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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED :16.10.2015

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THE HONOURABLE MR.JUSTICE R.SUBBIAH

W.P.(MD)No.14846 of 2015
and MP(MD)No.1 and 2 of 2015

THAMAYANTHI

... Petitioner

Vs.

1 THE DISTRICT REVENUE OFFICER
THENI DISTRICT, THENI.

2 THE REVENUE DIVISIONAL OFFICER
PERIYAKULAM,
THENI DISTRICT.

3 RUKKUMANI
4 THULASIMANI
5 RAMANATHAN

... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorarified Mandamus calling for the records relating to the impugned order passed by the 1st respondent in his proceedings in Na.Ka.No.20585/2014/D4 dated 03.08.2015 and quash the same as illegal and consequently to direct the respondents 1 and 2 to include the petitioner's name in the patta in respect of Survey Nos.3103 and 1554 situated at Kenguvarpatti Village, Periyakulam Taluk, Theni District.

For Petitioner ... Mr.V.P.Rajan

For Respondents ... Mr.M.Murugan
Government Advocate for RR-1 & 2
Mr.K.Samidurai for RR-3 to 5

ORDER

The writ petition has been filed for issuance of Writ of Certiorarified Mandamus calling for the records relating to the impugned order passed by the 1st respondent in his proceedings in Na.Ka.No.20585/2014/D4 dated 03.08.2015 and quash the same as illegal and consequently to direct the respondents 1 and 2 to include the petitioner's name in the patta in respect of Survey Nos.3103 and 1554 situated at Kenguvarpatti Village, Periyakulam Taluk, Theni District.



2. It is averred in the affidavit filed in support of the writ petition that the petitioner is a senior citizen. Originally, the property in Sy.Nos.3103, admeasuring an extent of 0.81.0 hectares, Sy.No.1554, admeasuring an extent of 1.21.5 hectares, situated at Kenguvarpatti Village, belonged to his father and he had been in peaceful possession and enjoyment of the property during his life time. His father married three wives. The petitioner and one Ramanathan, Thulasimani and Rukkumani are the children through the third wife. The first and second wives passed away without any issue. In these circumstances, in the year 1972, the petitioner's father Alagumalai passed away leaving behind him the petitioner, the above said Ramanathan, Thulasimani and Rukkumani. Subsequently, mother of the petitioner also passed away in the year 2010. After the demise of his father, the petitioner and the respondents 3 to 5 are in possession and enjoyment of the property.

In the said situation, the said Ramanathan without including the name of the petitioner and other heirs' name, fraudulently got patta to the said properties in his name in patta No.2100, during the UDR period. The Tahsildar, Periyakulam, without verifying the records and material evidence, had chosen, to issue patta in favour of the 5th respondent. As against the same, the petitioner preferred an appeal before the 2nd respondent to issue joint patta by including her name and other legal heirs' name, i.e the respondents 3 to 5. The second respondent had taken the said appeal on file in Na.Ka.A1/5385/2012 and issued summons to all the parties. The respondents 3 to 5 appeared and filed their written statement on 29.03.2013. However, the second respondent kept the appeal pending without passing any orders and repeatedly adjourned the matter. In the said situation, in order to know the status of the appeal, the petitioner preferred an application dated 25.02.2014 under the Right to Information Act and in reply, on 05.05.2014, the 2nd respondent informed that the entire file has been transferred to the 1st respondent on 28.11.2013. The second respondent further informed that patta has been issued mistakenly during the UDR period and the first respondent is a competent authority to decide the issues. Hence, the petitioner has preferred a writ petition in W.P.No.14291 of 2014, seeking to issue a writ of mandamus directing the 1st respondent to pass an order in appeal Na.Ka.No.A1/5385/2012 on the file of the 1st respondent. This Court, by an order dated 10.09.2014, had given a direction to dispose of the petitioner's appeal within a period of eight weeks.

In the said appeal, the fifth respondent filed a counter stating that as if the petitioner executed a release deed in respect of the above said property and as such, patta was transferred in his favour. He also stated that female legal heirs are not entitled for share. The first respondent, without considering the legal aspects in a proper and perspective manner, rejected the petitioner's appeal stating that patta, chitta and fasali are all standing in the name of the fifth respondent for the past 37 years. Thus, the petitioner is not entitled for getting joint patta. Aggrieved over the same, the present writ petition has been filed.



4. When the matter is taken up for consideration, the learned counsel for the petitioner relied upon a judgment reported in **2011 (6) CTC 102 (Ganduri Koteshwaramma and Another Vs. Chakiri Yandi and Another)** and submitted that the dictum laid down in the above judgment shows that daughter of co-parcener shall have same rights and liabilities in coparcenary property as she would have been a son is unambiguous and unequivocal. Thus, the petitioner as a female legal heir is entitled for getting name transfer in the patta. Thus, he sought for remitting of the matter.

5. Heard the learned Government Advocate and carefully perused the materials available on record.

6. Considering the above submissions and the decision relied on by the learned counsel for the petitioner, I am of the view that the impugned order passed by the 1st respondent in his proceedings of in Na.Ka.No.20585/2014/D4 dated 03.08.2015 is liable to be set aside. Accordingly, the same is set aside. The first respondent is directed to consider the issue afresh by conducting a fresh enquiry and pass an appropriate order, within a period of six weeks from the date of receipt of a copy of this order. It is made clear that this Court has not expressed any opinion on the merits of the claim of the petitioner.

7. The writ petition is allowed to the above extent. No costs. Consequently, connected M.P. (MD).Nos.1 & 2 of 2015 are closed.

Sd/-

Assistant Registrar (RTI)

/True Copy/

Sub Assistant Registrar

To

1 THE DISTRICT REVENUE OFFICER
THENI DISTRICT, THENI.

2 THE REVENUE DIVISIONAL OFFICER
PERIYAKULAM,
THENI DISTRICT.

+1cc to Mr.K.Viralinathan, Advocate Sr.No.61863

+1cc to The Special Government Pleader Sr.No.62114

akm/02.11.2015 /3p-5c/

W.P (MD) No.14846 of 2015
16.10.2015