



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 23.03.2018

CORAM:

WEB COPY

THE HONOURABLE MR.JUSTICE M.SATHYANARAYANAN
and
THE HONOURABLE MRS.JUSTICE R.HEMALATHA

W.A(MD)No.1447 of 2017
and
C.M.P(MD)No.11107 of 2017

A.Bama @ Sathiya Bama : Appellant/ Writ Petitioner

Vs.

1.The Revenue Divisional Officer,
Padmanabhapuram,
Kanyakumari District.

2.S.Sivakumar : Respondents/ Respondents

PRAYER: Writ Appeal is filed under Clause 15 of the Letters Patent, to set aside the order dated 12.04.2016 made in W.P(MD).No.18988 of 2014.

Prayer in WP(MD). 18988/ 2014 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a writ of Certiorarified Mandamus calling for the records relating to the Impugned proceedings in A3/1623/2014 dated 28.7.2014 passed by the 1st respondent and quash the same and consequently directing the 1st respondent to restore the patta in RTR 380/2014 dated 09.04.2014 stands in the name of the petitioner.

For Appellant : Mr.S.Saji Bino
For Respondent No.1 : Mr.CM.Marichelliah Prabhu
Additional Government Pleader
For Respondent No.2 : Mr.B.Brijesh Kishore

JUDGMENT

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

The appellant is the writ petitioner and she has made a challenge to the order of the first respondent dated 28.07.2014, in and by which the first respondent has directed to cancel the patta that stands in the name of the petitioner, in respect of new Survey Nos.201/1 and 201/2, Kuthiraipathran Villai Veedu, Villukuri Post, Kanyakumari District.



2. The writ petition came to be dismissed as not maintainable and even on merits and challenging the legality of the order of dismissal dated 12.04.2016, passed in the writ petition, the present writ appeal is filed.

3. The learned Counsel appearing for the appellant has drawn the attention of this Court to the materials placed and would submit that the father of the appellant / writ petitioner has executed a registered Will dated 20.04.2005 bearing Document No.32, in her favour, covering the property comprised in E.P.No.97 of 2012 in O.S.No.447 of 1973, on the file of the Court of District Munsif, Kuzhithurai, Kanyakumari District and however, in the impugned order, the first respondent has overturned the civil Court decree and ordered deletion of the name of Bama @ Sathiya Bama, which was bequeathed in her favour and prays for interference.

4. Per contra, the learned counsel appearing for the second respondent has drawn the attention of this Court to the schedule of the property given in the execution petition and would submit that admittedly, the petitioner was allotted the B Schedule property in Survey No.2302 and it is corresponding to new Survey Nos.165 and 166 and the said fact has been rightly taken note of by the first respondent and would further add that as against the impugned order, the petitioner has filed E.A.No.439 of 2011, before the District Munsif, Kuzhithurai and only after the said fact was brought to the knowledge of this Court, the said revision was withdrawn and on that ground also, the writ appeal filed by the writ petitioner deserves dismissal.

5. This Court heard the submission of Mr.CM.Marichelliah Prabhu, learned Additional Government Pleader, appearing for the official respondent also.

6. In the considered opinion of this Court, the point urged by the respective learned counsel appearing for the parties is relating to the title and ownership in respect of the property in question and it cannot be adjudicated by this Court in exercise of its appellate jurisdiction under Clause 15 of the Letters Patent.

7. The attention of this Court has also been invited to voluminous documents to substantiate the claim of the respective contesting parties. However, this Court cannot adjudicate the truth and validity of the said materials.

8. This Court is also of the considered view that the contesting parties are also at liberty to approach the jurisdictional Tahsildar for survey and measurement and for demarcation of the lands based on authenticated documents.

9. Be that as it may, since the matter in issue revolves around adjudicated and disputed questions of law, this Court directs the appellant herein to file an appeal before the District Revenue



Officer, Kanyakumari District, enclosing a copy of this order, within a period of four weeks from the date of receipt of a copy of this order and the said official upon receipt of the same, shall entertain the said appeal, if the papers are otherwise in order, without putting the question of limitation and after putting the second respondent on notice and hearing him, shall pass orders on merits and in accordance with law within a period of ten weeks thereafter and communicate the decision taken to the petitioner as well as to the second respondent.

10. The writ appeal stands disposed of, accordingly. However, in the facts and circumstances of the case, there shall be no order as to costs. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-III)

/True copy/

Sub Assistant Registrar

To
The Revenue Divisional Officer,
Padmanabhapuram,
Kanyakumari District.

+1CC TO M/S.S.SAJI BINO, ADVOCATE, SR NO.58094
+1CC TO M/S.B.BRIJESH KISHORE, ADVOCATE, SR NO.57782
+1CC TO SPECIAL GOVERNMENT PLEADER, SR NO.58384

JUDGMENT MADE IN
W.A (MD) No.1447 of 2017
23.03.2018

MR

MS/SV-MMS/SAR-4/23.04.2018/3P.5C