



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 06.09.2016

C O R A M

WEB COPY

THE HONOURABLE Dr.JUSTICE **S.VIMALA**Writ Petition (MD) No.16793 of 2016

N.Usha

.. Petitioner

Vs.

The Assistant Executive Engineer,
Distribution, East Gate,
Madurai -9.

.. Respondent

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 of the respondent dated 05.08.2016 in proceedings U.Me.Po/Pagi/Ke.Vasal/Va.2/Ko.Ka quash the same as the same is arbitrary in non-application of mind and consequentially direct the respondent to mutate the electricity service connection bearing Nos.029005969, 029005970, 0290051300, 0290051301, 0290051299 , 0200051309 in respect of the property bearing Door No.40 Lakshmipuram Madurai in the petitioner and in the Petitioner name, and in the names of N.Rajeswari Kavitha, Baburaj, Rajkumar, Kamali, on the basis of the Judgment and decree, dated 22.12.2015 made in O.S.No.119 of 2009 on the file of V Additional District Court, Madurai.

For petitioner

... Mr.R.G.Shankar Ganesh

For Respondent

... Mr.S.Srimathi

O R D E R

This Writ of Certiorari Mandamus has been filed, seeking to quash the order passed by the respondent as arbitrary without application of mind and consequently, to direct the respondent to make necessary changes, on the basis of the Judgement and decree, dated 22.12.2015, made in O.S.No.119 of 2009 pending on the file of V Additional District Court, Madurai.

2. O.S.No.119 of 2009 is the suit filed by the plaintiffs / petitioner herein seeking partition of 2/6th share over the plaint schedule properties.

2.1. The operative portion of the judgement reads as



1. The plaintiffs are entitled to get 2/6 share over plaint A schedule properties.

2. The defendants 2 to 5 are entitled to 1/6 share each over plaint A Schedule property.

3. The prayer for partition over 'B' schedule property is disallowed."

2.2. So far as B Schedule property is concerned, the finding is that it is not proved that the property belonged to the deceased Napoleon.

2.3. There is a finding in the Judgement, in paragraph No.41, that the plaintiffs have established that the marriage of the first defendant with Late.Napoleon is void and therefore, the first defendant is not entitled to any share over the suit properties. From the judgement it is clear that the plaintiffs N.Usha and N.Rajeswari are entitled to 2/6th share together and D-2-Kavitha, D-3-Baburaj, D-4-Rajkumar and D-5-Kamali are each entitled to 1/6th share over 'A' Schedule properties. The relief of the partition has been declined to the first defendant, Muthurani.

2.4. The electricity service connections had been in the name of the first defendant, Muthurani. Based upon the judgement, the first plaintiff / petitioner herein (N.Usha) has asked for mutation in the electricity service connection in the name of N.Usha and in the name second plaintiff and Defendants 2 to 5, in respect of Door No.40 Lakshmipuram, Madurai.

3. This is the simple prayer asked for in the representation, in respect of which, the first respondent has passed the impugned order, dated 05.08.2016, stating that in view of the decree passed in O.S.No.119 of 2009, there is a finding that each of the legal heir is entitled to 1/6th share and there is no clear finding as to which part of the property (out of 1/6th share) belong to which of the parties, so saying, the representation has been rejected.

3.1. This order is under challenge in this writ petition.

4. A mere perusal of the order passed would go to show that the order has been passed either without reading the judgement at all or by wilfully misreading the judgement. There is no share allotted to the first respondent from whose name mutation is required. In fact, the specific finding is that, the first defendant is not entitled to any share at all. Therefore, the order passed saying that each of the parties is entitled to 1/6th share and that the part of the property allotted could not be identified is certainly without application of mind. In fact, to be more precise, it could be branded only as an order passed by wrong application of mind. In the opinion of this Court, the order passed is an order passed for extraneous consideration and therefore, it is liable to be set-aside.



5. Accordingly, the impugned order is set aside and the respondent is directed to pass orders strictly in terms of the judgement passed in O.S.No.119 of 2009. No costs.

Sd/-

Assistant Registrar(Records)

/True copy/

Sub Assistant Registrar

To
The Assistant Executive Engineer,
Distribution,
East Gate,
Madurai -9.

+1 cc to M/s.R.G.Shankar Ganesh, Advocate in SR.No.50872

rj2

CSL/MV-MMS/31.01.2017 :3P/3C

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