



W.P.(MD)No.15875 of 2021

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 20.06.2024

Pronounced on : 08.07.2024

CORAM:

THE HON'BLE MR.JUSTICE K.MURALI SHANKAR

W.P.(MD)No.15875 of 2021

and

W.M.P.(MD)Nos.12788 and 12790 of 2021

K.Muthuraman

... Petitioner

Vs.

1. The District Collector,
Sivagangai District,
Collectorate Building,
Thiruppathur Road,
Sivagangai-630561.
2. The District Revenue Officer,
Collectorate Building,
Thiruppathur Road,
Sivagangai-630561.
3. The Revenue Divisional Officer,
Revenue Divisional Office,
Majith Road,
Sivagangai-630561.
4. The Tahsildar,
Sivagangai Taluk Office,
Market Road,
Sivagangai-630561.



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5. C.Kathaiah

6. C.Renganathan

... Respondents

Prayer : This Writ Petition filed under Article 226 of Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, to call for the records from the office of the second respondent pertaining to the impugned order dated 01.06.2021 passed by the second respondent in R.P.No:Paa.Mu.B1/15761/2018 confirming the order of third respondent dated 11.07.2018 in A.P.No:Paa.Mu.B2/1004/2015 and quash the same and consequently directing the fourth respondent to restore the patta with the name of the parties before changing the same.

For Petitioner : Mr.P.Paranthaman

For R1 to R4 : Mr.A.K.Manikkam
Special Government Pleader

For R5 & R6 : Mr.D.Srinivasa Raghavan

ORDER

The Writ Petition is directed against the order dated 01.06.2021 passed by the second respondent, confirming the order of the third respondent dated 11.07.2018 and for direction to the fourth respondent to restore the patta with the name of the parties before changing the same.

2. The case of the writ petitioner is that the property to an extent of 1.50 acres in Survey No.38/4 in Thiralaudappu Village, Kanchirangal



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Hamlet in Payyur Pillaivayal Group in Ward No.4, Town Survey No.22, Survey Ward-B, Block-2 of Sivagangai Town originally belonged to one K.Vellaikutty, who purchased the total extent of 2.26 acres in patta No.618 in Survey No.38/4 vide sale deed dated 20.05.1941, that the said Vellaikutty was in possession and enjoyment of the said property, that the said Vellaikutty died in the year 1965 leaving behind his only son V.Kamatchi, who is the father of the writ petitioner herein and as such, the said V.Kamatchi inherited the said property to the extent of 2.26 acres from his deceased father Vellaikutty, that the said V.Kamatchi has sold an extent of 76 cents out of 2.26 cents in Survey No.38/4 in favour of one K.Chinnakamatchi servai vide sale deed dated 05.09.1974 and he retained the remaining 1.50 acres of land, that the said V.Kamatchi has then executed a registered Will dated 05.09.2011 bequeathing his property in favour of his sons and daughters, that the writ petitioner along with his mother, brothers and sisters, after the death of the said V.Kamatchi, have been in possession and enjoyment of the property to an extent of 1.50 acres and that the writ petitioner's mother, brothers and sisters have executed a registered release deed dated 13.08.2012 relinquishing their right and shares in the property in favour of the writ petitioner and as such,



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the writ petitioner has become the absolute owner and is in possession and enjoyment of the said extent of 1.50 acres in Survey No.38/4 in Thiralaudappu Village, Kanchirangal Hamlet.

3. The writ petitioner's further case is that the writ petitioner's father V.Kamatchi has filed a suit for declaration and permanent injunction with regard to the land of 1.50 acres against one A.K.Saravanan in O.S.No.104 of 2011 on the file of the District Munsif Court, Sivagangai, that the said suit was decreed on 23.09.2011, that the title, possession and enjoyment of the property to an extent of 1.50 acres of V.Kamatchi was confirmed by virtue of a judgment and decree dated 23.09.2011 in O.S.No.104 of 2011, that after the death of the said V.Kamatchi, the writ petitioner and his brothers and sisters have filed a suit for partition in O.S.No.6 of 2005 on the file of the District Court, Sivagangai, that the suit was dismissed vide judgment and decree dated 27.04.2011 and that the writ petitioner's side, aggrieved by the same, have preferred an appeal in A.S.(MD)No.189 of 2011 before this Court and the same is pending.

