



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 10.09.2018

CORAM:

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**THE HONOURABLE MRS.JUSTICE PUSHPA SATHYANARAYANA
AND
THE HONOURABLE MRS.JUSTICE T.KRISHNAVALLI**

W.A(MD)No.1155 of 2018
and
C.M.P (MD)No.8337 of 2018

Subbiah

... Appellant/Petitioner

Vs.

1.The District Revenue Officer,
Kanyakumari.

2.The Tahsildar,
Agasteeswaram Taluk,
Kanyakumari District.

3.The Executive Officer,
Subramaniya Swami Temple,
Tiruchendur,
Tuticorin.

... Respondents/Respondents

Prayer: Writ Appeal filed under Clause 15 of the Letters Patent against the order, dated 05.02.2016 made in W.P(MD)No.2377 of 2016, on the file of this Court.

Prayer in WP(MD) . 2377/ 2016 :

Petition filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorarified Mandamus to call for the records relating to the impugned proceedings vide Na.Ka.No.M4/8660/2011 dated 08.10.2015 passed by the 1st respondent, quash the same as illegal and consequently direct the 1st and 2nd respondents to issue patta in the name of the petitioner in Sy.No.133/1A, 165/14, 165/15, 22/1, 73/2B, 24/5 and 73/7 which extends to 0.37.0 Ares at Vadiveeswaram Village, Agasteeswaram Taluk, Nagercoil, Kanyakumari District.



For Appellant: Mr.D.Saravanan

For RR 1 & 2 : Mrs.J.Padmaavathi Devi,
Special Government Pleader.

For R - 3 : Mr.M.Muthu Geethaiyan

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JUDGMENT

(Judgment of the Court was delivered by
PUSHPA SATHYANARAYANA,J.)

This writ appeal is preferred by the appellant/writ petitioner aggrieved by the order passed in W.P(MD)No.2377 of 2016 on 05.02.2016.

2. The case of the writ petitioner was that Survey Nos.133/1A, 165/14, 165/15, 22/1, 73/2B, 24/5 and 73/7 at Vadiveeswaram Village, Agasteeswaram Taluk, Nagercoil, belonged to the family of Ulaganatha Pillai Punnavanam Pillai. The appellant/writ petitioner, who is the legal heir of late Punnavanam Pillai, claims to be managing the property and performing pooja kaingaeryam to Arulmighu Shri Subramaniya Swamy Temple, Tiruchendur. For recovery of possession, the grandfather of the writ petitioner filed a suit in O.S.No.44 of 1121 (Malayala year) before the District Court, Nagercoil. The suit was decreed in favour of the plaintiff therein. It is the further case of the writ petitioner that his ancestors had created kattalai dharmam for offering neivedhyam and the property is not dedicated to the Temple and the same was said to be in possession of his father late Punnavanam Pillai. While so, the writ petitioner submitted a representation before the second respondent to issue patta in his name. The second respondent by order, dated 12.09.2014 rejected the request of the writ petitioner stating that the property belonged to Arulmighu Shri Subramaniya Swamy Temple, Tiruchendur. Aggrieved over the same, the writ petitioner preferred an appeal, in which, the first respondent/the District Revenue Officer, by order dated 08.10.2015 rejected the request of the writ petitioner. Against which, he had preferred the Writ Petition.

3. The learned Single Judge, by order dated 05.02.2016 dismissed the Writ Petition. Aggrieved over the same, the present Writ Appeal has been preferred.

4. The contention of the learned counsel appearing for the appellant/writ petitioner is that change of patta in the name of the appellant/writ petitioner was rejected by the first respondent, by order dated 08.10.2015 and held that the lands belonged to Subramaniya Swami Temple, Tiruchendur.

<https://hcservices.ecourts.gov.in/hcservices/>

5. Heard the submissions made on either side and perused the materials available on record.



6. From the perusal of the records, it is seen that though the appellant/writ petitioner, who is the legal heir of late Punnavanam Pillai, claims to be in possession and enjoyment of the petition mentioned properties, he has no evidence to show excepting the Judgment in O.S.No.44 of 1121 (Malayala Year), wherein, the suit was filed for recovery of possession from one Thanumalayaperumal Pillai Iyyamperumal Pillai and others. The suit was decreed in favour of the plaintiff therein. He had filed the relevant documents listed in the said Judgment, based on which, the decree was granted. Further, now his claim is against Arulmighu Shri Subramaniya Swami Temple, Tiruchendur, but the said Temple was not made as a party to the suit. Hence, the said Judgment is not binding on the Temple also.

7. Further, it is seen that though the appellant/writ petitioner claims that he is in possession and enjoyment of the property and has been performing kaingaryam to the Temple, the appellant/writ petitioner had approached the authorities for change of patta almost after 16 years. The appeal filed by the appellant/writ petitioner was also rightly dismissed by the District Revenue Officer stating that the property belonged to Arulmighu Shri Subramaniya Swamy Thirukovil, Tiruchendur. Further, it is recorded that the Temple had taken possession of the property and put up a board and necessary entries were made in the Revenue Register. Now, admittedly, the Temple had taken possession, who is the third respondent herein and hence, the appellant/writ petitioner cannot seek for change of patta in his name and the learned Single Judge had also rightly dismissed the Writ Petition on the ground of delay and laches. Besides, the appellant/writ petitioner has not even produced any documents to show his title.

8. At this juncture, the learned counsel appearing for the appellant/writ petitioner seeks liberty to move the civil Court for declaration of his title.

9. Accordingly, the Writ Appeal is dismissed, as devoid of merits. However, it is open to the appellant/writ petitioner to approach the civil Court, if he is so advised. No costs. Consequently, connected Civil Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (CS-I)

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To

1.The District Revenue Officer,
Kanyakumari.

2.The Tahsildar,
Agasteeswaram Taluk,
Kanyakumari District.

- + 1 CC TO MR.D.SARAVANAN, ADVOCATE IN SR NO.83604
- + 1 CC TO MR.M.MUTHU GEETHAIYAN, ADVOCATE IN SR NO.83293
- + 1 CC TO SPECIAL GOVERNMENT PLEADER, IN SR NO.83653

PS

BU/PM/SAR-IV :15.10.2018 : 4P/6C

W.A(MD)No.1155 of 2018
10.09.2018