



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **30.10.2019**

CORAM:

THE HONOURABLE **MR.JUSTICE M.SUNDAR**

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W.P (MD)No.22863 of 2019

C.Sivakumar

... Petitioner

/Vs./

1.The District Revenue Officer,
Theni, Theni District.

2.The Revenue Divisional Officer,
Theni, Theni District.

3.The Zonal Deputy Tahsildar,
Uthamapalayam Taluk,
Theni District.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, calling for the records pertaining to the impugned order made in Koppu No. 2019/0103/25/033649 passed by the 3rd respondent dated 18.07.2019 and impugned order made in Koppu No.2019/0103/25/033648 passed by the 3rd respondent dated 22.07.2019 and quash the same and consequently direct the respondent No.3 to transfer the patta bearing Nos. 398, 2414 and 1437 in favour of the petitioner and his younger brother namely Ravichandran within the time stipulated by this Court.

For Petitioner : Mr.D.Sadiq Raja

For Respondents : Mr.B.Bhagawathi

Government Advocate

ORDER

Mr.D.Sadiq Raja, learned counsel on record for writ petitioner and Mr.B.Bhagawathi, learned Government Advocate who accepts notice on behalf of all the three respondents are before this Court.

2. With consent of learned counsel on both sides, main writ petition is taken up, heard out and is being disposed of.

3. Short facts shorn of unnecessary details or in other words facts which are imperative for appreciating instant order are that certain extents of 'lands comprised in three (3) different survey numbers namely S.No.565, S.No.570/3A and S.No.568/2 in Uthamapuram Village, Uthamapalayam Taluk, Theni District' (hereinafter referred to as 'said lands' for the sake of brevity) belonged to writ



petitioner's father one S.K.Chinnaiyan; that writ petitioner's father S.K.Chinnaiyan died on 22.05.2015 leaving behind an unregistered Will dated 03.04.2014 with regard to said lands and that writ petitioner and his brother who are two (2) male legal heirs of writ petitioner's father are entitled to equal share in said lands vide the testament ie., unregistered Will.

4. In the aforesaid backdrop, writ petitioner submitted an online application for transfer of patta which as placed before this Court as part of the case file is as follows:

5. The aforesaid application for transfer of patta in the name

Printed on: 18-08-2019

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Form No. 10/2019
District: Chennai, Taluk: Chengalpattu, Village: Uththamarapuram

Applicant's Name: S. K. Chinnaiyan
Address: S. K. Chinnaiyan, 10/2019, Uththamarapuram, Chengalpattu District, Chennai-600 044.

Form Details:

S.No	Survey No./Sub-Survey No.	Registered Date / Impugned Date	Existing Patta No.	Name of SHO	Status
1	51274	18/07/2019	10/2019	Sankar	Not done
2	51274	22/07/2019	10/2019	Sankar	Not done

List of Documents provided by Applicant:

S.No	Description
1	Original Will
2	Copy of Will
3	Copy of Will
4	Copy of Will
5	Copy of Will
6	Copy of Will
7	Copy of Will
8	Copy of Will
9	Copy of Will
10	Copy of Will

Applicant's Signature: _____

of writ petitioner and his younger brother came to be negated by two (2) separate orders made by third respondent being 'orders dated 18.07.2019 bearing reference Koppu No.2019/0103/25/033649 and dated 22.07.2019 bearing reference Koppu No.2019/0103/25/033648' (hereinafter referred to as 'impugned orders' collectively in plural and 'impugned order' in singular for the sake of brevity, clarity and convenience). Impugned orders as placed before this Court as part of the case file are as follows:

[illegible]



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தமிழ்நாடு அரசு



வருவாய்த்துறை

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காப்பு எண்: 2019010325032648 உத்தமபாளையம்(14) வட்டாட்சியர் அலுவலகம்
தாள்: 22-07-2019 16:52:07

மேலெழுத்து

பட்டா மாற்றம் தேனி(22) மாவட்டம் உத்தமபாளையம்(14) வட்டம்
பொருள்: கும்பம்(14) கிராமம், கிராம புல எண் / உட்பிரிவு எண் 1073/1, 1140/3, 6
பட்டா மாற்றம் கோரியது தொடர்பாக

1. மனுதாரர் திரு.திருமதி செல்வி SIVAKUMAR மனு நாள் 02-07-2019
16:17:38
பார்வை: 2. MOHAMED ISMAAIL A கும்பம்(14) அறிக்கை நாள் 13-07-2019
18:16:23

பார்வையில் கண்ட தங்கள் பட்டா மாறுதல் கோரிய மனுவினை 2019010325032648
கிராம நிர்வாக அலுவலர் புலத்தணிக்கைக்கு உட்படுத்தி பார்வை 2ல் தண்ட விசாரணை
அறிக்கை பெறப்பட்டது. மண்டல துணை வட்டாட்சியர் அறிக்கையில் கீழ்க்கண்ட
தாராளங்களினால் தங்கள் மனுவின் பேரில் பட்டா மாறுதல் நடவடிக்கை எடுக்க
இயலவில்லை என தெரிவித்துள்ளார்.

