possession, probably applied for patta. The Special Tahsildar, under Natham Settlement, is not required to decide title but to grant house site patta in favour of person, who is in possession. The patta therefore, cannot be put against the landlord, whose title was acknowledged by the petitioner herself. In the instant case, but for her enjoyment of property as a lessee under the respondents, the petitioner has no right to be in possession. Even assuming that the patta granted under Natham Settlement is obtained by the petitioner and the same is not binding on the temple, the paramount title holder. Under Section



WEB COPY

116 of the Evidence Act, the petitioner is estopped from claiming title as against the temple. Taking note of all these facts, the Division Bench also held that the appeal is devoid of any merits and dismissed the same.

(10) This review application is again a vexatious litigation to protract the *lis* with mala fide intention. The conduct of the petitioner in setting up title after getting into possession of the property as a lessee is an abuse of process of law.

(11) Hence, the review application stands **dismissed with exemplary cost of Rs.25,000/- [Rupees Twenty Thousand only] payable by the petitioner to the respondents within a period of two weeks from the date of receipt of a copy of this order.**

[SSSRJ] [RNMJ]
26.09.2024

AP
Index : Yes / No
Internet : Yes / No
Neutral Citation: Yes / No

To

1. Arulmigu Vengeeswarar Alagar
Perumal and Nagathamman Devasthanam
represented by its Trustee
Vadapalani, Chennai 600 026.

2. The Assistant Commissioner/Executive
Officer, Arulmigu Vengeeswarar Alagar



Perumal and Nagathamman Devasthanam
Office at Arulmigu Vadapalani Andavar
Temple, Vadapalani, Chennai 600026.

WEB COPY



WEB COPY



S.S.SUNDAR, J.,

AND

R.N.MANJULA, J.,

AP

REV.APLC.No.127/2022

26.09.2024