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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated :27.11.2019

Coram:

THE HONOURABLE DR. JUSTICE G.JAYACHANDRAN

Writ Petition No.9060 of 2018
and
W.M.P.No.10915 of 2018

Mrs.T.Chitra

.. Petitioner

/versus/

1.The District Collector,
Coimbatore District,
Coimbatore.

2.The Revenue Divisional Officer,
Coimbatore North,Thudiyalur,
Coimbatore 641 018.

3.The Tahsildar,
Coimbatore North Taluk,
Dr.Balasundram Road,
Coimbatore 641 018.

4.Taluk Sub Inspector of Survey,
Coimbatore North Taluk,
Dr.Balasundaram Road,
Coimbatore 641 018.

5.S.Aravind

.. Respondents

Writ Petition filed under Article 226 of the Constitution of India seeking to issue a Writ of Certiorarified Mandamus to call for the records relating to the impugned order made in Na.Ka.No.11422/2017/C1 dated 15.12.2017 on the file of the 3rd respondent and quash the same and further direct the 3rd respondent to measure and lay survey stones for the extent of 50 cents in S.F.No.282/2 at Saravanampatti Village, Coimbatore North Taluk, Coimbatore.

For Petitioner :Mr.V.Ravi

For Respondents:Mr.J.Purushothaman,

GA for R1 to R4

Mr.R.Neelakandan for R5



O R D E R

The case of the petitioner herein is that one Thiru.S.V.Thottah Gounder, the father of the petitioner settled 50 cents of his land in S.F.No.282/2 in Saravanampatti Village, Coimbatore from out of 2.04 acres of land and based on the settlement deed duly registered, the petitioner sought for measuring the land and de-mark the boundaries. The Tahsildar has declined to measure the land stating that there is a title dispute between the petitioner and the 5th respondent. Hence, aggrieved by the said order of the Tahsildar on 15.12.2017, the present writ petition is filed seeking Writ of Certiorarified Mandamus to call for the records relating to the impugned order made in Na.Ka.No.11422/2017/C1 dated 15.12.2017 on the file of the 3rd respondent and quash the same and further, direct the 3rd respondent to measure and lay survey stones for the extent of 50 cents in S.F.No.282/2 at Saravanampatti Village, Coimbatore North Taluk, Coimbatore.

2.The brief facts involved in this case is that one S.V.Thottah Gounder is the owner of 2.04 acres of land in S.F.No.282/2 in Saravanampatti Village. Initially, he has bequeathed the property through a Will dated 24.02.2000 in favour of the 5th respondent, who is the grand-son of the Thottah gounder. Later, he has altered the Will by bequeathing 50 cent, out of 2.04 acres of his land in favour of the petitioner herein vide, registered Will dated 16.10.2015. Following the registered Will, Thottah Gounder has executed a settlement deed in respect of the said 50 cents in favour of the petitioner, thereby his earlier Will in favour of the 5th respondent to the entire extent of 2.04 acres has been modified, altered and rescind by virtue of the subsequent registered Will dated 16.10.2015 and the settlement deed dated 28.09.2016 in respect of the 50 cents of land settled in favour of the petitioner herein. Having done so, the said Thottah gounder died on 03.12.2016. The petitioner herein has given a representation to the Tahsildar for measuring the land. Since her representation dated 25.04.2017 was not considered, she has filed W.P.No.12469 of 2017 to consider the representation and pass orders.

3.This Court on 11.05.2017 disposed of the said writ petition directing the third respondent Tahsildar to consider the petitioner's representation dated 25.04.2017 and pass orders on merits and in accordance with law, preferably, within a period of four weeks from the date of receipt of copy of that order.

4.While so, the 5th respondent has filed W.P.No.14752 of 2017 challenging the summon issued by the Tahsildar on



07.06.2017 pursuant to the direction of this Court passed in W.P.No.12469 of 2017.

5. In the writ petition filed by the 5th respondent, this Court, on 01.11.2017 ordered the third respondent to conduct the survey on 14.06.2017 after taking a decision as to whether any survey has to be conducted or not, is for the 3rd respondent to get satisfied as to whether any title dispute is between the parties.

6. This writ petition was disposed of by directing both the parties to appear before the 3rd respondent on 20.11.2017 at 10.30 a.m with their relevant documents and for the third respondent to conduct an enquiry and decide whether to conduct survey or to direct the parties to approach the civil Court to agitate the matter. If the third respondent finds that a civil dispute is there between the parties, he will not survey the lands.

7. In the light of the above direction passed by this Court in W.P.No.14752 of 2017 dated 01.11.2017, the Tahsildar has conducted enquiry and passed order holding that there is a title dispute between the parties. In the light of the judgment of this Court, when there is a dispute between the parties, he need not proceed with the request measuring the disputed land. So, he has directed the parties to approach the civil Court to get redressal.

8. The infirmity in the above impugned order has been highlighted by the learned counsel appearing for the petitioner in the following ways: As on date, there is no civil dispute pending between the parties. Even after the impugned order passed by the third respondent dated 15.12.2017, neither of them have approached the civil Court to settle the title dispute.

9. As far as the title is concerned, by virtue of the settlement deed executed by Thottah Gounder on 28.09.2016, the petitioner is the absolute owner of the property and she is entitled to enjoy the property. Therefore, the Tahsildar is duty bound to measure the land and mark the boundaries.

10. The order of the High Court in W.P.No.14752 of 2017 dated 01.11.2017 is very clear without any ambiguity. The Tahsildar was asked to measure the land if he is satisfied that there is no civil dispute pending between the parties.

11. It is an admitted fact that the 5th respondent herein has not questioned the validity of the settlement deed executed by Thottah Gounder before any civil Court. While so, there is not even a semblance of dispute regarding the title,



which the petitioner relied upon based on the settlement deed dated 28.09.2016. Therefore, the 3rd respondent impugned order stating that there is a title dispute between the parties, is only a imaginary and fictitious, not real.

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12.It is pertinent to note that even after the order passed by this Court in W.P.No.14752/2017 dated 01.11.2017 and the impugned order of the 3rd respondent dated 15.12.2017, the 5th respondent has not chosen to challenge the settlement deed executed in favour of the petitioner herein on 28.09.2016. While so, merely because questioning the claim of the petitioner contrary to the duly registered settlement deed will not stand in the way of the petitioner's right to get his land measured.

13.The learned counsel appearing for the 5th respondent would submit that by virtue of the Will, his client is entitled for entire 2.04 acres of land and therefore, the subsequent settlement deed relied on by the petitioner has to be proved by him and it is not for the 5th respondent to approach the civil Court. The said submission is contrary to legal preposition. Any document duly registered is presumed to be genuine and any person who disputes the genuineness of the duly registered document has to agitate his cause before the competent Court not otherwise.

14.Therefore, this Court finds that the impugned order of the 3rd respondent is bereft of fact and contrary to law. Hence, the 3rd respondent is directed to measure the land of the petitioner based on the representation given by the petitioner dated 25.04.2017, in the presence of the 5th respondent, within a period of four weeks from the date of receipt of a copy of this order, after causing notice to the 5th respondent.

15.With the above direction, this writ petition is disposed of. No costs. Consequently, connected Miscellaneous Petition is closed.

s/d-
Assistant Registrar(J)

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Sub-Assistant Registrar

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To:

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+1 CC to The Govt. Pleader sr 100427
+1 CC to Mr.R.Neelakandan, Advocate sr 99532.
+1 CC to Mr.V. Ravi, Advocate sr 98722.

W.P.No.9060 of 2018

SP(18/12/2019)