

IN THE COURT OF THE ADDITIONAL DISTRICT MUNSIF, POLLACHI

PRESENT: THIRU.N.BHARATHIRAJAN, B.A., B.L.,

ADDITIONAL DISTRICT MUNSIF, POLLACHI.

WEDNESDAY THE 18th DAY OF OCTOBER 2023

I.A.No.1669/2017 in I.A.No. 03/2022 in O.S.No.40/2017

1) K.V.Varadharaj

2) V.Jagadeeswari

3) V.Sujakar

4) M.Vimala Ganesh ... Petitioners/Defendants 2,5 to 7

/Vs/

1) M.Gopalsamy

2) D.Senthilkumar ... Respondents / Plaintiffs

This petition coming on 09.10.2023 for final hearing before me in the presence of Thiru.K.P.Shanmugam, Advocate for the Petitioners and of Thiru.M.S.Gnanajanarthan, Advocate for the Respondents and on hearing both sides, upon perusing the case records and having stood over for consideration till this day, this court delivered the following:

ORDER

This petition has been filed under section 12(2) of court fees act r/w section 151 of cpc to frame an issue as to whether the suit is properly valued and court fee is correct and to decide the same as preliminary issue before going into the merit of the case and to pass such other and further reliefs.

2) The petitioners are the Defendants 2 and 5 to 7 in the suit. The suit has been filed to declare that the suit B schedule properties are absolute properties of the 1st defendant firm and for a consequential permanent injunction restraining the defendants from alienating or encumbering the suit B schedule properties.

The B Schedule properties are the absolute property of the petitioners/respondents 2, 5 to 7 and not the absolute property of the 1st defendant firm as alleged by the respondents/plaintiffs. The B schedule properties are a portion of properties situated within the campus of M/s. Kwaliti spinning mills private limited. Before and after the purchase the Suit B Schedule property, there was a mill building in it. The B schedule properties are not agricultural lands. The suit property has been valued based on its kist value. As per two sale deeds dated 06.02.2014 the value of B schedule property is Rs.2,03,61,251/-. The suit has been laid for declaration and consequential permanent injunction in respect of suit B schedule properties. Therefore, the respondents/plaintiffs ought to have given the market value of the B schedule property and court fee to be paid according to its market value. But the plaintiff undervalued the suit properties and has paid less court fee. The petitioners have raised their objections in their written statement regarding the undervalue of the suit property. Therefore, preliminary issue to be framed as to whether the suit is properly valued and the court fee paid is correct. Hence, this petition.

3) On the other hand, the respondents in their counter, contended that the suit B schedule properties are absolute property of the 1st defendant firm. The suit B schedule properties are not situated in the campus of M/s. Kwaliti spinning mills private limited. As per revenue records, the suit B schedule properties are agricultural lands. The valuation given in the plaint for the suit properties and court fee paid is correct. Therefore the petition is liable to be dismissed.

4) To buttress their arguments the petitioners cited the following precedents.

- 1) 2019 (2) MWN (Civil) 118
- 2) 2018 (3) MWN (Civil) 282
- 3) (2009) 1 MLJ 549

5) To substantiate their arguments, the respondents cited the following precedents.

- 1) (1961) 3 SCR 1015: AIR 1961 SC 1299
- 2) 2010-1-L.W.158
- 3) 1999 3 MLJ 433
- 4) (2019) 3 MWN (Civil) 249
- 5) (1972) 2 Supreme Court Cases 133
- 6) 1999 (III) CTC 88

6) On the Petitioners side **Ex.P1** to **Ex.P4** marked and on the Respondent side **Ex.R1** to **Ex.R17** marked. Further, on the respondent side Solapalayam VAO has been examined as Rw1 and Ex.C3 marked. The Advocate commissioner report and plan are marked as Ex.C1 and C2.

