

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.11.2018

CORAM

THE HONOURABLE MR. JUSTICE M. SATHYANARAYANAN

AND

THE HONOURABLE MR. JUSTICE P. RAJAMANICKAM

W.A.No.2615 of 2018
and CMP.No.21332 of 2018

P.Somasundaram

...Appellant

Vs

1.The Revenue Divisional Officer,
Coimbatore.

2.The Tahsildar,
Coimbatore North,
Coimbatore.

S.Maruthakutty (Died)
3.Kaliammal

4.Ponnammal

5.Padmavathi

6.Muthammal

7.Manoharan

8.Sivakami

9.Gautham

10.Premkumar

11.P.Pandiyan

...Respondents

PRAYER:- Writ Appeal filed under Clause 15 of the Letter Patents against the order dated 12.04.2018 made in W.P.No.30488 of 2012.

For Appellant : Mr.L.Mouli

For Respondents : Mr.A.E.Ravichandran for R11
Mr.A.Ansar,
Government Advocate for R1 & R2

JUDGMENT

[Judgment of the Court was delivered by M.SATHYANARAYANAN, J..]

The appellant is the writ petitioner and he filed WP.No.30488 of 2012, praying for issuance of a Writ of Certiorari to quash the proceedings dated 14.09.2012, confirming the order dated 06.10.2010 passed by the 2nd respondent and the said writ petition, after contest, came to be dismissed vide impugned order dated 12.04.2018 and challenging the legality of the same, the present writ appeal is filed.

2. Facts leading to the present litigation have been narrated in detail and in extenso in the impugned order, which is the subject matter of challenge in this writ appeal and therefore, it is not necessary to restate the facts once again.

3. Mr.Marappa Gounder, who is no more, filed a petition before the 2nd respondent praying for inclusion of his name in pattas, relating to Somaiyampalayam Village, S.No.567/1, 568 and 569 and in the said proceedings, the petitioner was also put on notice. The 2nd respondent after perusal of the records and upon providing opportunity to both the parties, passed an order dated 06.10.2010, for inclusion of the legal heirs of Ayammal, daughter of Marappagounder as well as the legal heirs of Thevatha along with Velammal, Kaliammal who are alive and granted joint patta. The appellant / writ petitioner who was a party to the said proceedings, aggrieved by the said order of the 2nd respondent dated 06.10.2010, filed an appeal before the 1st respondent, and it was taken on file. Notices were issued to the rival parties and records were also submitted and the 1st respondent, vide impugned order dated 14.09.2012, has confirmed the order of the 2nd respondent dated 06.10.2010.

4. The 1st respondent while confirming the order, has recorded a finding that on 14.07.1924, while Velammal daughter of Marappa Gowndar was alive, the inclusion of name of Palanisamy @ Palanikutty Gowndar, his wife Kaliammal, their son Mr.P.Somasundaram / appellant as well as Daughter Dhanalakshmi was wrong and further recorded a finding that in

the Will of Marappa Gowndar, a portion of the property has been sold by his father Devi Gownder and in respect of the ancestral property, Marappa Gownder has no right to execute the Will and therefore, the Will was not valid. The 1st respondent also taken note of the fact that the Suit for partition in O.S.No.1466 of 1992 was pending and paper publication has also been published to that effect and therefore, with regard to the division of the property, there is a dispute between the parties and in the light of the reasons assigned. has dismissed the revision and challenging the same, writ petition came to be filed, which also ended in dismissal and hence this writ appeal.

5. The learned counsel appearing for the appellant / writ petitioner would submit that the Suit in O.S.No.1466 of 1992, is no longer pending for the reason that it came to be dismissed as not pressed, vide judgment and decree 21.03.2017 and appellant / writ petitioner has also filed a Suit in O.S.No.497 of 2011 on the file of the IVth Additional District Munsif, Coimbatore to declare the said Sale Deed dated 24.11.2010 executed by the respondents 3 to 10 in favour of the 11th respondent as null and void and he would further urge that both the respondents 1 and 2 did not properly apply their mind to the relevant records and the points urged and hence prays for interference.

6. *Per contra*, the learned counsel appearing for the 11th respondent would submit that in the said suit, the Will referred to by the appellate authority namely the 1st respondent, which is also one of the grounds / issues raised and both authorities on a perusal of the records and on consideration of entire materials, had rightly reached the conclusion and those finding had also been confirmed by the learned Single Judge and in the light of the concurrent findings, this Court in exercise of its appellate jurisdiction under Clause 15 of the Letter Patent may not interfere with the same and prays for dismissal of this writ appeal.

