

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 27.11.2018

CORAM

THE HONOURABLE MRS. JUSTICE PUSHPA SATHYANARAYANA

W.P.No.29655 of 2018

S.Sivakumar

.. Petitioner

Vs.

The Tahsildar,
Office of Tahsildar,
Sankari,
Salem District.

.. Respondent

PRAYER : Writ Petition filed Under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for the records pertaining to the order passed by the respondent in Na.Ka.No.3061/2018 (K) dated 06.09.2018 and quash the same, consequentially issue direction directing the respondent to issue patta to in favour of petitioner to the Survey No.229/2A2, 2C situated at Vaikundham Village, Sankari, Salem District by considering the petitioner's representation dated 09.03.2018.

For Petitioner : Mr.R.Marudhachalamurthy
For Respondent : Mr.V.Shanmugasundar
Special Govt. Pleader

O R D E R

The petitioner has filed the present Writ Petition challenging the order passed in Na.Ka.No.3061/2018 (K) dated 06.09.2018 and to quash the same and consequently direct the respondent to issue patta.

2. Heard Mr.R.Marudhachalamurthy, learned counsel appearing for the petitioner and Mr.V.Shanmugasundar, learned Special Government Pleader on behalf of the respondent.

3. According to the petitioner, he approached the respondent seeking for transfer of patta in his name, based on the Will executed by his mother dated 23.11.2012. The said request was rejected by the impugned order passed by the respondent on the ground that the said Will produced by the petitioner is an unregistered one.

4. The learned Special Government Pleader has also filed

the counter affidavit and in paragraph 8 of the same, it is clearly stated that the petitioner's mother Seethalakshmi @ Chinnathayee, was the absolute owner of the property situate in Survey No.229/2A and 229/2C of Vaikuntham Village, Sankari Taluk, by means of decree passed in OS No.103 of 1994 on the file of District Munsif Court, Sankari. The said Chinnathayee, died on 08.10.2014 and the Legal Heir Certificate is also produced, which shows that she has left behind her husband, the petitioner, three daughters and one son. It is the case of the petitioner that the Will was executed bequeathing the said property in his name. No doubt, the execution of the Will has to be proved in the manner known to law. But the impugned order is passed only on the ground that the Will is Unregistered.

5. In the above said facts and circumstances of the case, the impugned order is to be set aside and the matter is to be remitted back to the respondent.

6. Accordingly, the Writ Petition is allowed. The impugned order is set aside remitting the matter back to the respondent. The respondent is directed to issue notice to all the legal heirs and also afford them due opportunity of hearing, with respect to the Will dated 23.11.2012 and also issuance of patta in favour of the petitioner. In the event there is any objection from the said persons, they cannot be impediment to the respondent to grant patta. If there is any dispute to the Will, the same has to be proved by the legatee in the manner known to law. The respondent is directed to complete the above exercise within a period of eight weeks from the date of receipt of a copy of this order. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

jv

To
The Tahsildar,
Office of Tahsildar,
Sankari, Salem District.

+1cc to Mr.R.Marudhachalamurthy, Advocate, S.R.No. 87175
+1cc to the Government Pleader, S.R.No. 81768

W.P.No.29655 of 2018

VD(CO)
GN(26/12/2018)