7) POINTS FOR CONSIDERATION:

1. Whether the petition is to be allowed or not ?

8) DISCUSSION AND DECISION :

Arguments advanced by both sides have been heard and material records have been perused. The suit has been filed to declare that the suit B schedule properties are the absolute properties of the 1st defendant firm and for a consequential permanent injunction restraining the defendants from alienating or encumbering the suit B schedule properties. The case of the plaintiffs is that the plaintiffs and the defendants 2 to 11 are partners of the 1st defendant firm. The 1st defendant firm is carrying on money lending business along with its other business activities. One company viz., M/s.Kwality spinning mills private limited approached the 1st defendant firm for financial assistance. M/s.Kwality spinning mills private limited had borrowed Rs.2,50,00000/- from the 1st defendant firm and for that, on behalf of the 1st defendant firm had executed a simple mortgage deed in respect of the suit A schedule property. The spinning mill did not pay the loan amount as agreed. Therefore, the spinning mill in order to discharge its loan had come forward to execute a sale deed in respect of portion of suit A schedule property. The

2nd defendant, being the managing director of the 1st defendant firm, has fraudulently colluded with the 5 to 7 defendants and purchased the property in their name without purchasing the property in the name of the 1st defendant firm. Therefore, the Respondents / Plaintiffs have filed the above suit.

9) In the suit the petitioners/defendants 1, 2, 5 to 7 and 12th defendant have filed their written statements. The petitioners in their written statement inter alia contended that the suit B schedule properties are not agricultural lands, even under the two sale deeds in respect of suit properties, the market value for the same was Rs.2,03,61,251/-. Therefore, the market value based on the kist shown in the plaint and court fee paid according to it not correct. In continuation of their contention the petitioners have come up with this application to decide the value of the suit property as preliminary issue.

10) On the other hand, the respondents/plaintiffs contended that as per the revenue records, the suit properties are agricultural lands and therefore, they have paid the court fee by giving the market value of the suit property based on its kist value.

11) Earlier, this court vide its order dated 07.07.2018 has dismissed this petition and against which the petitioners had preferred civil revision petition before the Hon'ble High Court Madras in CRP No.3560/2018. The Hon'ble High court of Madras was pleased to dispose the above civil revision petition by remanding this petition to this court with directions that both parties let in oral and documentary evidence to show the value of the suit property and also with liberty to the parties to file necessary application for appointment of advocate commissioner. Accordingly, an advocate commissioner has been appointed and he has also filed his report and plan. Further, this court gave ample opportunity to both parties to let in oral and documentary evidence. On the respondents side, Solapalayam VAO has been examined as Rw1.

12) Having regard to the dictum and legal principles laid down by the Hon'ble Apex Courts in the judgment referred to on both sides, this Court proceeds to decide the issue in this petition. On the petitioners side, certificate given by RDO, Pollachi is marked as Ex.P1. On perusal of the same, though the RDO has certified that the suit B Schedule properties are not in agricultural use, he has not certified that the said properties have been re-classified or that the properties are being used for other commercial purposes or have been divided into house sites. On the other hand, the Tahsildar, Pollachi has issued a certificate dated 24.04.2018 (Ex.R17) by certifying that the suit B schedule properties are agricultural barren lands and no building thereon. Here the certificate issued by the Pollachi Tahsildar (Ex.R17) assumes more significance as he certifies the nature of the suit B schedule properties and its existence when the issue arose.