4. The main contention of the writ petitioner is that the respondents 5 and 6 have no iota of right in the land owned by the writ petitioner, that



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this Court in the appeal in A.S.(MD)No.189 of 2011 has passed an interim order in M.P.(MD)No.1 of 2011 that the respondents/defendants therein will not create any encumbrance and will not alienate the suit properties and after recording their undertaking, the miscellaneous petition was ordered to be closed, that the respondents 5 and 6 and one Ganesan have no right to get patta in their names against their undertaking given before this Court, that the fourth respondent in collusion with the respondents 5 and 6 and the said Ganesan without issuing notice has wrongly changed patta in the names of respondents 5 and 6 and the said Ganesan and that the same was challenged by the writ petitioner.

5. It is not in dispute that the writ petitioner and his brothers and sisters have filed an appeal petition in A.P.No:Paa.Mu.B2/1004/2015 before the third respondent and the same was dismissed, that they have preferred a revision before the second respondent and the same was also ordered to be dismissed and that thereafter the writ petitioner has approached this Court.

6. According to the writ petitioner, the writ petitioner's grandfather Vellaikutty has purchased an extent of 2.26 acres of land in Survey No.



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38/4 of Thiralaudappu Village, Kanchirangal Hamlet and after his death, the writ petitioner's father V.Kamatchi has become the owner of the said property and after selling an extent of 76 cents to one Chinnakamatchi, he was retaining 1.50 cents of land and after his death, the writ petitioner's mother, brothers and sisters have relinquished their shares in favour of the writ petitioner and as such, the writ petitioner has become the absolute owner of the said extent of 1.50 acres. But the defence of the respondents 5 and 6 is that the said property originally belonged to Vellaikutty Servai, Periyakamatchi Servai and Chinnakamatchi Servai, that V.Kamatchi, son of Vellaikutty Servai sold his 1/3rd share to Chinnakamatchi-father of the respondents 5 and 6 on 05.09.1974, that subsequently Periyakamatchi has sold his 1/3rd share to Chinnakamatchi vide sale deed dated 27.03.1981 and that the said Chinnakamatchi has become the owner of the entire extent of 2.26 acres of land and after his death, his sons-respondents 5 and 6 have become the owners and on that basis, patta was issued in their names.

7. As already pointed out, the writ petitioner has claimed that his grandfather Vellaikutty has purchased 2.26 cents of land vide sale deed



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dated 20.05.1941 vide document No.568/1941 on the file of the SRO of Sivagangai. But the learned counsel appearing for the respondents 5 and 6 would submit that the said Vellaikutty has not purchased 2.26 acres of land but he only purchased 46 palm trees available in the said land and produced the copy of the sale deed dated 20.05.1941.

8. It is necessary to refer the following portions found in the sale deed,

□.... சுயார்ஜிதமாய் கிரையம் வாங்கி என் சுவாதீன அனுபவத்திலிருந்து வருவதும் யாதொரு வில்லங்கத்துக்கும் உட்படாததுமான அடியில் கண்ட பனைமரங்களை நான் தனக்கு ரூ.17-0-0-க்கு கிரையம் செய்து கொடுத்து அடியிற்கண்ட பனைமரங்களையும் அவைகளைச் சேர்ந்த சகல சர்வ சுதந்திர பாத்தியங்களையும் மேற்படி தேதி முதல் என்றென்றைக்கும் தானாதி விநியோக விற்கிரையங்களுக்கு யோக்கியமாகவும் சந்ததி பரம்பரையாகவும் இஷ்டப்படிக்கு ஆண்டனுபவித்துக் கொள்வாயாகவும் மேற்படி கிரையப் பத்திரத்தையும் இத்துடன் தன்னிடம் கொடுத்திருக்கிறேன்.□

