



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 03.08.2016

CORAM:

THE HONOURABLE MR.JUSTICE **S.S.SUNDAR**

W.P (MD) No.10754 of 2013

WEB COPY

Selvarasu

.. Petitioner

Vs.

1.The Tahsildar,
Peravoorani and Taluk,
Thanjavur District.

2.Tamilselvi

.. Respondent

PRAYER : Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari calling for the records of the first respondent in his proceedings in Ni.Mu.1591/2013 E 2, dated 09.04.2013 and quash the same as legally unsustainable in law.

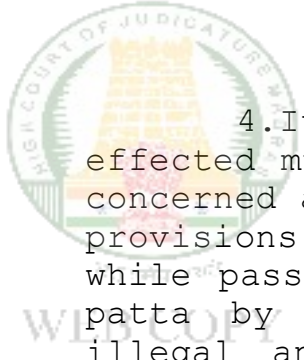
For Petitioner	: Mr.N.Balakrishnan
For Respondent 1	: Mr.Aayiram K. Selvakumar Government Advocate
For Respondent 2	: No appearance

O R D E R

This Writ Petition has been filed challenging the order passed by the Tahsildar, Peravoorani Taluk, Thanjavur District, by his proceedings Ni.Mu.1591/2013 E 2, dated 09.04.2013.

2.Heard the learned counsel for the petitioner and the learned Government Advocate for the first respondent.

3.The case of the petitioner in brief is that the property belong to one Sivabackiyam, the grand mother of the petitioner and that the said Sivabackiyam had executed a registered Will on 18.09.1990 in favour of the petitioner and his brother and sister. It is the further case of the petitioner that the petitioner's grand mother died on 20.09.2007 and that the said Will came into force. Though the petitioner has stated something about the reason for disowning other heirs of Sivabackiyam through her daughter Tamil Selvi and few other facts that compelled the testator to execute the Will, the fact remains that the petitioner has approached the first respondent for transfer of patta in the name of the petitioner only on the basis of the Will dated 18.09.1990 and the Tahsildar has passed an order transferring the property to the petitioner without holding an enquiry and without issuing a notice to the other legal heirs of the Sivabackiyam.



4. It is not in dispute that the Zonal Deputy Tahsildar has effected mutation of records without issuing notice to the person concerned and without holding an enquiry as contemplated under the provisions of Tamil Nadu Patta Passbook Act, 1983. The Tahsildar, while passing the impugned order, has found that the transfer of patta by the Zonal Deputy Tahsildar, without an enquiry, is illegal and that the order of the Zonal Deputy Tahsildar in effecting mutation is not valid for various reasons.

5. Having regard to the admitted fact that the Zonal Deputy Tahsildar, in the present case, has transferred the patta in the name of the petitioner and others without holding an enquiry and that the Zonal Deputy Tahsildar, is not an authority who is competent to effect mutation of name in the revenue records under the Tamil Nadu Patta Passbook Act, the order passed by the first respondent in restoring the revenue records prior to the order of Zonal Deputy Tahsildar dated 02.01.2013, is perfectly valid and hence, this Court finds no reason to interfere with the order of the first respondent. However, the petitioner is given liberty to approach the Civil Court to establish his right or title in respect of the property in question. The findings of the Tahsildar, with regard to the genuineness of the Will will not stand in the way of the Civil Court in deciding the relevant issues on merits. By dismissing the Writ Petition, this Court is not dealing with the merits of the findings of the Tahsildar on other issues with regard to the genuineness of the Will and character of the property in dispute. When the petitioner files a civil suit, the Civil Court may decide the issues without reference to and uninfluenced by the findings and observations of the Tahsildar with regard to the genuineness of the Will and the character of the properties. The Writ Petition is dismissed with the above observation. However, there is no order as to costs.

Sd/-

Assistant Registrar (CS-I)

/True copy/

Sub Assistant Registrar

To

The Tahsildar, Peravoorani and Taluk, Thanjavur District.

+1 CC to M/s.N.BALA KRISHNAN, Advocate, SR No.41818

+1 CC to M/s. THE SPECIAL GOVERNMENT PLEADER , SR No.41881

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