



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED:23.09.2016

CORAM:

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THE HONOURABLE MR.JUSTICE V.BHARATHIDASAN

Writ Petition (MD) No.15748 of 2016

and

W.M.P (MD) Nos.11541 and 11542 of 2016

K.Arunselvan

... Petitioner

Vs.

1.The District Collector,
Tirunelveli District,
Tirunelveli.

2.The Sub-Collector,
Cheranmahadevi,
Tirunelveli District.

3.The Tahsildar,
Radhapuram Taluk,
Radhapuram,
Tirunelveli District.

4.Gomathi Valli

... Respondents

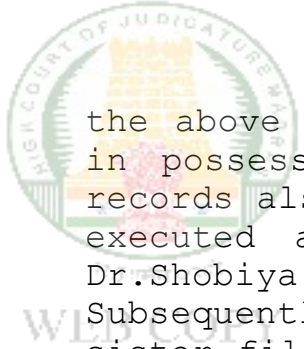
Prayer: Writ Petition is filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Certiorari to call for the records of the impugned order of the 2nd respondent made in Naa.Ka.No.A1/4516/2016, dated 30.06.2016 and quash the same.

For Petitioner : Mr.S.R.Anbarasu
For R-1 to R-3 : Mr.J.Gunaseelan Muthaiah,
Government Advocate
For R-4 : Mr.V.Meenakshi Sundaram

ORDER

Challenging the order passed by the Sub-Collector/Revenue Divisional Officer, Cheranmahadevi, the petitioner filed the present Writ Petition.

2. According to the petitioner, an extent of 0.9.48
<https://hsrce.sarathi.gov.in/services> Survey No.2248/2 at Vadakku Vallioor Village,
Radhapuram Taluk, Tirunelveli District, originally belonged to his
father Kumaravel. In a oral partition took place in the year 2011,



the above property has been allotted to the petitioner and he is in possession and enjoyment of the said property. The revenue records also mutated in his favour. Thereafter, on 19.08.2015, he executed a registered settlement deed in favour of his wife Dr.Shobiya and patta was also transferred in her name. Subsequently, the fourth respondent, who is none other than his sister filed an application before the second respondent to issue joint patta. Based on that application, without issuing any notice to the petitioner, joint patta was issued in the names of the legal heirs of the deceased Kumaravel. Aggrieved by the same, the petitioner has come forward with this Writ Petition.

3. The learned Government Advocate appearing for the respondents-1 to 3 on instructions submitted that the an enquiry notice has been ordered to the petitioner and the same was returned with an endorsement 'left India'. In the above circumstances, based on the records, the impugned order has been passed.

4. The fourth respondent filed a counter affidavit stating that originally the property belonged to their father by name Kumaravel. On 17.07.2015, he died intestate leaving behind her mother Santha, the petitioner, the fourth respondent and her sister one Venkata Soba. Hence, all the legal heirs are entitled to the share in the above property and there is no oral partition as pleaded by the petitioner and based on the information received under the R.T.I Act, she came to know that the Writ petitioner filed an application for issuance of patta stating that in the settlement deed executed by his father, the above property has also been included. But, in fact, the above property has not been included in the settlement deed. A copy of the settlement deed has also been produced to prove the same. It is further stated that by making a false statement, the writ petitioner changed patta in his name and subsequently, he executed another settlement deed in favour of his wife and created encumbrance. Now the other legal heirs filed a partition suit in respect of the above said property in O.S.No. 95 of 2016 before the Sub-Court, Valliyoor. There is also an order of interim injunction restraining the Writ Petitioner from dealing with the property in I.A.No.902 of 2016.

5. I have heard the rival submissions made on either side and perused the materials available on record.

6. The learned counsel for the petitioner vehemently submitted that the second respondent passed the impugned order without issuing notice to the petitioner. Now the petitioner has executed a settlement deed in favour of his wife and patta was also transferred in the name of his wife on 25.11.2015. The second respondent passed the impugned order without considering the above said fact, issued patta in favour of the writ petitioner and other legal heirs of the deceased Kumaravel. The second respondent passed the impugned



order behind the back of the petitioner, which is in violation of principles of natural justice and hence, the same is liable to be set aside.

7. On the other hand, the learned counsel for the fourth respondent submitted that against the order passed by the Sub-Collector, Cheranmahadevi, a revision is provided under Section 13 of the Patta Passbook Act and without availing the alternative remedy, the petitioner cannot maintain a Writ Petition. Apart from that, patta has been transferred, on mere misrepresentation of the petitioner that in the settlement deed executed by his father, the above said property has been gifted to him. Only based on the settlement deed, patta has been transferred. But, in fact the settlement deed, does not include the said property. Since patta has been issued on mere representation, the second respondent passed the impugned order after considering all those facts, issuing joint patta in favour of all the legal heirs of the deceased Kumaravel.

8. Admittedly, against the order passed by the second respondent, a revision is provided under Section 13 of the Patta Passbook Act. Since there is a dispute regarding the factual aspect, the Writ Petitioner without availing the statutory remedy available under the Act, he cannot invoke the jurisdiction of this Court under Article 226 of the Constitution of India.

9. In the above circumstances, without expressing any opinion on the merits of the case, this Writ Petition is disposed of directing the Writ Petitioner to file a revision before the District Revenue Officer under Section 13 of the Act, raising all his objections, within a period of four weeks from the date of receipt of a copy of this order and on filing of such revision, the District Revenue Officer, is directed to consider the revision and dispose of the same, after issuing notice to the petitioner as well as all the contesting parties, within a period of six weeks thereafter. No Costs. Consequently, connected Miscellaneous Petitions are closed.

sd/-

Assistant Registrar(P&A)

/True copy/

Sub Assistant Registrar

To

1.The District Collector, Tirunelveli District, Tirunelveli.

2.The Sub-Collector,
Cheranmahadevi, Tirunelveli District.



3.The Tahsildar, Radhapuram Taluk,
Radhapuram, Tirunelveli District.

+1cc to Mr.D.Nallathambi, Advocate SR.No.55504

+1cc to special Government Pleader SR.No.55631

pm

smSK-SKN:SAR II:6.10.2016:4P/6c

W.P (MD) No.15748 of 2016
23.09.2016