Survey No / Subdivision	Reason For Rejection
1073/1	பதிவு செய்யப்படாத உயில்சாசனம்
1140/3	பதிவு செய்யப்படாத உயில்சாசனம்

மேலே குறிப்பிட்ட காரணத்தால் தங்கள் கோரிக்கை ஏற்க இயலவில்லை.
மேற்படி குறைகளை தவிர்த்தி செப்து பின் விண்ணப்பித்து கொள்ள தெரிவிக்கப்படுகிறது.

பெறுநர் திரு.திருமதி செல்வி SIVAKUMAR மனுவைத் தீர்மானித்த வட்டாட்சியர்
03/01... Cernam, Uthamapalayam, Tamil தேனி(22) உத்தமபாளையம்(14)

6. Assailing the impugned orders, instant writ petition has been filed.

7. Notwithstanding very many averments made in the affidavit filed in support of instant writ petition, notwithstanding several grounds urged /contentions canvassed in the affidavit filed in support of instant writ petition, at the hearing, learned counsel for writ petitioner projected his arguments on one pivotal point and that one pivotal point is registration of a Will is optional. In support of his submission, learned counsel drew the attention of this Court to Section 18(e) of the 'Registration Act, 1908'



(hereinafter referred to as 'said Act' for the sake of brevity) and Section 18 of said Act reads as follows:

'18.Documents of which registration is optional.-Any of the following documents may be registered under this Act, namely,--

(a)instruments (other than instruments of gifts and wills) which purport or operate to create, declare, assign, limit or extinguish, whether in present or in future, any right, title or interest whether vested or contingent, of a value less than one hundred rupees, to or in immovable property;

(b)instruments acknowledging the receipt of payment of any consideration on account of the creation, declaration, assignment, limitation or extinction of any such right, title or interest;

(c)leases of immovable property for any term not exceeding one year, and leases exempted under Section 17;

(d)instruments (other than wills) which purport or operate to create, declare, assign, limit or extinguish any rights, title or interest to or in movable property;

(e)wills; and

(f)all other documents not required by section 17 to be registered.'

(bold font and underlining made by Court to supply emphasis and highlight).

8. It is also pointed out that said Will being unregistered is the only ground for negating writ petitioner's application dated 02.07.2019 and no other reason has been articulated in the impugned orders.

9. Learned State counsel submitted that it is necessary to examine all aspects of an application requesting transfer of patta, but there is no dispute or disagreement about the obtaining legal position that registration of a Will is optional.

10. In the aforesaid backdrop, this Court is left with the considered view that the impugned orders cannot be sustained in the light of Section 18(e) of said Act, as the lone reason that has been mentioned in the impugned orders is that the Will is unregistered. To be noted, law is also well settled that the impugned orders cannot be improved by way of counter affidavit or submissions at the hearing.

11. In the light of the narrative thus far, following order is

passed:
<https://hcservices.courts.gov.in/hcservices/>



(a) Impugned orders being Koppu No. 2019/0103/25/033649 passed by the 3rd respondent dated 18.07.2019 and Koppu No.2019/0103/25/033648 passed by the 3rd respondent dated 22.07.2019 are set aside.

(b) Impugned orders are set aside solely on the ground that lone reason mentioned therein is contrary to Section 18(e) of said Act.

(c) Third respondent shall now take up the writ petitioner's application dated 02.07.2019, consider the same on its own merits / in accordance with law and pass orders as expeditiously as possible and in any event within twelve (12) weeks from the date of receipt of a copy of this order.

(d) While reconsidering the application dated 02.07.2019, registration of Will being optional under Section 18(e) of said Act shall be borne in mind.

(e) Disposal of writ petitioner's application dated 02.07.2019 shall be communicated to writ petitioner under due acknowledgment within seven (7) working days from the date of disposal.

12. Instant Writ Petition is partly allowed albeit with directions as above. No costs.

Sd/-

Assistant Registrar (AD-II)

// True Copy //

Sub Assistant Registrar(CS)

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To

1.The District Revenue Officer, Theni, Theni District.

2.The Revenue Divisional Officer,
Theni, Theni District.

3.The Zonal Deputy Tahsildar,
Uthamapalayam Taluk, Theni District.

+1 CC to M/s.PALA.RAMASAMY, Advocate SR-95007.

+1 CC to SPL GP SR-95157.

Order made in
W.P(MD)No.22863 of 2019

(2/2)

Dated:30.10.2019

CS (22.11.2019) 6P 6C

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