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Court : Chennai

Decided On : Dec-02-2011

Judge : V. Dhanapalan, J.

Acts : Constitution of India - Article 226

Appeal No. : Writ Petition No: 19206 of 2011

Appellant : Minor Adithya

Respondent : The Special District Revenue Officer and ors.

Advocate for Def. : Mr. Digvijayapandian, Adv.

Advocate for Pet/Ap. : Mr. K.C. Vinoth, Adv.

Judgement :

1. Heard Mr. K.C. Vinoth for M/s. L. Chandra Kumar, learned counsel appearing for the petitioner; Mr. Digvijayapandian, learned Additional Government Pleader and Mr. S. Thangavel, learned counsel appearing for the 3rd respondent. The 2nd respondent is the father of the petitioner and he is only a formal party and hence, no hearing is required in respect of the 2nd respondent.

2. The petitioner has come before this Court for a direction to direct the 1st respondent to pass orders on the representation dated 25.07.2011 seeking apportionment of compensation to the extent of petitioner's right in the said

ancestral property mentioned therein within a time frame to be fixed by this Court.

3. The grievance of the petitioner appears to be that he is the minor son born to Venkatachalapathy and Sumithra Devi on 25.02.1997 as some misunderstanding arose between the parents consequent upon the birth of the petitioner and even prior to that, they have been living separately. Therefore, he filed this writ petition for a direction seeking apportionment of the share to the eligible extent of the property of his grand father Rangasamy Gounder who died intestate pursuant to the award arising out of land acquisition proceedings, in view of the fact that the petitioner's father's attitude being improper and irregular thereby resulting in the said property being snatched away illegally, denying the statutory rights conferred upon the petitioner. There were certain claim of rights which were pleaded and in such circumstances, the petitioner has made a representation on 25.07.2011 addressed to the 1st respondent and sought to restrain the authority from disbursing the compensation though not in its entirety atleast to the extent to which the petitioner would be entitled to despite receipt of the said representation the authorities are taking effective steps to disburse denying and depriving the petitioner's accrued rights derived from the ancestral nucleus and, therefore, having no other remedy, petitioner is before this Court invoking its jurisdiction under Article 226 of the Constitution of India. Petitioner has also pleaded that he had approached the Civil forum in O.S. No: 426 of 2011 on the file of the Subordiante Judge of Tiruppur for a decree of division and partition of the properties in to six equal shares by metes and bounds and also for a permanent injunction. In the said suit in I.A. No: 897 of 2011 an interim injunction has been granted restraining the second respondent herein and the other legal heirs viz. Tmt. Vijayakumari and Sridevi (D.1 and D.2), the other sisters of the 2nd respondent in any manner encumbering or creating any charge on the suit properties apart from taking steps to implead the first respondent herein as party respondent in the said suit. However, in view of the first respondent hastening to process the disbursal of the award amount which is said to have been obtained behind the back of the petitioner and his mother, the petitioner is before this Court.

4. The impleaded 3rd respondent has filed a petition seeking to vacate the interim order granted by this Court and it is stated therein that the property in question in

Survey No: 100/3, measuring an extent of 1.70 acres and S.F. No: 101 measuring an extent of 2.57 acres was originally belonged to one Kumarasamy Gounder, who had three sons, by name Rangasamy Gounder, Narayana Gounder and Palani Gounder, and two daughters. While the first two sons died unmarried, the third son Palani Gounder died leaving his wife Pachaiammal, who became the absolute owner of the said property, as their only son died unmarried at the age of 16. The said Pachaiammal sold the said properties to one Subbanna Gounder and Vaiyapuri Gounder under a registered sale deed dated 29.04.1946 for the purpose of discharging the earlier mortgage of the year 1918 and also for effecting repairs in the house. The said purchasers discharged the mortgage and later sold the property to one Karuppa Gounder under a sale deed dated 31.07.1948, registered as Document No: 1303 of 1948 in the Office of the Sub Registrar, Sulur, Coimbatore. The said Karuppa Gounder was in uninterrupted possession and enjoyment of the said properties till his death.

5. While so, one G. Rangaswamy, the grandfather of the petitioner in the writ petition, claimed right and title over the said properties under a Court auction sale. During his life time, Karuppa Gounder filed a suit in O.S. No: 29 of 1985 on the file of the District Munsif Court, Tirupur, against the said G. Rangasamy and another praying for declaration of his title to the suit properties viz. S.F. No: 100/3, measuring an extent of 1.70 acres and S.F. No: 101 measuring an extent of 2.57 acres and for a consequential permanent injunction restraining the defendants from interfering with his possession and enjoyment of the said properties. It is submitted that by judgment and decree dated 22.03.1993 the said suit was dismissed. As against the said judgment and decree, Karuppa Gounder filed an appeal in A.S. No: 26 of 1993 on the file of the Sub Court, Tiruppur. During the pendency of the appeal, the said G. Rangasamy died and his legal representatives, including the father of the petitioner Mr.Venkatachalapathy, were brought on record as respondents 3 to 8 in the said appeal. The appeal was allowed on 10.11.1993 and the suit was decreed as prayed for, declaring the title of Karuppa Gounder over the suit properties and granting consequential permanent injunction in his favour. The second appeal filed by S.M. Kandasamy and others was dismissed on 15.07.1994. The Special Leave Petition filed by the father of the writ petitioner and others in S.L.P. No: 1519 of 1995 before the

