



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 05.12.2019

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THE HONOURABLE MR.JUSTICE **S.S.SUNDAR**

W.P. (MD)No.25923 of 2019

K.Palanisamy

... Petitioner

vs.

1.The District Collector,
Office of the District Collector,
Dindigul District.

2.The Revenue Divisional Officer,
Office of the Revenue Divisional Officer,
Palani, Dindigul District.

3.The Tahsildar,
Vedasanthur Taluk Office,
Vedasanthur, Dindigul District.

4.The Taluk Surveyor,
Vedasanthur Taluk Surveyor,
Vedasanthur, Dindigul District.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Mandamus, to direct the first respondent, to consider the petitioner's representation, dated 11.11.2019 and consequently, to direct the first respondent to direct the third respondent to survey and earmark the land to an extent of 64 ½ cents out of 1 acre and 29 cents in S.No.948/1 and to an extent of 1 acre 14 cents out of 2 acre 28 cents of Ayyalour Village, Vedasandur Taluk, Dindigul District.

For Petitioner

:Mr.R.Senthil Kumar

For R1 to R4

:Mr.B.Bhagavathu

Government Advocate

ORDER

This Writ Petition is filed for issuing a Writ of Mandamus to direct the first respondent to consider the petitioner's representation, dated 11.11.2019 and consequently, to direct the first respondent to direct the third respondent to survey and earmark the land an extent of 64 ½ cents out of 1 acre and 29 cents in S.No.948/1 and to an extent of 1 acre 14 cents out of 2 acre 28 cents of Ayyalour Village, Vedasandur Taluk, Dindigul District.

2.By consent of both parties, the Writ Petition is taken up for final disposal at the stage of admission itself.



3.The brief facts that are set out in the affidavit filed in support of this petition are as follows:

3.1.The petitioner's grandfather, by name, Palaniyandi Ambalam and his brother, by name, Vengan Amabalam, have purchased the property, measuring to an extent of 1.29 acres in S.No.948/1 and an extent of 2 Acres 28 cents in S.No.1037/1. Stating that there was an oral partition, by which, the entire extent of 1 acre 29 cents in S.No.948/1 in Ayyalour Village, Vedasandur Taluk, Dindigul District, was allotted to the share of petitioner's grandfather, by name, Palaniyanadi Ambalam, a suit came to be filed in O.S.No.176 of 2011 on the file of the Principal District-cum-Judicial Magistrate Court, Vedasandur.

3.2.In the suit, it is the case of the petitioner that the entire extent of 1 acre 29 cents was allotted to the petitioner's grandfather and that the whole extent of 2 acres 28 cents in S.No.1037/1 was allotted to Vengan Ambalam, brother of petitioner's grandfather. The trial Court dismissed the suit by holding that the petitioner has no exclusive title to the property in S.No.948/1. It is also observed by the trial Court that the petitioner is entitled to a share along with other children of Kumaravel and the sisters of petitioner's father. The petitioner has not impleaded other legal heirs, who are also entitled to share along with the petitioner.

4.Be that as it may, the Civil Court dismissed the suit in O.S.No.176 of 2011 filed by the petitioner to get a declaration in respect of his exclusive right in respect of the property in in S.No.948/1. The findings of the trial Court cannot be interpreted to mean that the petitioner is entitled to at least half of the property in S.No.948/1 and in S.No.1037/1, as the entire property, namely, half of the extent in both survey numbers that belonged to the petitioner's grandfather goes to all the legal heirs of petitioner's grandfather, even by accepting the case of petitioner.

5.The judgment of trial Court in O.S.No.176/11, was also confirmed by the Appellate Court in A.S.No.4 of 2015 on the file of the Subordinate Court, Vedasandur. It is seen from the judgment of appellate Court that the petitioner has filed another suit in O.S.No.164 of 2011 as against the defendants in the suit in O.S.No.176 of 2011. This fact is not disclosed by the petitioner in the earlier suit. The appellate Court also rendered a finding that the petitioner has obtained patta in Patta No.3439 in respect of whole property in S.No.948/1 without showing the other heirs of petitioner's grandfather, Palaniyandi Ambalam. It is also stated that the petitioner is not entitled to get a decree



on the basis of patta obtained by him in his individual capacity.

6.Despite the fact that the Civil Court has not recognised the petitioner's exclusive right in respect of any land either in S.No.948/1 or S.No.1037/1, the petitioner has given a representation, dated 20.01.2017, as if the Civil Court has granted an order in favour of the petitioner in respect of an extent of 0.72.0 hectares in O.S.No.176 of 2011. It was further stated that the petitioner should be given separate patta in respect of S.Nos.948/1 and 1037/1 as per the documents. Having regard to the specific findings rendered by the trial Court as well as the appellate Court, the petitioner has no exclusive right either in S.No.948/1 or in S.No.1037/1 in Ayyalour Village, Vedasandur Taluk, Dindigul District.

7.Since there is no partition, that had taken place, the petitioner should file a suit for partition impleading all the legal heirs of both petitioner's grandfather, by name, Palaniyandi Ambalam and Vengan Ambalam. Based on a decree in the partition suit, it is open to the petitioner to approach the respondents, if specific extent of property is allotted to the petitioner in both survey numbers. Having regard to the facts narrated, this Court is unable to entertain this Writ Petition. Hence, this Writ Petition is dismissed. No costs.

Sd/-

Assistant Registrar (CRL.SIDE)

// True Copy //

Sub Assistant Registrar(CS)

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To

- 1.The District Collector,
Office of the District Collector,
Dindigul District.
- 2.The Revenue Divisional Officer,
Office of the Revenue Divisional Officer,
Palani, Dindigul District.
- 3.The Tahsildar,
Vedasanthur Taluk Office,
Vedasanthur, Dindigul District.



4.The Taluk Surveyor,
Vedasanthur Taluk Surveyor,
Vedasanthur, Dindigul District.

+1 cc to The Special Government Pleader Sr.No.103805

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