

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.11.2018

CORAM

THE HONOURABLE Mrs. JUSTICE PUSHPA SATHYANARAYANA

W.P.Nos.21238 and 25313 of 2018
and W.M.P.Nos.24904 of 2018 in W.P.No.21238 of 2018
and W.M.P.Nos.24939 to 29441 and 32528 of 2018

W.P.No.21238 of 2018

Perumal

.. Petitioner

Vs.

1. The Revenue Divisional Officer,
O/o.The Revenue Divisional Office,
Gobichettipalayam, Erode District.
2. The Tahsildar,
O/o.The Revenue Divisional Office at
Thalavadi Taluk,
Thalavadi, Erode District.

3. Tmt.Kempamma

... Respondents

* * *

Prayer : Writ Petition filed under Article 226 of the Constitution of India praying for a Writ of Certiorarified Mandamus calling for the records of the impugned order of the first respondent herein in PA.Mu.1860/2018 (A2), dated ...05.2018 signed by the first respondent on 15.05.2018 to quash the same and to direct the first respondent herein to restore the original joint patta No.178 which was cancelled in an arbitrary and biased manner.

सत्यमेव जयते

* * *

For Petitioner :Mr.M.Balasubramanian

For Respondents :Mr.V.Shanmugasundar,
Special Government Pleader for RR1 & 2
Mr.N.Manokaran for R3

W.P.No.25313 of 2018 :

1. P.Kembammal
2. E.C.Senniappan
3. Karthik @ Karthikeyan
4. K.Manickam
5. K.B.Jothi Latha

.. Petitioner

Vs.

1. The Revenue Divisional Officer/
Sub Divisional Executive Magistrate,
Gobichettipalayam,
Erode District.
2. The Tahsildar,
Thalavadi Taluk,
Erode District.
3. A.Ashokan
Revenue Divisional Officer,
Gobichettipalayam,
Erode District.
4. The Inspector of Police,
Asanur Police Station,
Erode District.
5. R.Jayaraj
6. Perumal
7. Mahesh
8. Medeva
9. Rajannam

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India praying for a Writ of Certiorarified Mandamus calling for the records relating to the impugned orders made in Na.Ka.No.A2/6319/2018, dated 16.08.2018 and Na.Ka.No.6925/2018-A2, dated 28.08.2018 passed by the first respondent, quash the same and consequently forbear the respondents 1 to 6 from interfering with our right to property measuring 3.36 acres in S.F.No.199/2, Ikalur Village, Thalavadi Taluk, Erode District.

For Petitioner :Mr.N.Manokaran

For Respondents :Mr.V.Shanmugasundar,
Special Government Pleader for RR1-4

Mr.AR.L.Sundaresan, Senior Counsel
for Ms.AL.Ganthimathi for R5

Mr.M.Balasubramanian for R6.

C O M M O N O R D E R

As the petitioner in W.P.No.21238 of 2018 is the sixth respondent in W.P.No.25313 of 2018 and the first petitioner in W.P.No.25313 of 2018 is the third respondent in W.P.No.21238 of 2018 and the subject matter in both the writ petitions are similar and connected with each other, these writ petitions are taken up for hearing together and disposed of by this common order.

2. Challenging the order of the first respondent, which was signed on 15.05.2018, and to direct the first respondent herein to restore the original joint patta No.178, W.P.No.21238 of 2018 has been filed.

3. Questioning the order of the first respondent dated 16.08.2018 and also the Show Cause Notice dated 28.08.2018 issued by the said respondent, W.P.No.25313 of 2018 has been instituted.

4. For the sake of convenience, the parties are referred preferably as per their status in W.P.No.25313 of 2018.

5. The first petitioner in W.P.No.25313 of 2018 is admittedly the owner of the property in dispute, having inherited the same by virtue of a Will dated 28.11.1972 from her father. As per the Will, the first petitioner is to enjoy it for life and thereafter, it should vest absolutely to her children. There is no dispute with respect to the above facts. The first petitioner has seven children and the total extent inherited by the first petitioner under the Will is an extent 3.36 acres in Old S.F. No.57 and R.S.No.199/2 in Iggalur Village, Thalavadi Taluk, Erode District. The Will came into force in the year 1977, when the father of the first petitioner died. In the year 1985, the first petitioner and her husband sold 10 cents to the second petitioner and four others. Later, the second petitioner purchased the share of the other four purchasers. Thus, the second petitioner is the owner of 10 cents of land.