Hon'ble Supreme Court was also dismissed on 31.07.1995. Therefore, the claim of right and title over the said properties by G. Rangasamy, the grandfather of the writ petitioner in the said proceedings, was rejected and the father of the writ petitioner Venkatesh @ Venkatachalapathy was also a party of the said proceedings and is bound by the said judgment and decree dated 10.11.1993 made in A.S. No: 26 of 1993. After the dismissal of the Special Leave Petition as referred above, the father of the writ petitioner did not take any steps in the matter and left it as such.

6. This impleaded respondent purchased the property comprised in S.F. No: 100/3, measuring an extent of 1.70 acres and S.F. No: 101 measuring an extent of 1.09 acres out of the total extent of 2.57 acres from the said Karuppa Gounder and his son Shanmugam under a sale deed dated 09.12.1993, registered as Document No: 976 of 1996 in the Office of the Sub Registrar, Sulur, for a valid consideration. Ever since the date of purchase, he is in possession and enjoyment of the said properties as an absolute owner thereof.

7. While so, by suppressing the true facts the writ petitioner, who is a minor represented by his mother, filed a collusive suit in O.S. No: 426 of 2011 on the file of Sub Court, Tirupur, against his father and two of his father's sisters praying for partition of the suit properties, which includes S.F. No: 100/3 measuring an extent of 1.70 acres and S.F. No: 101 measuring an extent of 2.57 acres as well and for a permanent injunction restraining the defendants from in any way encumbering or alienating the suit properties till the division and allotment of his share of the said properties to him and for other reliefs. The writ petitioner herein deliberately did not implead this respondent and Shanmugam, son of Karuppa Gounder as parties to the said proceedings and they filed an application to implead them in the said suit as parties and that application is pending disposal.

8. In these circumstances, the Special District Revenue Officer (Land Acquisition) N.H. 46 and 47, the 1st respondent in the writ petition, has acquired a portion of his property comprised in Survey Nos: 100/3 and 101 measuring an extent of 1105 sq. mts. And 672 sq. mts. totalling an extent of 1777 sq. mts. for the purpose of formation and widening four / six laning of roads on N.H. No: 47 in Coimbatore

District. The compensation for the said acquisition is yet to be received from the competent authority namely the 2nd respondent and an objection was raised before the 2nd respondent by the mother of the writ petitioner in respect of the other properties belonging to the above Shanmugam on the very same grounds, which was overruled by the 2nd respondent and compensation amount was ordered to be paid to the said Shanmugam and the petitioner has now come before this Court seeking a direction to the 1st respondent in the writ petition to pass orders on the representation dated 25.07.2011 seeking apportionment of the land acquisition compensation to the extent of the writ petitioner's right in the said ancestral property and for other reliefs. It is admitted by the impleaded respondent that even though the writ petitioner has no right or title over the property, he has obtained an order of injunction on 07.09.2011 in M.P. No: 1 of 2011, restraining the 2nd respondent from in any way disbursing the award amount to any person or to the impleaded 3rd respondent. By virtue of the registered sale deed dated 09.12.1993, having purchased the property from the lawful owner, this respondent is an appropriate and necessary party to the proceedings and, therefore, he has to be heard in the writ petition and the interim order granted by this Court has to be vacated.

9. On the aforesaid pleadings, I have heard the learned counsel for the parties and perused the material documents annexed in the typed set of papers.

10. Admittedly, the writ petition is only for a limited relief to direct the 1st respondent / competent authority to consider the representation of the petitioner and pass appropriate orders thereon.

11. Though this writ petition is filed for a limited direction, now the pleadings and documents filed in support of the case would reveal that the claim of the writ petitioner and the rival claim of the 3rd respondent and parties are already decided by the competent Civil Court, this Court as well as the Supreme Court. Now it appears that the petitioner, through his mother, has moved the Civil Court namely the Subordinate Court, Tirupur, by filing a Civil Suit in O.S. No: 426 of 2011 along with I.A. No: 897 of 2011 and the suit is pending on the file of the District Munsif, Tirupur, wherein an order of injunction has been granted and the 1st respondent in

this writ petition was not a party to the Civil Court proceedings and therefore, there is no impediment for him to consider the representation of the petitioner. Taking into account the various proceedings and after hearing the learned counsel appearing for the parties, this Court is of the view that the 1st respondent herein is the competent authority to consider the representation of the petitioner and pass orders thereon. Accordingly, the 1st respondent is hereby directed to consider petitioner's representation dated 25.07.2011 by issuing notice to the concerned parties, hear them in person and then pass appropriate orders, in accordance with law, within a period of six weeks from the date of receipt of a copy of this order. The writ petition stands disposed of accordingly. Consequently, connected miscellaneous petitions are closed. There shall be no orders as to the costs.

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