

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.01.2015

CORAM

THE HONOURABLE DR. JUSTICE S.TAMILVANAN

W.P.No.682 of 2014

N.Rangan

... Petitioner

vs.

1. Government of Tamil Nadu
Rep. by the Secretary to Government,
Revenue Department,
Fort St. George, Chennai - 9.

2. The Tahsildar
Mambalam-Guindy Taluk,
Chennai - 78.

... Respondents

Writ Petition filed under Article 226 of the Constitution of India, to issue a writ of mandamus, directing the second respondent to consider the representation of the petitioner and / or to pass such further or other orders as this Court deem fit.

For Petitioner : Mr.T.K.S.Gandhi

For Respondents : Mr.R.Ravichandran, AGP

ORDER

Heard the learned counsel appearing for the petitioner as well as the learned Additional Government Pleader appearing on behalf of the respondents.

2. The writ petition has been filed under Article 226 of the Constitution of India, seeking an order for issuance of writ of mandamus, directing the Tahsildar, Mambalam-Guindy Taluk / second respondent herein to consider the representation of the petitioner, dated 27.09.2013 and pass appropriate orders.

3. Learned counsel appearing for the petitioner drew the attention of this Court to the copy of the representation available

in page No.52 of the typed set of papers, wherein the property stated in the representation, measuring 2 acres comprised in S.No.30, situate at Taramani village, the then Saidapet Taluk, now Mambalam-Guindy Taluk, Chennai was the ancestral property of his grandfather, late Kannaiya Pillai, as per the earlier Patta No.6, issued in the name of his grand father late Kannaiya Pillai. The petitioner has stated that late Kannaiya Pillai, had four sons, viz., late Raghava Pillai, late Govinda Pillai and petitioner's father Nammazhvar Pillai and Gopal Pillai. The lands in S.No.30 was settled by late Kannaiya Pillai, in favour of his only daughter late Peeliammal, by a settlement deed, dated 09.08.1951, registered Document, vide Document No.1362 of 1960, however, the said Peeliammal died unmarried intestate. That apart, by virtue of existing law of succession (Item No.1 property), the property devolved upon her brothers, viz., late Raghava Pillai, Late Govinda Pillai, Nammazhvar Pillai (Petitioner's father) and late Gopal Pillai and further, the land measuring 85 cent, comprised in S.No.31/1, situate at Taramani village, then Saidapet Taluk, now Mambalam-Gundy Taluk, Chennai was purchased absolutely under a sale deed, dated 09.10.1951, registered, vide Document No.1978 of 1951, by petitioner's father jointly with his brothers, Raghava Pillai, late Govinda Pillai and Gopal Pillai. Item Nos.1 and 2 properties are referred to herein after as the "said property" that was acquired by the Government of Tamil Nadu for the purpose of formation of the "Indian Institute of Technology at Chennai" under the Land Acquisition Act, 1894.

4. Learned counsel appearing for the petitioner further submitted that late Nammazhvar Pillai and his brothers, Raghava Pillai, Govindha Pillai and Gopal Pillai had been in continuous joint possession and enjoyment of the said property and the petitioner had been authorised by the other legal heirs as power of attorney by Power of Attorney Deed, dated 26.01.2008, registered vide Document No.141 of 2007. Hence, as an agent, he is entitled for mutation of the revenue records, jointly in his name and also in the name of the other legal heirs of late Nammazhvar Pillai and his brothers late Raghava Pillai, Govinda Pillai and Gopal Pillai. The petitioner's request that proper and due enquiry be made in this regard and the necessary mutation of the revenue records in respect of the said property in the joint names of the legal heirs of late Nammazhvar Pillai and his brothers late Raghava Pillai, late Govinda Pillai and Gopal Pillai.

5. On the aforesaid circumstances, the representation made by the petitioner was not considered, that is why he filed the present writ petition, seeking a direction in the nature of writ of mandamus against the respondent to consider the representation made by the petitioner and pass appropriate orders.

6. Mr.R.Ravichandran, learned Additional Government Pleader

appearing for the respondents submitted that the claim made by the petitioner is solely based on a disputed question of fact, which requires evidence and therefore, the writ petition itself is not legally maintainable, hence liable to be dismissed.