6. It is alleged by the first petitioner Kembammal that the fifth respondent Jayaraj had created an unregistered common pathway agreement dated 20.01.2006 alleged to have been executed by her. Therefore, the second petitioner filed O.S.No.46 of 2006 on the file of the District Magistrate Court, Sathyamangalam, and obtained a decree for injunction. The fifth respondent Jayaraj also claimed to have purchased an undivided 1/8th share approximately an extent of 0.41 cents on 22.10.2009 from one of the sons of the first petitioner. On 22.06.2017, the fifth respondent also had obtained a joint patta in the name of

the first petitioner, her sons and daughters from the Zonal Deputy Tahsildar, Thalavadi.

7. On coming to know of the same, a complaint was given by the first petitioner to the District Collector, Erode and to the Tahsildar, Thalavadi. A representation was also given to the first respondent - Revenue Divisional Officer, to cancel the joint patta alleging that the same was obtained by fraud. On 15.05.2018, the first respondent had passed an order cancelling the patta transfer order dated 22.06.2017 and deleted all other names excepting the name of the first petitioner Kembammal.

8. On 07.02.2018, the sixth respondent, who is the petitioner in W.P.No.21238 of 2018, had purchased 1/8th share from the daughter of the first petitioner Kembammal. Thus, he was also one of the pattadars in the joint patta No.178, as his vendor Pasamani being the joint pattadars. Aggrieved by the deletion of his vendor's name, the said writ petition, i.e., W.P.No.21238 of 2018 was filed by him.

9. The fifth respondent has also given a petition to include his name as co-pattadar in Patta No.178. In the meanwhile, on 09.08.2018, the first petitioner along with her children had sold an extent of 2.76 acres and 0.50 acres in favour of the fourth and fifth petitioners respectively. On 16.08.2018, the first respondent has passed an order directing the inclusion of the name of the fifth respondent Jayaraj as co-pattadar. This is the first order impugned in W.P.No.25313 of 2018. While so, the first respondent - RDO had issued a Show Cause Notice under Section 107 of the Code of Criminal Procedure (Cr.P.C.) on 28.08.2018, which is also questioned in W.P.No.25313 of 2018.

10. Heard the learned counsels on either side and perused the materials available on record.

11. The first contention of Mr.N.Manokaran, learned counsel for the petitioners in W.P.No.25313 of 2018 and the third respondent in W.P.No.21238 of 2018 is that the first petitioner Kembammal being the beneficiary cum life interest holder, the sale deed executed on 22.10.2009 and 07.02.2018 will not convey any right, as the vendors therein do not have any saleable interest. It is the contention of the petitioners that the fifth and sixth respondents have purchased the property under the wrong impression that it is an ancestral property. It is argued further that there was a collusion between the fifth and sixth respondents to create false documents in order to deprive the property rights of the first petitioner, which would amount to fraud and it would render the entire transaction void ab initio. However, when the sale in favour of the fifth and sixth respondents are admitted, the same can be undone only by approaching the civil court by the persons aggrieved and seeks

to set aside the same.

12. It is also not the case of the first petitioner that she wanted to retain the properties bequeathed in her favour intact and benefit her children after her death to be inherited. It is evident from the transactions dated 09.08.2018, wherein, the first petitioner along with her children, had sold the properties in favour of the fourth and fifth petitioners in document No.873 and 874/2018. In fact, admittedly, the extent of 10 cents already been sold on 09.09.1985 itself by the first petitioner herself along with her husband to the second petitioner, and thereby, the entire extent of 3.36 acres have been alienated by the first petitioner and her family. It is well within the knowledge of the first petitioner Kembammal that the fifth respondent had purchased an extent of 1/8th share of the undivided property and another 1/8th share of the said property was sold in favour of the sixth respondent on 07.02.2018 by her children, namely, Kalappa and Pasamani and there was also a joint patta including all the sharers. However, on 15.05.2018 excepting the name of the first petitioner Kembammal, the other names were deleted.

13. As stated earlier, when approximately, an extent of 0.84 cents (0.42 + 0.42 cents) have been sold by the children of the first petitioner, the alleged sale in favour of the fourth and fifth petitioners on 09.08.2008, including the said extent, could not have been done. When the first petitioner had taken steps to cancel the joint patta obtained by the fifth and sixth respondents alleging that they had played fraud, without setting aside those sales in the manner known to law, she ought not to have executed the documents 873 and 874 of 2018 dated 09.08.2018 overlapping the same properties.

14. A reading of the impugned order dated 16.08.2018 goes to show that the first petitioner Kembammal appears to have given an notarized affidavit before the Tahsildar that she has got no objection to include the name of the fifth respondent Jayaraj, as admittedly he has purchased the 1/8th share in Survey No.119/2 from her son Kalappa. Having given consent for issuing the patta and having accepted the title of the fifth respondent, the first petitioner is estopped from objecting the inclusion of the name in the joint patta. Hence, the first impugned order dated 16.08.2018 passed by the first petitioner does not suffer from any mala fides.

