



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 22.11.2018

DELIVERED ON : 21.12.2018

CORAM:

THE HONOURABLE MR.JUSTICE **S.S.SUNDAR**

AND

THE HONOURABLE MR.JUSTICE **C.SARAVANAN**

W.A.(MD)No.1053 of 2017

and

C.M.P(MD)No.7375 of 2017

T.Senthil @ Senthil Kumar

... Appellant/Petitioner

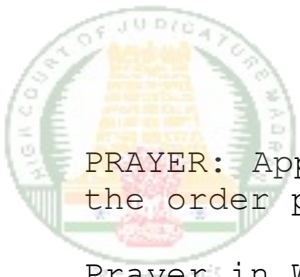
Vs.

1. The District Revenue Officer,
Ramanathapuram,
Ramanathapuram District.
2. The Revenue Divisional Officer,
Ramanathapuram,
Ramanathapuram District.
3. The Tahsildar,
Rameswaram,
Ramanathapuram District.
4. N.Saravanan
5. N.Rajamani (Late)
6. T.S.M.S. Sadaq Jalal,
S/o.ThaiKa Seyed Mohideen,
No.19A, Rutland Gate,
4th Street, Chennai - 600 006.
Rep. by his Power Agent,
H.Rasim Abdul Kadar,
S/o.Hameed,
No.6/32, A Chakra Pani Street Extension,
Rangarajapuram, Kodambakkam,
Chennai - 600 024.
7. H.Rasim Abdul Kadar
8. Gandhi
9. C.Thirumurugesan

... Respondents/Respondents

(Respondents 8 and 9 are impleaded vide Court order dated 23.01.2018 made in C.M.P.(MD)No.8366 of 2017 in W.A.(MD)No.1053 of 2017 by MSNJ and RHJ)

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PRAYER: Appeal filed under Clause 15 of the Letters Patent, against the order passed in W.P(MD)No.7442 of 2016, dated 12.04.2017.

Prayer in WP(MD). 7442/ 2016 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Certiorarified Mandamus, to call for the records culminating in the order bearing NO. PM(B6) 69038/2015 dated 16.03.2016 on the file of the 1st respondent and quash the same and consequently direct the 1st respondent to issue Patta No. 5603 to the Petitioner bearing Survey No. 379/6, Rameswaram Village, Rameswaram of an extent of 1.75 acres pursuant to the compromise decree dated 22.08.2005 in A.S.No. 1245/1994.

For Appellant : Mr.S.Meenakshi Sundaram
Senior Counsel for M/s.V.Perumal

For Respondents : Mr.V.R.Shanmuganathan
Special Government Pleader for R.1 to R.3
Mr.N.Rahamadullah
Mr.P.Saravanakumar for R.8 & R.9

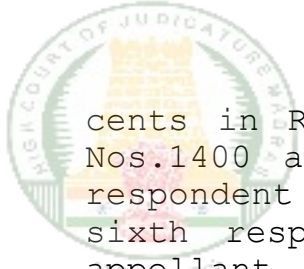
JUDGMENT

S. S. SUNDAR, J.

The above appeal has been filed by the Writ Petitioner in W.P. (MD)No.7442 of 2016 as against the order of the learned Single Judge dismissing the Writ Petition filed by the appellant.

2.The Writ Petition in W.P.(MD)No.7442 of 2016 was filed by the appellant for issuing a writ of certiorarified mandamus to quash the proceedings of the first respondent dated 16.03.2016 and consequently direct the first respondent to issue patta to the petitioner in respect of the land measuring an extent of 1.75 acres in Survey No.379/6 Rameswaram Village, Rameswaram, pursuant to the compromise decree dated 22.08.2005 in A.S.No.1245 of 1994.