7. This Court heard the submission of the learned counsel appearing for the appellant and Mr.A.Ansar, learned Government Advocate appearing for the official respondents 1 and 2.

8. A perusal of the orders passed by the 2nd respondent, as confirmed by the 1st respondent would disclose that certain findings came to be rendered and the 1st respondent, in the impugned order, had assumed the role of the Civil Court and given certain findings in Page Nos.4 and 5 of the impugned order, which also includes the finding relatable to the validity of the Will.

9. In the considered opinion of this Court, the revenue authorities cannot assume the role of the Civil Court and the said finding recorded by the appellate authority can be adjudicated only by a competent civil forum based upon relevant pleadings and quality of evidence to be let in. However, the appellate authority / 1st respondent has also reached the conclusion after taking note of the pendency of the suit for partition in O.S.No.1466 of 1992, which subsequently came to be dismissed as not pressed.

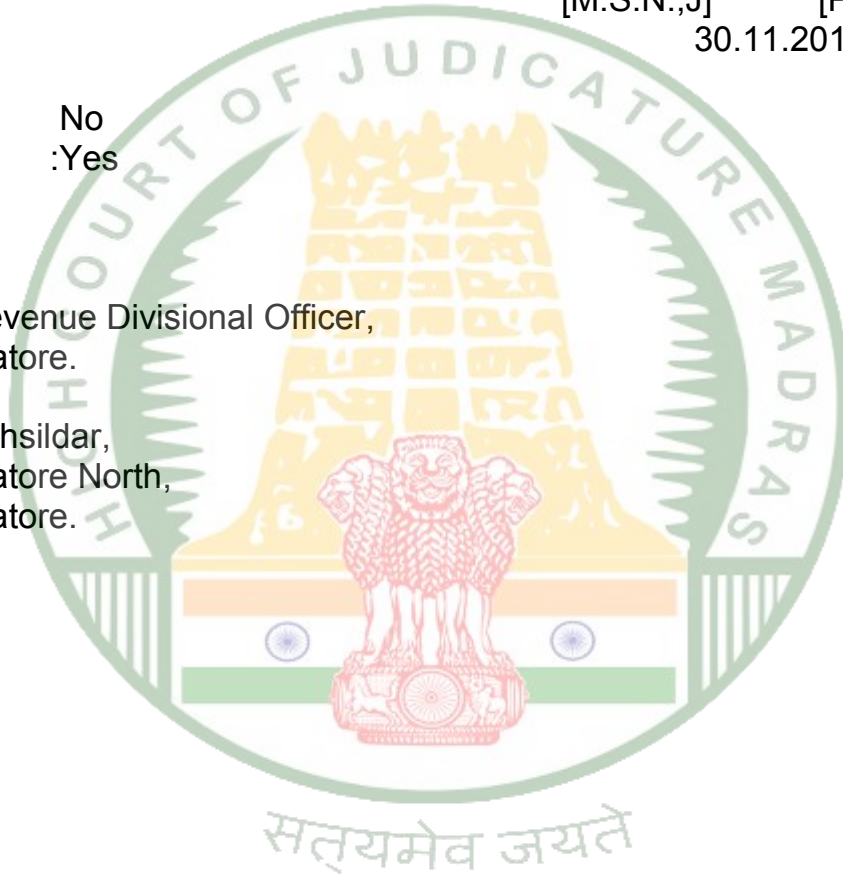
10. The points now urged by the learned counsel revolve around the truth and validity of the Will under which, he claims rights, title and possession. In the considered opinion of this Court, the same cannot be adjudicated by the revenue authorities as well as by this Court. Admittedly, the suit in O.S.No.497 of 2011 referred to above has been filed by the appellant/writ petitioner against the respondents 3 to 11 and depending upon the result of the said suit as well as the final culmination of the civil proceedings, the appellant / writ petitioner is always at liberty to workout his remedy in respect of the patta proceedings.

11. In the result, the Writ Appeal stands dismissed, confirming the order dated 12.04.2018 made in W.P.No.30488 of 2012. No costs. Consequently connected miscellaneous petition is closed.

[M.S.N.,J] [P.R.M., J]
30.11.2018

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Index : No
Internet :Yes

To
1.The Revenue Divisional Officer,
Coimbatore.
2.The Tahsildar,
Coimbatore North,
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and
P.RAJAMANICKAM..J.

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