



C.R.P(MD)No.1418 of 2019

WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **16.04.2024**

CORAM

THE HON'BLE MR.JUSTICE R.VIJAYAKUMAR

C.R.P(MD)No.1418 of 2019

and

C.M.P(MD)No.7546 of 2019

Annamalai

... Petitioner /Petitioner/
5th Defendant

Vs.

1.Kalimuthu

2.Kavitha

3.Kaliammal

... Respondents/Respondents 1-3/
Plaintiffs

4.Vellaisamy

5.The Tahsildar,
Taluk Offic,
Karaikudi,
Karaikudi Taluk,
Sivagangai District.

6.The Joint Commissioner,
Hindu Religious and Charitable Endowment Department,
Sivagangai,
Sivagangai District.

7.The State of Tamil Nadu,
Through its District Collector,
Collector Office,
Sivagangai District.

...Respondents/Respondents 4-7/
Defendants 1-4



C.R.P(MD)No.1418 of 2019

PRAYER: Civil Revision Petition is filed under Article 227 of Constitution of India, to call for the records of the learned Principal District Munsif-cum-Judicial Magistrate, Karaikudi made in I.A.No.229 of 2018 in OS No.22 of 2017 and set aside the Fair and Decreetal Order, dated 17.07.2019.

For Petitioner	: Mr.R.Balakrishnan
For R1 - R3	: Mr.C.Godwin
For R4	: No Appearance
For R5 & R7	: Mr.C.Satheesh Government Advocate
For R6	: Mr.P.Subbaraj Special Government Pleader

ORDER

The 5th defendant in O.S.No.22 of 2017 is the revision petitioner herein.

2. The said suit was filed by the respondents 1 to 3 herein as plaintiffs for the relief of declaration of title and permanent injunction. Pending suit, the 5th defendant had filed I.A.No.229 of 2018 under Order 7 Rule 11 of Code of Civil Procedure to reject the plaint. The said application has been dismissed by the trial Court on 17.07.2019. Challenging the said order, the present revision petition has been filed.

3. A perusal of the plaint indicates that the suit has been filed for declaration of title over 'A' schedule property and permanent injunction



C.R.P(MD)No.1418 of 2019

in favour of the 1st plaintiff. It is further prayed for declaration of title of 'B' schedule property and for permanent injunction in favour of the 2nd defendant. It has been further prayed for declaration of title with regard to 'C' schedule property and permanent injunction in favour of the 3rd defendant. It could be seen from the plaint that Tahsildar has been impleaded as the 2nd defendant, Joint Commissioner (HR & CE) Department, Sivagangai has been impleaded as the 3rd defendant and the Government of Tamil Nadu, represented by the District Collector, Sivagangai has been impleaded as the 4th defendant.

4. The 5th defendant had filed I.A.No.229 of 2018 under Order 7 Rule 11 of Code of Civil Procedure on the ground that the revenue authorities have already initiated proceedings under the Land Encroachment Act and notice under Section 7 of the said Act has been issued. Therefore, the present suit is barred under Section 14 of the said Act. On the sole ground that the said application was filed.

5. The plaintiffs have filed a counter contending that the property has been classified as Natham property and patta has been issued by Tahsildar in Patta No.293 in the name of their father to new R.S.No. 271/3 in old Survey No.271/2 to an extent of 0.0242 Hectares on



C.R.P(MD)No.1418 of 2019

05.10.1989. They have further contended that since the property is a Natham property and patta has already been granted and the defendants are disputing the title of the plaintiffs, they are constrained to file the present suit. They have further contended that the proceedings initiated under the Land Encroachment Act is not a bar for filing a suit for declaration of title.

6. The trial Court after considering the submissions made on either side, has arrived at a finding that the plaint has to be read as a whole and if the plaint discloses a cause of action, the plaint cannot be rejected. The trial Court has also relied upon the judgment of this Court to the effect that Grama Natham does not belong to the Government. The trial Court had further found that in view of the judgment of this Court, the notice issued under the Land Encroachment Act will not affect the title or the maintainability of the said suit. Based upon the said findings, the application under Order 7 Rule 11 of Code of Civil Procedure has been dismissed. Challenging the same, the present revision petition has been filed.

7. According to the learned counsel appearing for the revision petitioner, already proceedings have been initiated under Section 78 of



C.R.P(MD)No.1418 of 2019

the Hindu Religious and Charitable Endowment Act as against the present plaintiffs. Therefore, the present suit is barred. He had further contended that when the proceedings have already been initiated also under the Land Encroachment Act, Section 14 of the said Act would be a bar.

8. Per contra, the learned counsel appearing for the respondent contended that Section 14 would be a bar only if the noticee challenges any one of the actions initiated by the revenue officials. That would not be a bar for filing a suit for declaration of title. Hence, he prayed for dismissal of the revision petition.

9. I have carefully considered the submissions made on either side.

10. The sole ground on which an application under Order 7 Rule 11 of Code of Civil Procedure Code has been filed is that the suit is barred under Section 14 of the Land Encroachment Act. A perusal of the said Section clearly reveals that the bar applies only to the challenge made to an order or proceedings taken by any officer or authority or the State Government under the said Act. Therefore, it is clear that whenever a suit is filed for declaration of title, bar under Section 14 of the Act is



C.R.P(MD)No.1418 of 2019

not attracted. That apart, in the present suit, the Joint Commissioner of Hindu Religious and Charitable Endowment Department is also a party.

Therefore, if already proceedings have been initiated under Section 78 of the Hindu Religious and Charitable Endowment Act, it is for them to proceed in accordance with law. Therefore, at the time of considering an application under Order 7 Rule 11 of Code of Civil Procedure, the averments in the plaint and the documents annexed to the plaint alone can be considered. The trial Court has rightly considered the averments and found that there is a cause of action and the suit is not barred by any law. There is no illegality or infirmity in the order passed by the trial Court. The said order does not warrant any interference at the hands of this Court. It is for the revision petitioner to work out his remedy in a manner known to law.

11. With the above said observations, this Civil Revision Petition stands dismissed. No costs. Consequently, connected Civil Miscellaneous Petition is closed.

16.04.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes
gbg



C.R.P(MD)No.1418 of 2019

To

WEB COPY

- 1.The Principal District Munsif
cum Judicial Magistrate,
Karaikudi.
- 2.The Record Keeper,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



WEB COPY



C.R.P(MD)No.1418 of 2019

R.VIJAYAKUMAR ,J.

gbg

Order made in
C.R.P(MD)No.1418 of 2019

16.04.2024