



W.P.(MD) No.11768 of 2020

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 13.06.2023

CORAM:

THE HONOURABLE MS.JUSTICE P.T.ASHA

W.P.(MD) No.11768 of 2020

1.A.Gunaseeliya Mary

2.A.Vimala

3.A.Jasphine Amala

... Petitioners

Vs.

1.The Inspector General of Registration,
100, Santhome High Road,
Chennai-600 028.

2.The District Registrar (Administration),
Office of the District Registrar,
Tiruchirappali.

3.The Sub Registrar Joint III,
Office of Sub Registrar Office Joint III,
Big Bazaar Street, Singarathope,
Devathanam, Tiruchirappali.

... Respondents

Prayer :- Petition filed under Article 226 of the Constitution of India,



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praying for issuance of Writ of Certiorarified Mandamus, calling for the records relating to the impugned order passed by the third respondent vide Memo Na.Ka.No.97/2020 dated 28.05.2020 and consequential order passed by the second respondent on appeal vide Na.Ka.No. 4708/AA1/2020 dated 10.06.2020 relating to the registration of Gift Deed dated 26.05.2020 pertinent to the lands in old Survey No.39/C4 and the New T.S.No.15/4, comprising 2 acres and 42 cents in Devadhanam Villagee, Tiruchirapalli East Taluk, Tiruchirapalli and to quash the same as it is arbitrary and illegal and in consequence, to direct the third respondent to register the said document presented before him in accordance with the Registration Act and Rules.

For Petitioner : Mr.K.Vijayanand

For Respondents : Mr.M.Prakash
Additional Government Pleader

ORDER

The petitioners seek to quash the order passed by the third respondent in his proceedings vide Memo Na.Ka.No.97/2020, dated



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28.05.2020 and consequentially the order passed by the second respondent on appeal vide Na.K.No.4708/AA1/2020 dated 10.06.2020 relating to registration of gift deed dated 26.05.2020 pertinent to the lands in old Survey No.39/C4 and the New T.S.No.15/4, comprising 2 acres and 42 cents in Devadhanam Village, Tiruchirapalli East Taluk, Tiruchirapalli and to quash the same as it is arbitrary and illegal and in consequence, to direct the third respondent to register the said document presented before him in accordance with the Registration Act and Rules.

2. It is the case of the petitioner that the land in Survey No.39/C4 in Devadhanam Village originally belonged to one Senbagathammal, who had purchased the same under a registered sale deed dated 16.05.1971 from one V.Rengachariyar Vaigair and V.Ramasamy Iyengar Vagair. The patta in respect of the land was also issued in her name under Patta No.127. The said Senbagathammal thereafter sold an extent of 1 acre 21 cents out of 2 acre 42 cent to the petitioner's husband V.Anthonysamy under a registered sale deed dated 10.09.2003 and the remaining 1 acre 21 cents was sold to the petitioner on the very same day



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under a registered sale deed. The petitioner would submit that she and her husband had applied for mutation of revenue records in their names and patta pass books were issued in their names in patta No.109 under pass book Nos.34977 and 34978. However, in the computer entries the patta number was wrongly entered as patta No.121. The petitioner would further submit that at the time of settlement, the Assistant Settlement Officer had held that Senbagathammal was actual owner of the land and was entitled to the land revenue fixed under the Act. As against this order, the Prince of Arcot Endowment, made a representation before the Settlement Officer, who in his proceedings, dated 20.11.1987, was pleased to remand the matter back for fresh enquiry, to the Assistant Settlement Officer.

3. It is the further case of the petitioner that the Assistant Settlement Officer held that the Prince of Arcot Endowment was entitled to pay the land revenue to the Government. Aggrieved by which, the petitioner's predecessor in title Senbagathammal had preferred a revision before the Settlement Officer. The Settlement Officer had dismissed the



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revision, against which, the said Senbagathammal had preferred a revision petition under Section 10(2) of the Tamilnadu Act 31/73 before the Commissioner and Director of Survey and Settlement, Chennai. The Commissioner had reversed the order of his subordinate and held that the Senbagathammal alone is entitled to pay the land revenue and Prince of Arcot was not the owner of the land as he only held the melvaram right. Meanwhile, the petitioner's husband passed away on 17.11.2014 leaving behind her and her two daughters to inherit the land in question. Thereafter, the gift settlement deed was executed in favour of the petitioner's brother in law V.Rayar. The gift settlement deed was prepared and submitted for registration before the third respondent. The third respondent had refused to register the same for the following reasons:-

1.எழுதி கொடுப்பவர்கள் பெயரில்
பட்டா இல்லை 2.முன் ஆவணம் 113/2007
நீங்கலாக இதர முன் பதிவு ஆவணங்கள் 2022/1971
1886/2003 தாக்கல் செய்யப்படவில்லை 3.வழிகாட்டி
மதிப்பிற்கு குறைவான மதிப்பில் ஆவணம் தாக்கல்
செய்யப்படவில்லை 4.வருவாய்துறை பதிவேட்டில் முன்
ஆவணங்களின்படி ஆற்காடு நவாப்மாமியம் என
காணப்படுவதால் வக்பு வாரிய தடையின்மை சான்று



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பெற்று மீள தாக்கல் செய்ய திருப்பப்படுகிறது.

4.The petitioner would submit that as regards the first three reasons, the same has been clarified by submitting the documents. With reference to the fourth issue, the order of the Commissioner and Director of Survey and Settlement, dated 02.03.2000 would clearly demonstrate that the petitioner's predecessor in title was recognized as owner of the property.

5.The third respondent has filed a counter. The sum and substance of the counter is that the petitioner is claiming right only on the basis of revenue patta and that there was no document of title to prove the same. The third respondent would submit that filing of the writ petition is wrong in as much as there is a statutory appeal under Section 72 of the Registration Act, only if the order of refusal is passed under Section 71. The respondent would submit that the return has been made only for the petitioner to obtain no objection form the wakf board.



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6. Heard the learned counsel appearing on either side.

7. The records in question, particularly the order dated 02.03.2000 by the Commissioner and Director of Survey and Settlement, would clearly go to show that after hearing both the petitioner's predecessor in title as well as the counsel for Prince of Arcod, the Assistant Settlement Officer, Thanjavur and Tahsildar, Trichy, the Commissioner has ultimately held as follows:-

The documents clearly show that the right that was exercised by the respondent herein is nothing but a Melvaram right and the kudiwaram right of the land resides with the revision petitioner herein. A holder of mere 'Melvaram' right cannot qualify to be called as the owner of the land, as 'Melvaram' right does not confer any or all of the rights mentioned above. I therefore have no hesitation in setting aside the order of the settlement officer's R.P.5 and 6/95 dated 31.01.1996 and deciding that the Ryotwari Assessment as fixed by this Assistant Settlement Officer be collected from the revision petitioner herein.



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8. This order has not been challenged. Therefore, a mere reading of this order would clearly demonstrate that the petitioner's predecessor's title and right to the property has been recognized. That being the case, the respondents cannot once again sit in appeal over the order that has been passed and it attained finality. The petitioner is claiming only under the said Senbagathammal. Therefore, the order impugned has to necessarily be set aside.

9. In the view above, this Writ Petition is allowed and the orders impugned dated 28.05.2020 and 10.06.2020 are quashed. The petitioner shall represent the gift deed dated 26.05.2020 within a period of two weeks from the date of receipt of a copy of this order and on such re-filing, the third respondent is directed to register and release the documents within a period of four weeks thereafter. No costs.

13.06.2023

NCC : Yes/No
Index : Yes/No
Internet : Yes/No
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To

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P.T.ASHA, J.

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