



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 31.08.2018

CORAM:

THE HONOURABLE MR.JUSTICE V.PARTHIBAN

WEB COPY

W.P.(MD) No.18992 of 2018andW.M.P.(MD) Nos.16827 and 16828 of 2018

V.N.Biju

... Petitioner

vs.

1.The District Collector,
Nagercoil,
Kanyakumari District.

2.The Tahsildar,
Kalkulam Taluk,
Thuckalay,
Kanyakumari District.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of writ of Certiorarified Mandamus to call for the records pertaining to the impugned order passed by the second respondent herein, in his proceedings in Moo.Mu.A5/2475/2018, dated 26.06.2018, which was signed on 31.07.2018, which was served on the counsel at Madurai on 10.08.2018 and so far as not served on the petitioner till date and quash the same as illegal and consequently direct the second respondent to issue patta in the petitioner's favour in respect of the suit schedule property shown in the decree made in O.S.No.381 of 2001 and O.S.No.212 of 2002, on the file of the learned Principal District Munsif Court, Padmanabhapuram and in A.S.No.121 of 2005, on the file of the Subordinate Court, Padmanabhapuram, comprised in R.S.No.155/1 and R.S.No.155/2, Attoor Village, Kalkulam Taluk, Kanyakumari District for an extent of 1 cent 230 sq.links within a stipulated time as fixed by this Court.

For Petitioner : Mr.C.Kishore

For Respondents : Mr.S.Angappan
Government Advocate

ORDER

The case of the petitioner is that the petitioner, his brothers and sisters including his mother were the absolute owners of the property comprised old Survey No.4435/A, Attoor Village, Kanyakumar District measuring an extent of 1 Acre 90 cents and 500 sq.links. The extent of the property was resurveyed during the resettlement and subdivided as R.S.No.156/3A1. In 1973, the

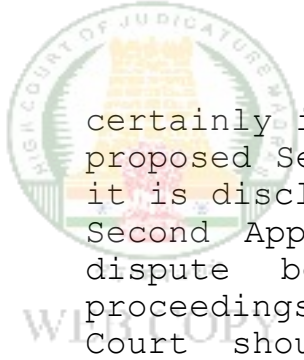


petitioner and his other siblings and his mother entered into a registered partition. The petitioner was allotted Plot No.5 to an extent of 6 cents.

2. On attaining the age of majority, the petitioner has become the absolute owner of the property which was allotted to him under the registered partition deed. The petitioner applied for subdivision of his property to the revenue authority in 2001 and in response to his application, it was subdivided as R.S.No.156/3A1B, Attoor Village. Only at that time, the petitioner came to know that the petitioner's property has been wrongly carved out and measured along with the poramboke land in the adjacent survey number. In these circumstances, the petitioner approached the revenue authorities and requested to rectify the mistake. In this regard, the petitioner also filed a civil suit in O.S.No.381 of 2001, on the file of the Principal District Munsif Court, Padmanabapuram for declaration of title and possession over the suit schedule property and for separate demarcation of the property incorrectly classified as poramboke land for an extent of 1 cent 230 sq.links. The said suit appears to have been decreed in favour of the petitioner on 09.07.2004. Against which, the first respondent filed an appeal in A.S.No.121 of 2005, on the file of the Subordinate Court, Padmanabapuram, which was dismissed on 05.04.2006. Against which, no Second Appeal was preferred and thus, according to the petitioner, dismissal of the appeal by the Subordinate Judge, Padmanabapuram has become final.

3. Thereafter, the petitioner approached the revenue authorities for grant of patta on several occasions and since there was no action, the petitioner was constrained to approach this Court by filing a writ petition in W.P.(MD)No.6777 of 2018 for issuance of Mandamus and this Court passed an order on 28.03.2018, directing the second respondent to consider the representation of the petitioner. In pursuance of the direction passed by this Court, the second respondent by his proceedings dated 26.06.2018 rejected the request of the petitioner on the ground that the department has decided to file a Second Appeal against the order passed in A.S.No.121 of 2005, since the petitioner was occupying the sensitive and important piece of land and he had no right to the same. At this stage, the petitioner is before this Court challenging the proceedings of the second respondent dated 26.06.2018.

4. When the respondents have decided to approach this Court by way of Second Appeal against the order of the Subordinate Judge, Padmanabapuram in A.S.No.121 of 2005, dated 05.04.2006, this Court cannot interfere with the dispute between the petitioner and the respondent in a collateral proceeding. According to the learned Counsel appearing for the petitioner, the civil proceedings had ended in his favour long ago and therefore, it is not open to the respondents to file the Second Appeal at this time. In any event, it is open to the appellate Court to decide the genuineness of the Second Appeal to be filed on behalf of the second respondent and



certainly it is not for this Court to delve into the merits of the proposed Second Appeal by the second respondent. In any event once it is disclosed by the respondent that they are proposed to file the Second Appeal, it is not for this Court to entertain the same dispute between the petitioner and the respondents in the proceedings under Article 226 of the Constitution of India. If this Court should entertain such litigation, it will unnecessarily complicate the matters further and it is not in the interest of either parties.

5. For the above stated reasons, this Court is of the considered view that the writ petition as it is not maintainable and the same is dismissed. No costs. Consequently, the connected Miscellaneous Petitions are also dismissed.

Sd/-
Assistant Registrar(CS-II)

/True Copy/

Sub Assistant Registrar(CS-III)

To

1.The District Collector,
Nagercoil,
Kanyakumari District.

2.The Tahsildar,
Kalkulam Taluk,
Thuckalay,
Kanyakumari District.

+1CC to Mr.C.Kishore, Advocate, SR.No.81530

W.P.(MD) No.18992 of 2018
31.08.2018

SSL
ES/PM/SAR 3/27.09.2018/3P/4C