



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **12.11.2019**

CORAM:

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

W.P (MD)No.23834 of 2019

N.Senthil

... Petitioner

/Vs./

1.The District Collector,
Madurai District, Madurai.

2.The Thasildhar,
South Taluk, Madurai,
Madurai District.

... Respondents

PRAYER: Writ Petition - filed under Article 226 of the Constitution of India for issuance of a Writ of Mandamus, to direct the respondents to issue patta to the petitioner for the land situated in Survey No.111/2B, in Patta No.174 having extent of 2 ½, Survey No.111/3A2, Patta No.222 having extent of 1 ½ cents, Survey No.111/3A1, A1 Joint Patta No.1744 having extent of 3 ½ cents situated at Panaiyur Revenue Village, Madurai, Madurai District based on petitioner's representation dated 01.11.2019.

For Petitioner : Mr.S.Balaji

For Respondents : Mr.K.Mu.Muthu

Additional Government Pleader

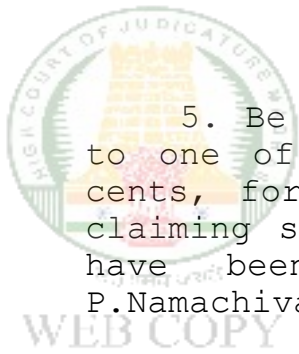
ORDER

Mr.S.Balaji, learned counsel on record for writ petitioner and Mr.K.Mu.Muthu, learned Additional Government Pleader, who accepts notice on behalf of both the 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. Prayer in instant writ petition is to mandamus the respondents to issue patta to writ petitioner for 'lands comprised in Survey No.111/2B, in Patta No.174 having extent of 2 ½, Survey No.111/3A2, Patta No.222 having extent of 1 ½ cents, Survey No.111/3A1, A1 Joint Patta No.1744 having extent of 3 ½ cents situated at Panaiyur Revenue Village, Madurai, Madurai District' (hereinafter referred to as 'said lands' for brevity).

4. From aforementioned description of said lands for which writ petitioner seeks patta, it is clear that the said lands are in three parcels comprised in three different survey numbers.



5. Be that as it may, there is no disputation that with regard to one of the three parcels namely S.No.111/3A1 admeasuring 3 ½ cents, for which there is joint patta No.1744 writ petitioner is claiming separate patta on the basis of a registered Will said to have been executed by the writ petitioner's father one P.Namachivayam.

6. What is of significance is, admittedly writ petitioner's father P.Namachivayam is still alive which means that said registered Will has not come into force. It will tantamount to stating the obvious to say that a Will does not come into force during the lifetime of the testator. To be noted, a registered Will can get revoked even by execution of subsequent unregistered Will. In any event, in the instant writ petition the testator is admittedly alive. Therefore, Will has not taken effect.

7. Learned State counsel points out that writ petitioner's request for separate patta cannot be considered as said lands are ancestral properties and writ petitioner's claim is predicated on a registered Will where the testator is alive. More importantly, learned State counsel, advertent to the Will points out that writ petitioner is not the only child of testator P.Namachivayam, but even according to recital in the Will, testator has other sons besides grand children. It is emphasized said lands are ancestral property.

8. Owing to all the aforesaid reasons, this Court is left with the considered view that the request of the writ petitioner for patta cannot be entertained at this stage.

9. As of today, writ petitioner has neither inherited the property nor has the property been bequeathed on the writ petitioner qua said lands. Therefore, writ petitioner has no legal right.

10. Law is well settled in the case of **Praga Tools Corporation vs. Shri C.A.Imanual and others** reported in **AIR 1969 SC 1306** that writ petitioner should have legal right to seek a writ of Mandamus.

11. Owing to all the aforesaid reasons set out supra, this Court is left with considered view that prayer in instant writ petition cannot be answered in the affirmative. Writ petition is bereft of merits.

12. Ex consequenti, instant Writ Petition is dismissed. No costs.

Sd/-

Assistant Registrar ()

// True Copy //

Sub Assistant Registrar(CS)



To

1.The District Collector,
Madurai District, Madurai.

2.The Thasildhar,
South Taluk, Madurai,
Madurai District.

+1 CC to Mr.S. BALAJI, Advocate (SR-97478[F] dated 12/11/2019)
+1 CC to SPL GP (SR-98087[F] dated 13/11/2019)

Order made in
W.P(MD)No.23834 of 2019
12.11.2019

VB(19.11.2019) 3P 5C