BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED: 05.07.2018
CORAM
THE HONOURABLE MR.JUSTICE S.S.SUNDAR

W.P(MD)No.8837 of 2018
and
W.M.P.(MD) No.8264 of 2018

P.Muthu ... Petitioner

vs

1. The District Revenue Officer,
   Collector Office,
   Madurai District-625 020

2. The Revenue Divisional Officer,
   Collector Office,
   Madurai District-625 020

3.S.Saravanan
4.P.Kundumalai ... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorarified Mandamus, calling for the records on the file of the first respondent pertaining to the proceedings in Ni.Mu.48555/2015/G2 dated 17.01.2018 and quash the same as illegal and to restore the order of the second respondent.

For Petitioner : Mr.A.Jeyaram
For R1 & R2 : Mr.J.Gunaseelan Muthiah
Additional Government Pleader
For R3 & R4 : Mr.M.Venkatesan

ORDER

This writ petition has been filed to call for the records on the file of the first respondent pertaining to the proceedings in Ni.Mu.48555/2015/G2, dated 17.01.2018 and to quash the same as illegal and to restore the order of the second respondent.

2.The brief facts that are set out in the affidavit filed in support of this writ petition are as follows:

(i) The property in Survey No.24/5 measuring an extent of 1 acre 16 cents originally belongs to the mother of the writ petitioner, namely, Ayyammal W/o. Periyakaruppan Ambalam situated at Pirakudi Village, Madurai South Taluk, Madurai District. The petitioner's elder brother, by name, Malaiyalam sold the 40 cents on the northern side of the land in Survey No.24/5 to one Sethuraman Chettiyar. The respondents 3 and 4 purchased the said 40 cents from Sethuraman Chettiyar by document dated 19.09.2007. After purchasing the land, the respondents 3 and 4 applied for sub-division and separate patta. Thereafter, the land purchased by the respondents 3 and 4 was sub divided as Survey No.24/5B and a separate patta was issued by the Tahsildar concerned. The proceedings of the Tahsildar, was challenged by the petitioner before the Revenue Divisional Officer, who cancelled the sub division on the ground that the sub division of the land by the Tahsildar was not carried out as per sale deed dated 19.09.2007. The order passed by the second respondent dated 19.09.2007, was challenged by the respondents 3 and 4 before the first respondent, the District Revenue Officer, Madurai District, Madurai. The first respondent / the District Revenue Officer, Madurai District, Madurai, after issuing notice to the petitioner as well as the respondents 3 and 4, passed the impugned order, dated 17.01.2018, which is challenged in this writ petition.

3.The learned counsel for the petitioner submitted that the sub division of the land is contrary to the sale deed. He submitted that the petitioner is aggrieved as the property originally belonged to his mother, namely, Ayyammal.

4.The learned counsel for the respondents 3 and 4 contested this writ petition by filing a detailed counter affidavit, wherein, he highlighted the fact that the petitioner has no right in the property in Survey No.24/5.

5.Sum and substance, the argument of the learned counsel for the respondents 3 and 4 is to the effect that one Malayalam, i.e., brother of the petitioner sold 40 cents to one Sethuraman Chettiar. The said Sethuraman Chettiar sold the northern 40 cents to the respondents 3 and 4. The remaining lands were sold by Malayalam in favour of two other persons.

6.It is stated by the learned counsel for the respondents 3 and 4 that by document dated 22.12.2004, the said Malayalam, executed a sale deed in respect of an extent of 22 cents in the middle portion of Survey No.24/5 in favour of one V.Sonai. Again the said Malayalam, executed another sale deed on 26.04.2007, to one Rajkumar, to an extent of 54 cents, which lies on the southern portion of Survey No.24/5.

7.It is pertinent to note that in all the sale deeds, executed by one Malayalam, it has been described as one belong to the mother of the Malayalam and subsequently, allotted to him in an oral partition in the year 1980. It is, of course, stated that separate patta was given in favour of the petitioner's brother namely, Malayalam in respect of the entire extent of land in Survey No.24/5.

8.The dispute is therefore between the petitioner and the purchasers of the land from the petitioner's brother. It is pertinent to note that the petitioner may claim some right as a co-owner and as one of the legal-heirs to succeed to the estate of his mother. But that is not the position here. The petitioner is not aggrieved by the sale deeds executed by his brother on the basis of oral partition as stated in the sale deed. The Thasildar, who has effected sub division did not give any notice to the petitioner. However, the Revenue Divisional Officer, has set aside the order of the Thasildar only on the ground that the property has been sub divided in favour of the respondents 3 and 4 contrary to the sale deed obtained by them from the vendor of the petitioner's brother.

9.In these circumstances, the first respondent went to the rival claim and found that the petitioner has not established his right over the property in dispute. Since the first respondent took note of the subsequent developments that the remaining land in Survey No.24/5B has been formed, as lay out by the persons, who purchased the property from the petitioner's brother and none of the purchasers of property in S.No.24/5 has raised any objection, passed a detailed order and set aside the order of Revenue Divisional Officer.

10.In this case, the sub division effected by the Thasildar, could have been questioned for the simple reason that it was not done after issuing notice to the petitioner, if he has a claim as a co-sharer. However, the petitioner does not dispute the sale deed and its validity and he does not claim any title or right in respect of any portion of S.No.24/5.

11.The learned counsel for the respondents 3 and 4 submitted that challenging the oral partition the petitioner has not filed any civil suit or questioned the sale deeds executed by the petitioner's brother in favour of others. He further wanted this Court to consider the bona fides of the petitioner and submitted that a stranger, who has no semblance of right cannot question the subdivision. He further submitted that the petitioner has not filed any separate suit for partition or any other relief, though he is aware of the sale deeds executed by the petitioner's brother in favour of three different persons.

12.Under these circumstances, it is submitted that the order of District Revenue Officer is well founded and that his findings cannot be challenged by the petitioner without having any right. Since the District Revenue Officer has ultimately gave an opportunity to the petitioner to approach the civil Court, it is submitted that there is no illegality in the order passed by the District Revenue Officer.

13.This Court considered the rival submissions made on either side.

14.The fact that the property belonged to the petitioner's mother is not in dispute. Even though, the petitioner's brother has sold the entire extent of lands in S.No.24/5 under three sale deeds in favour of different parties on the basis of the oral partition in the family, the same is not disputed by the petitioner even in this writ petition. The learned counsel for the petitioner admits that he wants to protect the right of other purchasers, who have obtained sale deeds in respect of other portion of land in S.No.24/5. The petitioner has no locus standi to question the order of first respondent as he has no claim over any portion of the property in S.No.24/5.

15.As a result, the writ petition is dismissed as devoid of any merits. No costs. consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar (CS-I)

/True Copy/

Sub Assistant Registrar(CS-III)

To

1. The District Revenue Officer,
   Collector Office,
   Madurai District-625 020

2. The Revenue Divisional Officer,
   Collector Office,
   Madurai District-625 020

+1cc to Mr.A.Jeyaram, Advocate SR.No.70835
+1cc to Mr.M.Venkatesan, Advocate SR.No.71208
+1cc to SPECIAL GOVERNMENT PLEADER, SR.No.70913
Mm
MK/KAK/SAR 3/07.08.2018/4P/6C

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