2.It is stated by the appellant that by a compromise decree passed in A.S.No.1245 of 1994 on the file of this Court dated 22.08.2005 an extent of 1.75 acres in old Survey No.379/2 (New Survey No.379/6) was allotted to appellant's father (shown in Schedule 1 (d)). It is admitted that on 01.03.2007 the third respondent issued a patta to the respondents 4 and 5. However, it is further stated that the said patta was issued in favour of the respondents 4 and 5 without properly verifying the boundaries mentioned in the schedule allotted to respondents pursuant to the compromise decree dated 22.08.2005 in A.S.No.1245 of 1994. It is also admitted that on 24.09.2007, the seventh respondent, being the power of attorney of respondents 4 and 5 sold the property in Survey No.379/2 (New Survey No.379/6) measuring an extent of 3 acres and 57

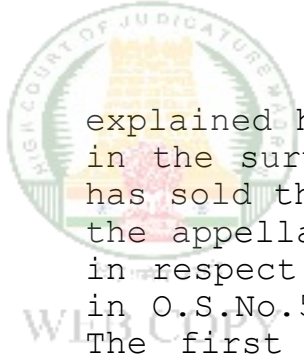


cents in Rameswaram village to the sixth respondent vide document Nos.1400 and 1401 of 2007. It is also admitted that the third respondent transferred patta vide patta No.3856 in favour of the sixth respondent on 29.10.2007. Hence, it is stated that the appellant was constrained to file a petition before the second respondent for issuance of a patta in respect of the piece of land having an extent of 1.75 acres out of 1.35 hectares which was allotted to his father in the compromise decree in A.S.No.1245 of 1994.

3.By order dated 25.06.2010 the second respondent directed the third respondent to sub-divide and issue separate patta in favour of the legal heirs of appellant's father in respect of the parcel of land in respect of the land measuring 1.75 acres out of 1.35 hectares in old Survey No.379/2 (New Survey No.379/6) as per the compromise decree. It is stated by the appellant that without making any sub-division as directed by the second respondent, the third respondent issued joint patta in favour of the legal heirs of the appellant's father Late Thavasumanian along with sixth respondent. The sixth respondent challenging the order passed by the second respondent dated 25.06.2010 filed a Writ Petition in W.P. (MD) No.9467 of 2010 before this Court. The prayer in the Writ Petition was to direct the respondents 2 and 3 to restore the mutation of revenue records in the name of sixth respondent. This Court allowed the Writ Petition and quashed the order of the second respondent dated 25.06.2010. However, the matter was remitted to the first respondent for fresh consideration with certain directions. It is stated by the appellant that the seventh respondent approached the second respondent and the second respondent passed an order on 11.12.2015 to the effect that the Civil Court alone is competent to redress the grievance of the seventh respondent having regard to the nature of dispute. When the seventh respondent has approached the second respondent, it is also stated by the appellant that he filed another Writ Petition in W.P. (MD)No.14989 of 2015 before this Court for issuing a Writ of Prohibition against the second respondent restraining him from proceeding further with the appeal filed by the seventh respondent. It is admitted by the appellant that the first respondent pursuant to the order of this Court in W.P.(MD)No.9467 of 2010 dated 16.07.2015, passed an order on 16.03.2016 holding that only a civil court is competent to adjudicate the present dispute between the parties. Since this Court has earlier set aside the order dated 25.06.2010 passed by the second respondent, the first respondent directed the second respondent to issue patta in favour of the fourth respondent with regard to the disputed lands in compliance of the direction of this Court.

4.It is against the order dated 16.03.2016 the Writ Petition in W.P.(MD) No.7442 of 2016 came to be filed. The Writ Petition was contested by the respondents 6 and 7 in the Writ Petition by filing a counter affidavit. In the counter affidavit, respondents 6 and 7 have admitted that the appellant's father was allotted an extent of

