

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 17.08.2017

CORAM

THE HONOURABLE Mr.JUSTICE S.VAIDYANATHAN

W.P.No.9437 of 2004
&
W.P.M.P.No.11011 of 2004
and
W.V.M.P.No.1316 of 2004

1. M.Subramanian (Died)
2.S.Arukkani
3.S.Periyasamy
4.D.Banumathy
5.I.Lakshmi
(Petitioners 2 to 5 are substituted as L.R's of
Deceased P1:M.Subramanian as per order
dated 24.07.2017 in W.M.P.No.19851/2017
in W.P.No.9437/2004.) .. Petitioners

Vs

1.M.Ayyakannu
2.Kannan
3.The Tahsildar,
Kallakurichi Taluk,
Kallakurichi, Villupuram District.
4.The District Revenue Divisional Offficer,
Kallakurichi, Villupuram District.
5.The District Revenue Officer,
Villupuram, Villupuram District.
6.The Special Commissioner and
Commissioner of Land Administration,
Chepauk, Chennai-5. Respondents

PRAYER: Writ Petition filed under Article 226 of the
Constitution of India, praying to issue a writ of Certiorari to
call for the records of the sixth respondent relating to its
order dated 28-9-2003 passed in Na.Ka.No.G1/52080/99 and quash
the same as illegal and without jurisdiction.

For Petitioner : Mr.S.Kadarkarai for Mr.V.Radhakrishnan

For Respondents : Mr.Senthilmurugan for R1 & R2.
Mr.Akhil lAkbar Ali, Government
Advocate, for R3 to R6.

O R D E R

The writ petitioner (since deceased and legal heirs are brought on record as petitioners 2 to 5, vide order dated 24.07.2017 in W.P.M.P.No.19851 of 2017), has come forward with this writ petition praying for issuance of Writ of Certiorari to call for the records of the sixth respondent relating to its order dated 28-9-2003 passed in Na.Ka.No.G1/52080/99 and quash the same as illegal and without jurisdiction.

2. The writ petitioner is challenging the order dated 28.09.2003 of the sixth respondent holding that the petitioner has a joint property and that the patta cannot be issued independently. According to the petitioner, the lis between the parties has to be decided only by the Civil court and that the sixth Respondent has no jurisdiction to decide the disputed questions of fact, much less the title to the property. It is submitted by the learned counsel for the petitioner that the order passed by the 6th respondent is contrary to law and needs to be interfered with.

3. The first and second respondents have filed counter affidavits stating that the Revenue officials have inspected the property and found that it is in joint possession and that only after taking note of the objections and inspection, joint patta has been issued. The contention that the Special Commissioner and Commissioner of Land Administration, namely the 6th respondent has no jurisdiction to render a finding may not be correct, as the Tahsildar is the competent authority to issue patta and if the petitioner has got any grievance, he has got a right to file an appeal and while deciding the issue in question, naturally the authority will have to see as to whom the property belongs to.

4. In reply, the learned counsel for the petitioner submitted that it is true that the Tahsildar is empowered to issue patta either individually or jointly, but it is based on undisputed documents and he has got jurisdiction to do so and he cannot decide the lis between the parties as to who is the owner of the property. He further submitted that the petitioner has filed a suit for declaration and injunction and he is the owner of the property that he shall not be disturbed, was ultimately decided in his favour in Second Appeal No.1116 of

1999 before this court on 26.03.2012 and that declaration has been rendered in his favour and the order passed by the 6th respondent issuing joint patta has got to go and individual patta needs to be issued by the 6th respondent in favour of the petitioner.

5. Taking note of the fact that the disputed questions have been decided by this Court in favour of the petitioner (since deceased and legal heirs of the deceased petitioner have been brought on record pending Writ Petition) in the above Second Appeal No.1116 of 1999 on granting declaration and interim injunction in favour of the petitioner, the order impugned is liable to be interfered with and the same is accordingly set aside. The authority concerned ought to have issued individual patta in favour of the original petitioner. Taking note of the Judgement and decree in the above said Second Appeal, the authority is bound to issue individual patta in the name of original Writ petitioner. As the original petitioner is no more, the legal heirs are entitled to joint patta and the authorities cannot issue individual patta in the name of the legal heir unless the property is settled in favour of one of the legal heirs either by Release Deed or by means of any other valid transfer of property in the name of one person. The exercise shall be completed within 45 days from the date of receipt of a copy of this order.

6. The Writ petition is allowed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Asst.Registrar (CS VIII)

/true copy/

Sub Asst. Registrar

mfa

To

1.The Tahsildar,
Kallakurichi Taluk,
Kallakurichi,
Villupuram District.

2.The District Revenue Divisional Officer,
Kallakurichi,
Villupuram District.

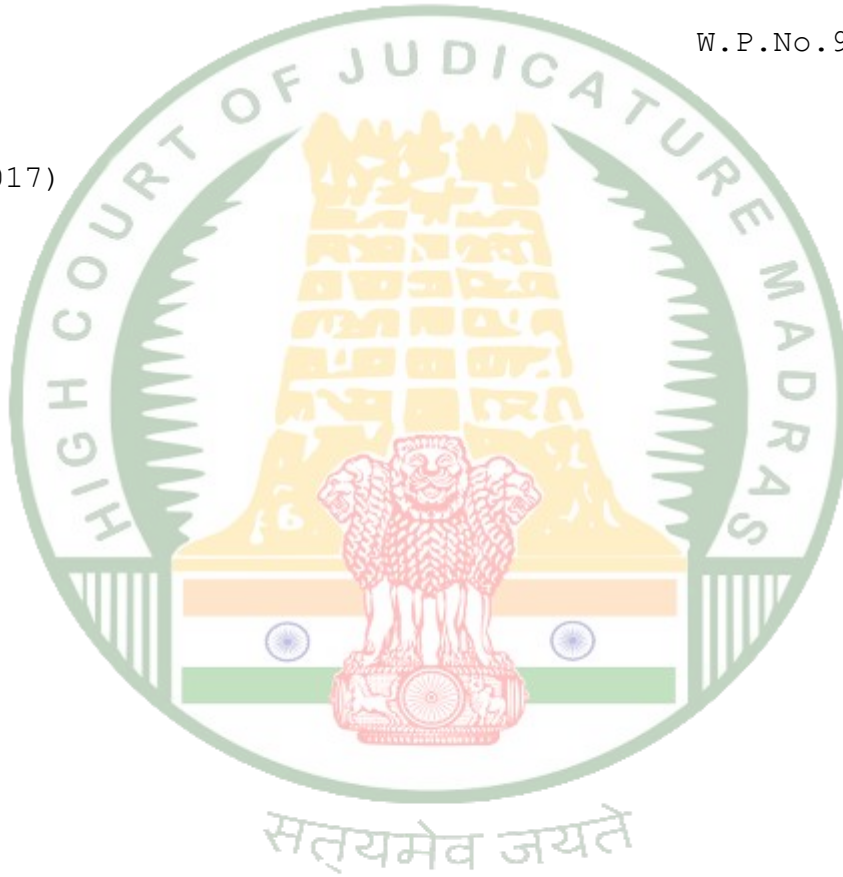
3.The District Revenue Officer,
Villupuram,
Villupuram District.

4.The Special Commissioner and
Commissioner of Land Administration,
Chepauk,
Chennai-5.

+1cc to mr.R.Ananda Kumar,Advocate sr.59000

W.P.No.9437 of 2004

vgII(co)
ss(12/9/2017)



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