



WEB COPY

W.P.(MD)No.25937 of 2019

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 05.12.2019

CORAM

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

W.P. (MD)No.25937 of 2019

and

W.M.P (MD)No.22460 of 2019

Saraswathi

... Petitioner

vs.

1.The Revenue Divisional Officer,
Madurai, Madurai District.

2.The Tahsildar,
Madurai North Taluk, Madurai District.

3.Shanthi

... 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 and pass orders on the petitioner's appeal, dated 13.09.2019 to change of patta in the name of the petitioner and her sisters, regarding the land in S.No.58/9B of about 0.44.0 ares situated at Samayanallur Village Group, Madurai North Taluk, Madurai district.

For Petitioner

:Mr.V.Kannan

For R1 and R2

:Mr.C.Ramar

Additional Government Pleader

O R D E R

This Writ Petition is filed for issuing a Writ of Mandamus, to direct the first respondent to consider and pass appropriate orders on the petitioner's appeal, dated 13.09.2019 regarding change of patta in the name of petitioner and her sisters in respect of a land in S.No.58/9B of about 0.44.0 ares situated at Samayanallur Village Group, Madurai North Taluk, Madurai 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 are as follows:

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



3.1.The petitioner's father, one Muthiah and petitioner's mother, by name, Pappathiammal, have five children, namely, Chinnaponnu, Muthuraku, Ramu, Saraswathi (petitioner herein) and Durairaj. The petitioner's father along with his brother, by name, Karuppiyah Thevar, had several ancestral properties. By selling some of the ancestral properties to Meenakshi Mills, situated at Paravai Village, the petitioner's father and his brother mobilised fund and purchased a property to an extent of 2.10 acres in S.No.58/8, situated at Samayanallur Village Group, Madurai North Taluk, from one Muthu Sundaram Iyer and the property was purchased in the name of petitioner's mother, Papathiammal and Rakkammal, wife of petitioner's paternal uncle, Karuppiyah Thevar.

3.2.A family partition took place in the year 1960, wherein, the property in S.No.58/9 in Samayanallur Village Group was divided in two portions. The petitioner's mother, by name, Papathiammal got 0.44.0 Ares in S.No.58/9B.

4.It is the case of the petitioner that the property is not the self acquired property of his mother and that the property is the ancestral property of petitioner and other heirs of petitioner's father. Since the property itself was acquired out of the funds mobilised by selling out the ancestral property, the petitioner submitted that her mother, without authority or title, had executed a registered Will under Document No.2829/1993 bequeathing the entire property in favour of one Shanthi, daughter of petitioner's sister. The said Shanthi has been impleaded as third respondent herein.

5.It appears that the third respondent has applied transfer of patta in respect of the land in her favour on the basis of the registered Will, stated to have been executed by the petitioner's mother, who had no right according to the petitioner, to transfer or alienate the ancestral property, as she wished. Since the character of property is joint family property, the petitioner challenges the mutation of records in favour of Shanthi. When the petitioner came to know that mutation had been effected in favour of the third respondent, on the basis of the Will alleged to have been executed by Papathiammal, she filed an appeal on 13.09.2019 before the first respondent. Though the first respondent directed the second respondent to look into the matter and submit a report, the grievance of the petitioner is that the first respondent has not considered her appeal, which is pending from September'2019.

6.This Court considered the petitioner's case on merits. Even on the admitted facts, this Court is of the view that a *bona fide* dispute exists. The petitioner, who claim right over the property, should establish the character of the property as joint family property. Though the petitioner admits the execution of the Will, it is open to the petitioner to challenge the Will regarding its validity and genuineness before the Civil Court.



7. Having regard to the documents produced by the petitioner, the first respondent cannot ignore the registered Will, alleged to have been executed by the petitioner's mother in favour of third respondent. The petitioner will stand to gain, if she approach the Civil Court seeking partition of the property, if she establishes that the Will is not genuine. The Will shows an unnatural disposition. It is also open to the petitioner to challenge the Will on the ground of suspicious circumstances. Hence, this Court is of the view that in the interest of petitioner, she may be directed to approach the Civil Court for appropriate relief, rather than getting her right established before the first respondent, who may not go beyond the records.

8. Considering the nature of dispute, this Writ Petition is closed with a direction/liberty to the petitioner to approach the Civil Court to establish her right in the manner known to law. The Civil Court shall decide all the issues independently, uninfluenced by any of the observations made by this Court in this order. Since the petitioner's right as legal heir of her mother is not disputed, the Civil Court may also ignore the patta or order passed by the Tahsildar regarding mutation of records on the basis of the Will alleged to have been executed by the petitioner's mother in favour of the third respondent. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar ()

// True Copy //

Sub Assistant Registrar(CS)

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To

1. The Revenue Divisional Officer,
Madurai, Madurai District.

2. The Tahsildar,
Madurai North Taluk, Madurai District.

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VB(02.01.2020) 3P 3C