IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 26.07.2018

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.No.12046 of 2018

and W.M.P.Nos.14058 and 14059 of 2018

C.Thirulogachandar .. Petitioner

Versus

1.The Commissioner
Idappady Municipality
Office of Idappady Municipality
Idappady Taluk
Salem District.

2.C.Rajendran

3.C.Govindarajan

4.C.Kalaiselvi
(R2 to R4 are impleaded as per order dated 29.06.2018 in W.M.P.No.17371 of 2018) .. Respondents

Writ Petition filed under Article 226 of the Constitution of India, seeking for a Writ of Certiorarified Mandamus, calling for the records which relates to the impugned order dated 21.07.2016, bearing Ref.Na.Ka.No.1740/2016/H1 passed by the Respondent and quash the same and consequently direct the respondent to restore the Property Tax assessment No.18564 for the house situated at No.40, Nainampatty Road Street, Avaniperur Kilmugam Village, Idappady Taluk, Salem District.

For Petitioner : Mr.T.Sai Krishnan

For Respondent : Mrs.P.Rajalakshmi,
Government Advocate [R1]
Mr.L.Mouli [R2 to R4]

ORDER

Heard Mr.T.Sai Krishnan, learned counsel for the petitioner, Mrs.P.Rajalakshmi, learned Government Advocate appearing for the first respondent and Mr.L.Mouli, learned counsel appearing for respondents 2 to 4.

2. The petitioner has challenged the order cancelling the property tax assessment in the name of the petitioner on the ground that he has purchased the property and without notice to him, the property tax assessment cannot be cancelled.

3. The counter affidavit filed by the first respondent clearly illustrates the factual position and for better appreciation, the relevant paragraphs of the counter affidavit are quoted herein below:

> "... 4. It is submitted that the petitioner and his brother C.Adinarayanan purchased a house plot admeasuring 7 cents (3052 sq.ft) comprised in Survey No.287/6, Avaniperur Kilmugam Village, Idappadi Taluk, Salem District by the sale deed dated 31.12.2012 and registered as Document No.5499 of 2012 in the Office of the Sub Registrar, Idappadi. The petitioner paid house property tax for the year 2016-2017. The respondents 2 to 4 objected to cancel the house tax assessment, hence the 1st respondent cancelled the house assessment for the reason that the partition suit is pending in O.S.No.134 of 2004 and further in accordance with the judgment, the property tax will be assessed, aggrieved the order of the 1st respondent, the petitioner filed this present writ petition.
>
> 5. It is submitted that the whole property belongs to one Periyammal, she have one son (Chinna Irusan) and one daughter (Chinna Ponnu). Chinna Irusan have two wives, namely Chinna Pillai and Chinnammal. The above said Chinna Irusan executed gift deed in favour of 2nd wife sons and daughters, namely, Govindaraj, Kalaiselvi and Rajendran, respondents 2 to 4 herein. Meanwhile, the legal heirs of Chinnaponnu namely, 1. Chinnathambi, 2.Chinnusamy, 3. Lakshmi, 4. Chinnathayee and 5.Kundumani have filed Partition deed in O.S.No.134 of 2004 and the same is pending before the District Court, Sankiri, Salem District. While being so, the legal heirs of Chinna Ponnu, (said 5 persons) executed sale deed in favour of the petitioner herein and his brother C.Adi Narayanan. The said sale deed was executed the land to an extent of 7

cents out of 55 cents and the said sale deed was registered as Document No.5499 of 2012.

6. It is further submitted that originally the partition suit is still pending, but the 5 legal heirs of Chinna Ponnu jointly sold the land to an extent of 7 cents before getting their part by way of partition suit. Since the title was not confirmed with the executor of the property the petitioner purchased the executor has not interest over the property the sale deed was executed. Till the disposal of the Partition suit, the petitioner has no right over the property."

From the above averments, it is clear that the property still continues to remain undivided and the petitioner is stated to have purchased the property from the one set of legal heirs. Thus, the first respondent is fully justified in holding that till the disposal of the partition suit, the property tax assessment cannot be changed in the name of the petitioner. Though the first respondent has passed the impugned assessment order without issuing notice to the petitioner, mere non-adherence to such a procedure cannot vitiate the proceedings, as the petitioner cannot improve his case even if notice is issued as the partition suit is still pending.

4. Thus, there is no error in the impugned order. It is submitted by the learned counsel for respondents 2 to 4 that the petitioner has filed impleading petition in the suit.

5. In the light of the above, this writ petition is dismissed leaving it open to the parties viz., the petitioner and the respondents 2 to 4 to agitate their rights before the civil Court. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Deputy Registrar(CS)

//True Copy//

Sub Assistant Registrar

vsm

To
The Commissioner
Idappady Municipality
Office of Idappady Municipality
Idappady Taluk
Salem District.

+1cc to Mr.T.SAIKRISHNAN, Advocate, S.R.No.50929
+1cc to Mr.L.MOULI, Advocate, S.R.No. 50335

W.P.No.12046 of 2018

TR(21/08/2018)