1.75 acres in old Survey No.379/2A. It is further stated that the appellant's father had already sold an extent of 2 acres of land in the very same survey number by referring to the compromise decree in A.S.No.1245 of 1994. It was on the basis that the property allotted in favour of the appellant's father had already been sold, it was contended that the appellant has no right over any portion of the property that was allotted to the appellant. It was pointed out that under the sale deed dated 09.04.2002, the appellant's father sold the property to one Seenikutti and two others. It is relevant to point out that the property conveyed under the said document is in respect of 1.75 acres out of 10.62 acres in Survey No.379/2A. Again another extent of 25 cents out of 10.62 acres was also sold by another sale deed dated 09.04.2002. These two documents were registered as document Nos.291 and 292 of 2002. It is the specific case of the contesting respondents that the appellant's father had already sold two acres of land which is more than the extent that was allotted in favour of the father of the appellant. The appellant, however, contended that the sixth respondent has purchased an extent of 3.58 acres under two sale deeds vide document No.1400 and 1401 of 2007 in Survey No.379/6 and 379/2A1B. It is also stated that the respondents 4 and 5 were allotted the properties purchased by sixth respondent in the same compromise decree and that separate patta was also given in favour of the respondents 4 and 5. Since the sixth respondent has now purchased the property from respondents 4 and 5, who were the lawful owners as per the compromise decree, it is also submitted that the appellant has no right to claim any title over the disputed property. The learned Single Judge of this Court after recording the fact that the patta was issued in favour of the sixth respondent on 29.10.2007 and that the order dated 25.06.2010 granting joint patta by including the name of the appellant on 25.06.2010 has been set aside by this Court in the earlier Writ Petition filed by the sixth respondent in WP(MD)No.9467 of 2010 by order dated 16.07.2015 held that the order passed by the revenue officials by directing the parties to approach the Civil Court to sort out the dispute and to restore the patta granted in favour of the sixth respondent by the second respondent pending adjudication of the dispute before the competent Civil Court cannot be faulted. Since the appellant is given liberty to approach the Civil Court, it is further observed by the learned Single Judge that the appellant does not suffer any prejudice. While dismissing the writ petition, the learned Single Judge of this Court has also rejected the contention of the appellant that the second respondent cannot change his own order. The learned Senior Counsel appearing for the appellant has admitted the position that the appellant's claim is based on the compromise decree in A.S.No.1245 of 1994 dated 22.08.2005. Though the appellant in the affidavit filed in respect of the Writ Petition has referred to the facts that there are some discrepancies in the boundaries and that patta in favour of the respondents 4 and 5 and consequently in favour of the sixth respondent was not in respect of the property that was allotted to respondents 4 and 5 in the compromise decree in the whole affidavit filed in support of the Writ Petition, the appellant has not



explained how he is entitled to claim any portion over the property in the survey number as per the compromise decree after his father has sold the property in favour of strangers. It is to be seen that the appellant's father has executed two sale deeds dated 09.04.2002 in respect of the property which is the subject matter of the suit in O.S.No.54 of 1974 on the file of the Sub Court, Ramanathapuram. The first document is in respect of an extent of 1.75 acres in Survey No.379/2A. The appellant and his brother are attestors to this document. By the second document further extent of 25 cents was also sold by the appellant's father in Old Survey No.379/2A. The appellant cannot plead ignorance about the sale of the property in Survey No.379/2A by referring to the suit for partition which culminated in the compromise decree in A.S.No.1245 of 1994. The appellant himself has admitted that the property in old Survey No.379/2A has now been changed to Survey No.379/6. It is to be noted that the appellant's father has sold the property in Survey No.379/2. The subject matter of partition is only 9.62 acres and only an extent of 1.75 acres was allotted to the appellant's father. When these facts are not in dispute, the appellant ought to have approached the revenue officials and this Court with an explanation as to how his father was entitled to more than the property which he had already sold. Merely because the compromise decree was subsequent to the sale, it cannot be presumed that the appellant's father was entitled to another extent of 1.75 acres as the entire holding of the family members has been accounted in the compromise decree. Hence, we do not find any irregularity in the order passed by the first respondent. It is to be seen that the first respondent has also found some discrepancies in the boundary descriptions for the property allotted to respondents 4 and 5 in the compromise decree and the properties for which the respondents 4 and 5 claimed patta. The appellant may also take advantage of such discrepancies before the Civil Court. Having regard to the position that the appellant has failed to account for the property that had already been sold by his father in 2002 by referring to the partition suit, this Court do not find any merits in the above appeal.

5.As a result, this Writ Appeal is dismissed and the order of the learned Single Judge is confirmed. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CO)

/True Copy/

Sub Assistant Registrar(CS-I)

To

1. The District Revenue Officer,
<https://hcservices.ecourts.gov.in/hcservices/>
Ramanathapuram,
Ramanathapuram District.



2. The Revenue Divisional Officer,
Ramanathapuram,
Ramanathapuram District.

3. The Tahsildar,
Rameswaram,
Ramanathapuram District.

+1cc to M/s.P.Kalaiyarasi Bharathi, Advocate Sr.No.101608
+2cc to Mr.P.Saravanakumar, Advocate Sr.No.101609
+1cc to M/s.V.Perumal, Advocate Sr.No.101695

SRM

KM/PM/SAR1/27.12.2018/6P/8C

JUDGMENT MADE IN
W.A. (MD) No.1053 of 2017
and
C.M.P (MD) No.7375 of 2017
21.12.2018