13) At this juncture, it is pertinent to rely the oral evidence given by the Solapalayam Village Administrative Officer/Rw1 which is as follows:-

" **சோலபாளையம் கிராமம் க.ச.எண்.24/2A மற்றும் 25/1A தொடர்பான வருவாய் ஆவணங்களை சமர்ப்பிக்க கோரி வட்டாட்சியர் பிறப்பித்த உத்தரவின் பேரில் மேற்கண்ட இரண்டு க.ச.எண்களுக்கான 1422 முதல் 1431 வரையிலான பசலி ஆண்டுகளுக்கான அடங்கல் பதிவேட்டின் சான்றிட்ட நகலை கொண்டு வந்துள்ளேன். அந்த அடங்கல் பதிவேட்டின் சான்றிட்ட நகல் எ.மா.சா.ஆ.1 ஆகும். (10 எண்ணிக்கைகள்).**

மேற்கண்ட காலை எண்களுக்கான கை சிட்டா சான்றிட்ட நகல் எ.மா.சா.ஆ.2 ஆகும். மேற்கண்ட காலை எண்களுக்கான புலவரைபடங்கள் எ.மா.சா.ஆ.3 ஆகும். (2 எண்ணிக்கைகள்) .

க.ச.எண் 24/2A மற்றும் க.ச.25/1A ஆகிய காலைகள் 1424ம் ஆண்டு பசலி படி 28.01.2015 அன்று உட்பிரிவு செய்யப்பட்டுள்ளது. மேற்கண்ட

உட்பிரிவுகள் குவாலிட்டி ஸ்பின்னிங்மில் பிரைவேட் லிமிடெட் வகையறா பேர்களில் கூட்டுப்பட்டாவாக உள்ளது. மேற்படி காலகளுக்கான கணினி சிட்டா எ.மா.சா.ஆ.4 ஆகும். கணினி சிட்டாவில் 29.01.2015 அன்று மேற்கண்ட உட்பிரிவுகள் செய்யப்பட்டதாக குறிப்பு உள்ளது. கணினி சிட்டாவில் உட்பிரிவு செய்யப்பட்ட தேதி தான் மாறியுள்ளது. Ref.No. கணினி சிட்டாவிலும், 1424 ம் ஆண்டு பசலி அடங்கல் பதிவேட்டிலும் ஒன்றாக உள்ளது.

1984 முதல் 1987 வரையிலான நிலஉடமை மேம்பாட்டு திட்ட பதிவேட்டின்படி மேற்கண்ட காலகள் 24/2A மற்றும் 25/1A ல் கண்ட நிலங்கள் ரயத்து புஞ்சை நிலவகைப்பாடாக உள்ளது. நீ.மா.சா.ஆ.5 கணினி சிட்டாவிலும் புஞ்சை என்று குறிப்பிடப்பட்டுள்ளது.

1431 பசலி ஆண்டில் இருந்து மேற்கண்ட க.சஎண்கள் 24/2A மற்றும் 25/1A ல் கண்ட நிலங்கள் தரிசு என்று எழுதப்பட்டுள்ளது. நிலத்தீர்வை புஞ்சை நிலத்திற்கும் மற்ற நிலங்களுக்கும் மாறுபடுமா என்று எனக்கு தெரியாது.

நிலம் விவசாய பயன்பாட்டில் உள்ளதா இல்லையா என்று தான் என்னால் சொல்ல முடியும். வேறு நிலத்துடைய வகைப்பாட்டை பற்றி என்னால் சொல்ல இயலாது. மேற்கண்ட காலகளை புலத்தணிக்கை செய்துள்ளேனா என்றால் செய்துள்ளேன். நான் புலத்தணிக்கை செய்தபோது அங்கு கட்டிடம் இல்லை. "

14) From the above evidence it is come to know that after purchase of B Schedule properties in S.F.Nos.25 and 24/2 they are sub-divided into separate S.F.Nos. 25/2A and 24/1A. Further the above subdivision has been incorporated in the adangal register of the Fasli year 1424 i.e., the Fasli year 2014 but there is no corresponding entry in the adangal register (Ex.R1) regarding the classification of the subdivided suit B schedule properties. Prior to the subdivision, Suite B Schedule properties were entered as the mill building in the adangal register for the Fasli

years 1422 to 1428. Thereafter in the adangal register for the Fasli year 1431 i.e., for the fasli year 2021, the suit B schedule property has been referred to as other barren lands (இதர தரிசு நிலங்கள்). Further the Rw1 has very categorically stated in his evidence that as per entries in the updated land register (UDR) the suit B schedule properties are classified as ryotwari punja land. Though the VAO/Rw1 stated in his evidence that when his inspection there is no building in the suit property but he has been inspected the suit property only after receiving the summon in this petition.