7. Learned counsel for the petitioner referred the xerox copy of a settlement deed, which stands in the name of Kannaiya Pillai and others, who are not alive. In the representation, the petitioner has stated that the property was originally owned by late Kannaiya Pillai and he had four sons, namely late Raghava Pillai, late Govinda Pillai, late Nammazhvar Pillai and late Gopal Pillai, however, without adducing proper evidence, the alleged factum cannot be established. It cannot be disputed that the averments of the petitioner are self-serving in nature and further, he has submitted that the settlement deed was executed by Kannaiya Pillai in favour of his sister Peeliammal, as per settlement deed, dated 09.08.1951, which is a registered document. It is further stated by the petitioner that the said Peeliammal died unmarried and the said averments cannot be proved without adducing evidence through Civil Court, as per procedure known to law.

8. It is further averred that after the death of Peeliammal, her brothers got right absolutely, is also a disputed question of fact and that cannot be decided by Revenue Authorities, who are the respondents herein. The petitioner has further stated that in the said land in S.No.31/1, situate at Taramani village, a portion was acquired by the State for formation of Indian Institute of Technology at Chennai and he has also referred a G.O, relating to the year 1963.

9. The detailed averments made by the petitioner would show that the property, according to him was owned by late Kannaiya Pillai and his four sons, however, deceased Peeliammal, got settlement deed from her father. Hence, the validity of the alleged settlement and the plea of the petitioner that Peeliammal died unmarried and the property devolved upon her brothers, are all disputed question of fact and that cannot be decided by the Writ Court or the respondents herein. Based on the disputed question of fact and mere averments and producing the documents, which are not standing in the name of the writ petitioner, he cannot file a writ petition, seeking a direction in the nature of writ of mandamus, against second respondent and that would create only multiplicity of proceedings and that would not meets the ends of justice. Hence, the property remedy available to the petitioner would be the concerned Civil Court, to establish his claim, in accordance with law.

10. On the aforesaid circumstances, this Court is of the view that the writ petition itself is not legally sustainable and the same is liable to be dismissed. Accordingly, the writ petition is dismissed, however, it is left open to the petitioner to approach the

concerned Civil Court and seek appropriate remedy, according to law.
No order as to costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

kal / tsvn

To

1. The Secretary to Government
Government of Tamil Nadu
Revenue Department,
Fort St. George, Chennai - 9.

2. The Tahsildar
Mambalam-Guindy Taluk,
Chennai - 78.

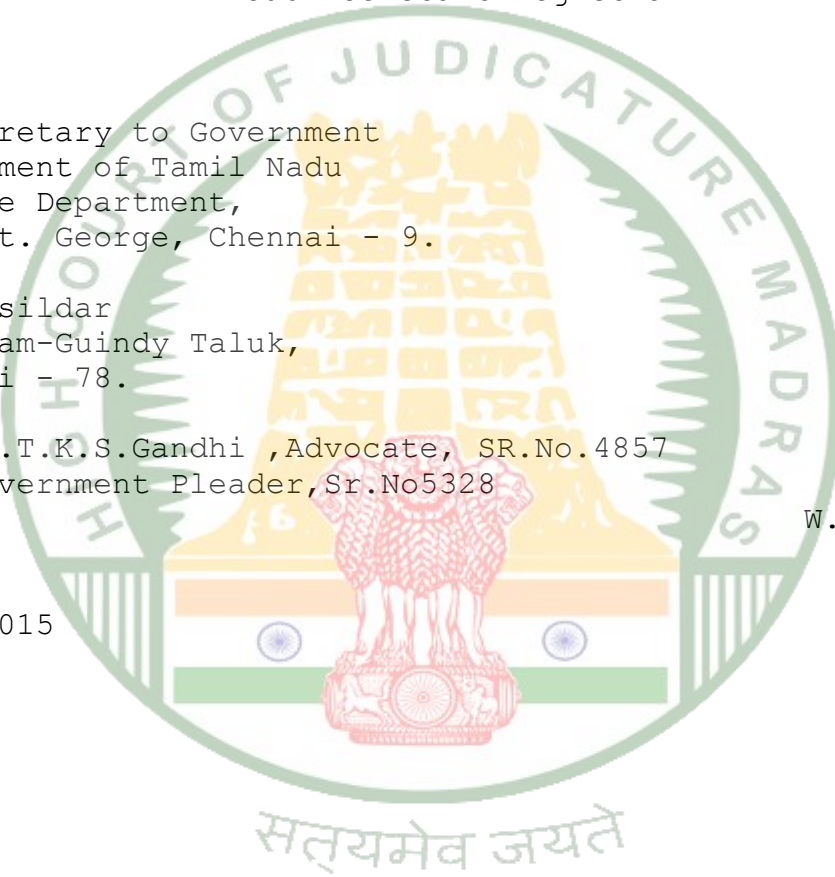
1 cc to Mr.T.K.S.Gandhi ,Advocate, SR.No.4857

1 cc to Government Pleader,Sr.No5328

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