9. In the description of property,

□... பொதுப் பாதம்தியமாகவுள்ள கிழமேல் கொளுகாலில் நிற்கிற சிறிது பெரிது உள்பட



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பனைமரங்கள் 46 நாற்பத்தாறு. ... □

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10. Considering the above, it is very much clear that the said Vellaikutty has only purchased palm trees and not the land. As rightly contended by the learned Special Government Pleader appearing for the respondents 1 to 4 and the learned counsel appearing for the respondents 5 and 6, the writ petitioner, by suppressing the fact that his grandfather has only purchased palm trees, has made a claim as if his grandfather has purchased 2.26 acres of land.

11. It is pertinent to note that the writ petitioner and his brothers and sisters have filed a suit for partition in O.S.No.6 of 2005 against the respondents 5 and 6 and others and the learned District Judge, after full trial, dismissed the suit vide judgment and decree dated 27.04.2011. Aggrieved by the dismissal of the suit, the writ petitioner and his brothers and sisters have preferred an appeal in A.S.(MD)No.189 of 2011 before this Court and the same is pending. It is not in dispute that the writ petitioner's side/appellants have filed an application in M.P.(MD)No.1 of 2011 in A.S.(MD)No.189 of 2011 seeking temporary injunction and a Division Bench of this Court has passed an order dated 10.06.2014 which



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is as follows:-

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“3. De hors what is stated in the counter, it is stated Mr.S.P.Maharajan, learned counsel appearing for the respondents/defendants that the respondents/defendants will not create any encumbrance and will not alienate the suit properties. Therefore, without going into the merits, the said undertaking recorded and the Miscellaneous Petition is closed.”

12. Regarding the other suit filed by the writ petitioner's father Vellaikutty in O.S.No.104 of 2011, it is the specific complaint of the respondents 5 and 6 that the said suit was filed against some third parties/strangers not connected with the property and obtained an *ex parte* judgment and decree on 23.09.2011.

13. When the writ petitioner's grandfather himself was not having any title or right over the entire extent of 2.26 acres, his son Kamatchi cannot claim ownership over the said land and as such, the decree obtained by the said Kamatchi cannot help the writ petitioner in any way.

14. The third respondent as well as the second respondent, in their



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impugned orders, have specifically observed that since the appeal filed by the writ petitioner's side is pending before the High Court, the writ petitioner has to sort out his remedy as per the judgment to be pronounced in the appeal.

15. As rightly contended by the learned counsel appearing for the respondents 5 and 6, since the suit filed by the writ petitioner and his brothers and sisters was dismissed, the writ petitioner has no right or *locus standi* to seek restoration of patta.

16. The learned Special Government Pleader appearing for the respondents 1 to 4 would submit that since the appeal before this Court is pending, without moving further the writ petitioner may be directed to sort out his remedy subject to the result of the appeal.

17. Considering the above, the impugned order passed by the second respondent confirming the order of the third respondent cannot be found fault with. Consequently, this Court concludes that the writ petition is devoid of merit and the same is liable to be dismissed.



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18. In the result, the Writ Petition is dismissed and the impugned order passed by the second respondent dated 01.06.2021 stands confirmed. The writ petitioner is at liberty to sort out his remedy subject to the result of the appeal in A.S.(MD)No.189 of 2011. Consequently, connected Miscellaneous Petitions are closed. No costs.

08.07.2024

NCC :yes/No
Index :yes/No
Internet:yes/No
csm

To

1. The District Collector,
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Sivagangai-630561.
2. The District Revenue Officer,
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Market Road, Sivagangai-630561.



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K.MURALI SHANKAR,J.

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Pre-Delivery Order made in

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and

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Dated : 08.07.2024