15. In so far as the second impugned order dated 28.08.2018 issued by the very same Revenue Divisional Officer is concerned, it is only a Show Cause Notice under Section 107 of Cr.P.C. From the above narrated facts, it would very clear and evident that the first petitioner is the puppet in the hands of the

petitioners 2 to 5 going back and forth in her stand. As the first petitioner has alleged fraud and creation of documents, it is a matter of evidence to be tried and resolved before a Civil Court and the same cannot be decided by this Court in exercise of the jurisdiction under Article 226 of the Constitution of India. Hence, there is no infirmity in the second impugned order dated 28.08.2018 also.

16. As the first respondent has already issued a Show Cause Notice dated 28.08.2018 directing the parties in dispute to appear for an enquiry, he is directed to conclude the above said enquiry within a period of four weeks from the date of receipt of a copy of this order. Needless to say that all the parties are directed to co-operate for the enquiry.

17. In so far the issue with respect to the title and execution of the sale deeds is concerned, as fraud and fabrication of documents are alleged, it is open to the petitioners to go before the appropriate civil forum and the parties are directed to co-operate for the trial, if so instituted.

18. Consequently, the impugned order passed by the first respondent in W.P.No.21138 of 2018 deleting the names of joint pattadars is set aside. The first respondent is directed to issue notice to all the parties interested in the subject property and after affording them an opportunity of hearing pass appropriate orders for issuing patta, including in the name of the sixth respondent.

19. In the result, W.P.No.21238 of 2018 is allowed and W.P.No.25313 of 2018 is dismissed. However, there shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar

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To

1. The Revenue Divisional Officer,
O/o.The Revenue Divisional Office,
Gobichettipalayam, Erode District.

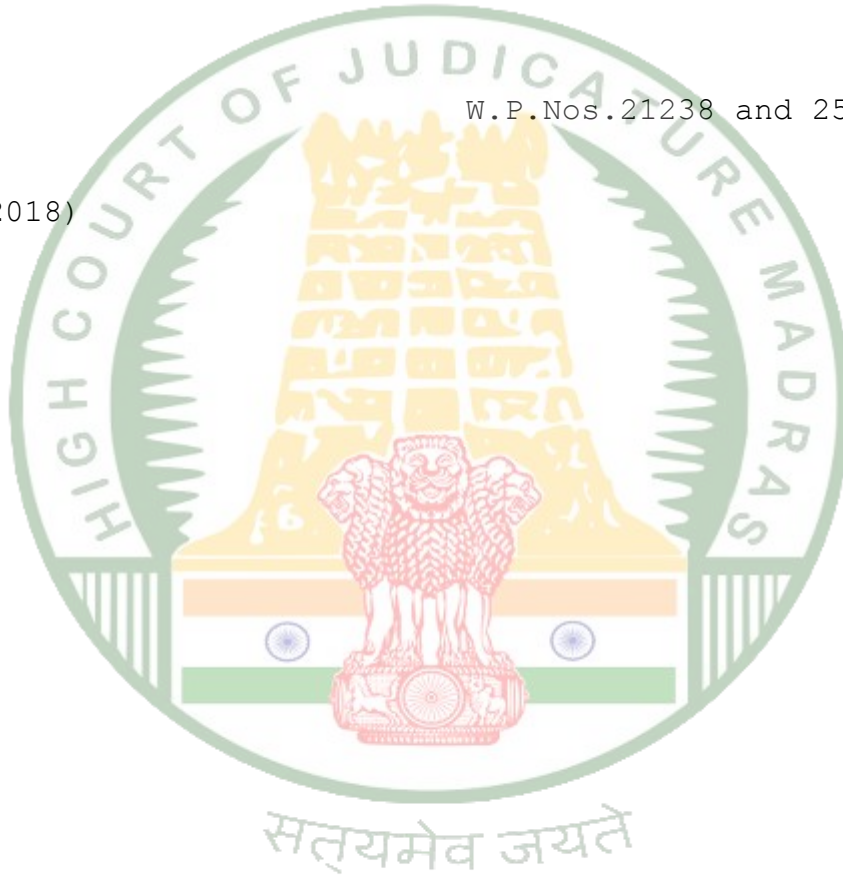
2. The Tahsildar,
O/o.The Revenue Divisional Office at
Thalavadi Taluk,
Thalavadi, Erode District.

3. The Inspector of Police
Asanur Police Station
Erode District.

+2 Ccs to Mr.M.Balasubramanian, Advocate sr 80779.
+2 Ccs to Mr.N.Manokaran, Advocate sr 80635, 80634.
+1 CC to M/s.A.L. Gandthimathi, Advocate sr 80731.

W.P.Nos.21238 and 25313 of 2018

SP(06/12/2018)



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