15) It is stated in the plaint that after the suit property was purchased, the existing building was demolished. Further the advocate commissioner also stated in his report that only debris of the building were laydown in the suit property. Further the advocate commissioner has stated in his report that the suit B schedule property has been separated from the mill building by fencing on the four sides and there are nine coconut trees and other trees are in the suit properties. Further, the advocate commissioner stated in his report that there were no signs of agricultural activities being carried out on the suit properties. However, a perusal of the Court Commissioner's report in its entirety reveals that it does not state that the Schedule B property is divided into house sites or used for any other commercial purpose. Therefore, it appears that the suit B schedule properties were barren lands on the date of filing of the suit.

16) On perusal of the precedents referred by both the parties, it appears that the Hon'ble Apex Courts have laid down the rule of law that when lands are registered as agricultural lands in the revenue records, it cannot be said that the lands have ceased to be agricultural lands merely because they have been left vacant. The respondents have produced the patta for the suit properties (Ex.R4 and Ex.R16) Which shows that as on date of filing of suit the B schedule properties are classified as nanja lands. Further the document regarding the guideline value of suit

B schedule properties (Ex.P2 and Ex.P3) produced by the petitioners side does not bear the date on which it was issued. As per the dictum of the Hon'ble Apex Courts, while Suite B Schedule properties are classified as Nanja lands in the Revenue Records, Suite B Schedule properties are classified as Residential area in the Guideline Value (EX.P1 and P3) does not get any significance. Further, the revenue records will prevail over the guideline value. That apart, in the description of property given in the two sale deeds (Ex.R14 and Ex.R15) the suit properties have been mentioned as nanja lands.

17) Therefore, from considering the facts and circumstances of the case, oral and documentary evidence this court come to a conclusion that at the time of filing the suit the properties are ryotwari lands and as such the market value of the suit property based on the kist levied according to section 7 2A of Tamilnadu court fees and suit valuation act and court fee paid in the plaint is correct.

RESULT:

In the result, this petition is dismissed. No costs.

Dictated to the Steno-Typist, typed by her, corrected and Pronounced by me in the open court on this the 18th day of October 2023.

Sd/- (N.Bharathirajan)
Additional District Munsif,
Pollachi.

List of witness for Petitioner side: - Nil -

List of documents for Petitioner side:

Ex.P1	02.12.2021	Original certificate issued by the Thasildhar, Pollachi.
Ex.P2		Copy of the guideline value related to S.F.No.24/2A, Solapalayam Village, Pollachi Taluk.

Ex.R12	-	Xerox copy of the plaint in O.S.36/11.
Ex.R13	07.12.2011	Certified copy of the Memorandum of Settlement filed in O.S.36/11.
Ex.R14	06.02.2014	Certified Registration copy of the sale deed executed with respect to suit 'B' schedule property.
Ex.R15	06.02.2014	Certified Registration copy of the sale deed executed with respect to suit 'B' scheduled property.
Ex.R16	02.02.2017	computerized Patta No.53 issued in the names of D2, D5, D6 and D12.
Ex.R17	24.04.2018	Certificate issued by the Tahsildar of Pollachi to the effect that the suit property 'B' schedule does not possess any building, but only kept as barren agricultural land.

List of documents for Court side:

Ex.C1 & C2		Commissioner report and plan
Ex.C3		Authorisation letter given by the Tahsildar, Pollachi to give evidence

Sd/- (N.Bharathirajan)
Additional District Munsif,
Pollachi.

Fair Order
IA No.03/2022
in
O.S.No.40/2017
Date : 18.10.2023
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