



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 18.09.2018

CORAM

THE HONOURABLE MR.JUSTICE V.PARTHIBAN

W.P.[MD]No.18237 of 2018

and

W.M.P.[MD]No.16143 of 2018

Devahi Amma : Petitioner

Vs.

1.The District Collector,
Kanniyakumari District.

2.The District Revenue Officer,
Kanniyakumari District.

3.The Revenue Divisional Officer,
Padmanabhapuram.

4.The Thasildhar,
Vilavancode Taluk,
Kanniyakumari District.

: Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus, praying to call for the documents pertaining to the impugned order passed by the third respondent in petition No.2018/9005/30/527753/0723 dated 23.07.2018 and quash the same as illegal and consequently direct the respondents 1 and 2 to issue patta to the petitioner in Re.Sy.No.230/2 Aruthesam Village after reclassifying the same as patta land on the strength of the decree and judgment passed by I Additional District Munsif Kuzhithurai in O.S.No.832/989 dated 30.11.2014.

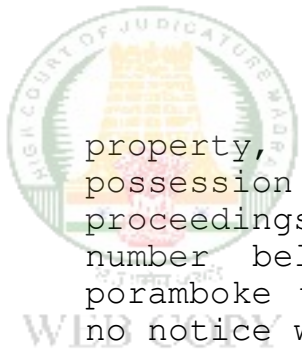
For Petitioner : Mr.K.P.Narayanakumar

For Respondents : Mr.S.Angappan

Government Advocate

O R D E R

The case of the petitioner is that he and his sister were owner of the property in Survey Nos.1541 and 1543 correlated to re-survey Nos.230/1 and 2 of Arundesam Village, to the extent of 75 cents. The property was purchased vide sale deed dated 10.03.1961, from one Chellamma Pillai and on purchase of the



property, the petitioner and his sister were in peaceful possession and enjoyment of the property. During re-settlement proceedings, it appears that a mistake crept in and the survey number belonging to the petitioner was classified as arasu poramboke to the extent of 10 ares. According to the petitioner, no notice was given to him when such re-classification was made.

2. According to the petitioner, an attempt was made to disturb the possession of the petitioner and therefore, he and his sister were constrained to file a suit in O.S.No.832 of 1989, on the file of the I Additional District Munsif, Kuzhithurai, seeking for declaration of title to the property under their possession and enjoyment and also for a permanent injunction. The respondents were parties in the said suit and the suit was decreed in favour of the petitioners and an execution petition was also filed. On the basis of the orders passed in the execution petition, the property was also measured and demarcated. According to the petitioner, an appeal was filed against the civil Court decree and the same was also dismissed. These facts are not in dispute.

3. In the above circumstances, the petitioner approached the respondents for grant of patta under the provisions of Patta Pass Book Act. Despite a valid decree passed in favour of the petitioner, the authorities concerned have not taken any action in issuing patta for the subject land. Finally, by order dated 23.07.2018, the third respondent has passed an order rejecting the request of the petitioner on the ground that the property in question was classified as Arasu Poramboke. The said proceeding is put to challenge in the present writ petition.

4. The learned Counsel appearing for the petitioner would vehemently contend that the declaration of title granted by the civil Court has become final since admittedly the appeal filed against the decree by the respondents was dismissed. Therefore, it is open to the respondents to issue patta to the petitioner on the basis of the civil Court decree granted in favour of the petitioner. However, unfortunately, despite a valid civil Court decree, the third respondent rejected the request of the petitioner on the ground that the subject property was classified as Arasu Poramboke.

5. The learned Counsel for the petitioner would submit that in the re-settlement proceedings a mistake had occurred and due to which a portion of the land has been classified as Arasu Poramboke. Such re-classification has happened without notice to the petitioner. In fact, the civil Court had given a finding that there was no notice to the petitioner in the re-settlement. In any event, when the civil Court had granted declaration and title and mandatory injunction and the property having been measured and demarcated, it is no more open to the respondents to deny patta. Therefore, the impugned order issued by the respondents still classifying the subject land as Arasu Poramboke cannot be



countenanced either in law or on facts.

6. Per contra, Mr. S. Angappan, learned Government Advocate has entered appearance and filed counter affidavit on behalf of the fourth respondent. The learned Government Advocate reiterated the averments contained in the counter affidavit. According to the counter affidavit, the petitioner has not filed any suit for cancellation of re-settlement and for re-classification of the property. In the absence of the challenge to re-survey settlement, it is not open to the petitioner to claim patta on the basis of civil Court decree alone. In the counter affidavit it is also averred that there is no relief in the pending suit in O.S.No.832 of 1989, as regards the recovery of possession. However, the fact that the civil Court decree has become final is not disputed.

7. Upon consideration of the submissions made on behalf of the learned Counsels appearing for the parties, this Court is in agreement with the contention of the learned Counsel appearing for the petitioner that once civil Court has granted a valid decree of declaration of title, it is not open to the respondent to hold on to the position that the land was still classified as Arasu Poramboke. Although, some mistake had occurred during re-survey settlement, the said mistake cannot be held against the petitioner in the place of the civil Court decree which has admittedly become final as between the parties.

8. Once the civil Court has given declaration of title to the petitioner, the petitioner is entitled to consequential benefits on such declaration being granted. In the said circumstances, the rejection by the third respondent on the said ground as rightly contended by the learned Counsel for the petitioner cannot be countenanced either on law or on facts. The impugned order therefore, cannot be allowed to stand in the face of the civil Court decree. Therefore, this court is of the considered view that the order dated 23.07.2018 of the third respondent is unsustainable and therefore, the same is set aside. The respondents are directed to consider the claim of the petitioner for grant of patta to the subject property on the basis of the civil Court decree granted in O.S.No.832 of 1989 and pass appropriate orders in this regard within a period of four [4] weeks from the date of receipt of a copy of this order.

9. The Writ Petition stands allowed, accordingly. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-III)

// True Copy //



To

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Kanniyakumari District.

2. The District Revenue Officer,
Kanniyakumari District.

3. The Revenue Divisional Officer,
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4. The Thasildhar,
Vilavancode Taluk,
Kanniyakumari District.

+1 CC To MR.K.P.NARAYANA KUMAR, Advocate SR. NO. 84968

ORDER MADE IN
W.P. [MD] No. 18237 of 2018
18.09.2018

MR

TR/RP/SAR-IV(03.10.2018) 4P 6C