



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
(Civil Appellate Jurisdiction)

Wednesday, the Ninth day of November Two Thousand Sixteen

PRESENT

The Hon`ble Mr.Justice M.SATHYANARAYANAN
and
The Hon`ble Mrs.Justice J.NISHA BANU

CMP(MD) No.10345 of 2016
IN
WA(MD) No.SR37720 of 2016

1 KANNAN
2 RAGHAVAN,
3 THIYAGARAJAN

... PETITIONERS/PROPOSED APPELLANTS

Vs

1 R.PALSAMY,
2 THE TAHSILDAR
SIVAKASI TALUK.

3 THE HEAD SURVEYOR
KOPPAYANAICKENPATTI VILLAGE,
SIVAKASI TALUK.

... RESPONDENTS/RESPONDENTS

Petition praying that in the circumstances stated therein and in the affidavit filed therewith the High Court will be pleased to grant leave and permit the petitioners to file Writ Appeal.

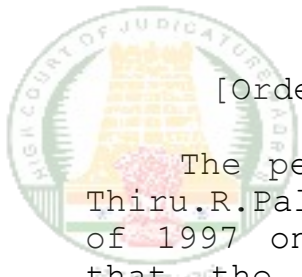
PRAYER IN WA(MD) No.SR37720 of 2016

to allow the Writ Appeal and set aside the judgment dated 13.06.2016 made in WP(MD)No.10318 of 2016.

Prayer in WP(MD). 10318/ 2016 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Mandamus, directing the respondents herein to measure the petitioner's property in S.No.308/6 and 308/15 of Vendu Rayapuram Village and issue separate patta by sub dividing the property within the time frame fixed by this Court

ORDER : These petitions coming on for orders upon perusing the petitions and the affidavits filed in support thereof and upon hearing the arguments of M/S. P.ARUN JAYATRAM, Advocate for the petitioner and of on behalf of the Respondents the court made the following order:-



[Order of the Court was made by **M. SATHYANARAYANAN, J.**]

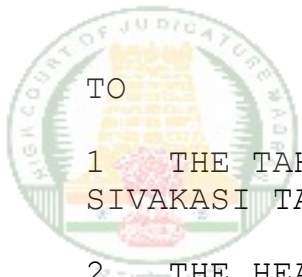
The perusal of the typed set of documents would disclose that Thiru.R.Palsamy, 1st respondent herein and two others filed O.S.No.78 of 1997 on the file of District Munsif, Sivakasi for declaration that the suit property belonged to them and restraining the defendants therein/respondents 1 to 3 and others or their agents, servants or anybody on behalf of them from interfering with their peaceful possession of the suit property. The trial Court has dismissed the suit on 28.04.2000 and aggrieved by the same, the plaintiffs therein including the 1st respondent herein filed appeal before the Subordinate Judge, Sivakasi. The lower appellate Court, vide judgment and decree dated 30.07.2001 has reversed the judgment and decree passed by the trial Court and decreed the suit granting declaration in favour of the plaintiffs and also restraining the defendants from interfering their physical possession and enjoyment of the property at the hands of the plaintiffs. Thereafter, the 3rd plaintiff has filed a Writ Petition in W.P.(MD) No.10318 of 2016 praying for issuance of writ of Mandamus, directing the respondents 2 and 3 herein to measure the petitioner's property in S.No.308/6 and 308/15 of Vendu Rayapuram village and issue separate patta by sub dividing the property within a time frame fixed by this Court. This Court while disposing of the writ petition on 13.06.2016, directed the concerned authority to consider the representation and pass orders after providing necessary opportunity to the petitioner therein and others concerned by strictly adhering to the principles of natural justice and to do the needful in the subject matter as expeditiously as possible. The petitioner being a third party, came forward with this petition seeking leave of this Court, claiming that as per sale deed dated 03.09.1952, the petitioners are the owner of the property and without impleading them as party to the suit, decree has been obtained behind their back.

2.In the considered opinion of the Court, the remedy open to the petitioners, if any, is either to file appeal against the judgment and decree of the lower appellate Court or to take out appropriate proceedings to declare the judgment and decree as null and void. In the considered opinion of the Court, the petitioners want declaration of title and ownership based on the sale deed dated 03.09.1952 by seeking leave of the Court to file Writ Appeal, which cannot be done.

3.In the result, the present petition is dismissed, granting liberty to the petitioners to workout their remedy before competent forum in accordance with law.

sd/-
09/11/2016

/ TRUE COPY /



TO

1 THE TAHSILDAR
SIVAKASI TALUK.

2 THE HEAD SURVEYOR
KOPPAYANAICKENPATTI VILLAGE,
SIVAKASI TALUK.

JAM/15.11.16/DB/SAR I/3p-3c

ORDER

IN

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IN

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Date :09/11/2016