

IN THE HIGH COURT OF JUDICATURE AT MADRAS  
DATED 23.01.2018  
CORAM  
THE HONOURABLE Mr.JUSTICE K.KALYANASUNDARAM

W.P.No.2018 of 2013  
and MP.Nos.2 and 3 of 2013

1. C.Ramasamy

2. C.Nagarajan

..Petitioners

Vs

1. The Revenue Divisional Officer,  
Coimbatore.

2. Namasivayam @ Sampath

3. Ramu

4. The Tahsildar,  
Coimbatore North Taluk Office,  
Coimbatore.

..Respondents

Prayer:- The Writ Petition is filed under Article 226 of the Constitution of India, seeking for a Writ of Certiorari calling for the records of the first respondent issued in Na.Ka.8985/2011/A2, dated 07.01.2013 and quash the same.

For Petitioner : Mr.R.Bharath Kumar

For Respondents : Mr.Ansar

Government Advocate for (R1 & R4)

: Ms.V.S.Usha Rani (R2 & R3)

ORDER

The writ petition is filed challenging the order of the 1st respondent issued in Na.Ka.No.8985/11/A2, dated 07.01.2013.

2. According to the petitioners, their father P.Chinnappan acquired a property measuring an extent of 2.32 acres of agricultural land in S.F.Nos.114/2, 114/1B, 115 and 116 of Puliakulam Village, vide sale deed dated 11.02.1974 and the remaining extent in the survey numbers were purchased by third parties and by registered partition deed, dated 21.11.1983, the petitioners' father was allotted 2.24 acres. After the demise of their father on 14.03.2019, the petitioners' mother Ponnammal and sisters Thulasiammal and Samiathal have released their rights in the property in dispute.

3. The petitioners would further claim that there is a sub canal known as Raja Vaikkal, which runs through East-West

direction and proceeds up to North-Eastern boundary of the lands belonging to the respondents 2 and 3. The petitioners and their predecessors reached their property on the passage of the sub canal and there is no other access to the property. In the Revenue Records, the sub canal is maintained as T.S.Nos.8/3, 9/4, and 10/3.

4. The petitioners have alleged that the respondents 2 and 3 were doing real estate business and they are attempting to obliterate the said canal. Hence, a suit in O.S.No.549 of 2011 was instituted before the Principal District Mufi Court, Coimbatore and in I.A.No.683 of 2011, an interim injunction was granted and the same is still in force and in I.A.No.684 of 2011, an Advocate Commissioner was appointed and after inspection, he has also filed his report showing the existence of the canal.

5. The petitioners would further allege that when the suit is pending, the respondents 2 and 3 have approached the first respondent to cancel the sub-division and the first respondent, without providing them any opportunity, has passed the impugned order.

6. The learned Government Advocate appearing for the respondents 1 and 4, by referring the counter filed by the 4<sup>th</sup> respondent, submitted that the sub canal is existing in Old S.F.No. 104/part, 105/part and 106/2, corresponds to T.S.Nos.8/3, 9/4 and 10/3 and the canal is situated on the North-Eastern boundary of the lands owned by the respondent 2 and 3. The sub-division is created during the Town re-survey and the Revenue Divisional Officer has recommended to take necessary action against the Town Surveyor and still, no final orders have been passed.

7. Heard learned counsel for the petitioners and learned Government Advocate appearing for the respondents 1 and 4 and the learned counsel appearing for the respondents 2 and 3 and perused the materials available on record.

8. The learned counsel for the petitioners, while reiterating the averments in the affidavit contended that the impugned order came to be passed without affording ample opportunity to the petitioners.

9. The learned counsel appearing for the private respondent contended that there is no sub-division after 1961 and if there is any sub-division, it was done behind the back of the respondents 2 and 3. It is further submitted that the petitioners have filed only injunction suit and the title of the petitioners cannot be decided by the Civil Court and the respondents have no serious objection for remanding the case.

10. The learned Government Advocate appearing for the official respondents submitted that the only allegation of the

petitioners that they were not given opportunity, is not actually correct. The learned counsel further submitted that if the matter is remanded back to the 1<sup>st</sup> respondent, he can pass orders in the appeal, after hearing both the parties.

11. The order impugned in this writ petition has been challenged mainly contending that the first respondent, without affording an opportunity and in violation of principles of natural justice, has passed the impugned order. The learned Government Advocate submitted that though the first respondent has passed the impugned order on 07.01.2013, the order is still not implemented and they are awaiting further orders from the District Revenue Officer due to the pendency of the Civil Court and the interim order passed in the Suit.

12. In the light of the above facts and the grievances expressed by the petitioner, this Court is of the considered opinion that the impugned order cannot be sustained. Accordingly, the impugned order is set aside and the case is remanded back to the first respondent to pass an order afresh, after providing opportunity to the petitioners and the respondent 2 and 3, on merits and in accordance with law. Accordingly, the writ petition is allowed. No costs. Consequently, connected Miscellaneous petitions are closed.

Sd/-  
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

pvs / msrm

To

1. The Revenue Divisional Officer,  
Coimbatore.

2. The Tahsildar,  
Coimbatore North Taluk Office,  
Coimbatore.

+1cc to Mr.V.S.Usharani, Advocate Sr.No.5106  
+1cc to M/s.Bharath Kumar, Advocate Sr.No.5706  
+1cc to Government Pleader SR.No.5507

sm:15.2.2018

W.P.No.2018 of 2013