



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 18.02.2020

CORAM:

THE HONOURABLE MR.JUSTICE S.S. SUNDAR

W.P. (MD).No.6500 of 2015
and M.P. (MD).Nos.1 and 2 of 2015
and W.M.P. (MD).No.16631 of 2017

P.Sornalingam

.. Petitioner

Vs.

1.The District Collector,
Sivagangai District, Sivagangai.

2.The District Revenue Officer,
Sivagangai District, Sivagangai.

3.The Revenue Divisional Officer,
Devakottai, Sivagangai District.

4.The Tahsildar,
Karaikudi, Sivagangai District.

5.M.Soraja Devi

.. Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, for the issuance of Writ of Certiorarified Mandamus, calling for records pertaining to the impugned order, dated 08.04.2015 in Mu.Mu.A1 5405/2014 passed by the 3rd respondent and quash the same as no jurisdiction and consequently direct the respondents to restore the name of the petitioner in the patta, chitta and other revenue records for the property situated in Natham S.No.248/8 admeasuring 0.08.09 Ares and S.No.248/15 admeasuring 0.16.0 Ares at Serumathur Village, Kandandevi Group, Devakottai Taluk, Sivagangai District as it stood prior to the passing of the impugned order and consequently pay a compensation of Rs.5,00,000/- for the mental agony caused by the impugned order.

For Petitioner : Mr.K.P.Narayanakumar

For Respondents : Mr.A.Thiyagarajan
Government Advocate, for R1 to R4
Mr.Rajiv Gandhi for R5



ORDER

This writ petition is filed to quash the impugned order passed by the third respondent, dated 08.04.2015 and to restore the name of the petitioner in patta and chitta and in other revenue records in respect of the property measuring an extent of 0.08.9 hectares in S.No.248/8 and an extent of 0.16.0 hectares in S.No.248/15 in Serumathur Village, Kandandevi Group, Devakottai Taluk, Sivagangai District.

2.The dispute in the present writ petition is in respect of two properties, one is house and another is a house site in Serumathur Village, Kandandevi Group, Devakottai Taluk, Sivagangai District. The petitioner and the 5th respondent are the children of one Periyannan Ambalam and Kanagaranjitham ammal. Previously the patta and revenue records stand in the name of petitioner's father. The petitioner claims title on the basis of a registered Will alleged to have been executed by the petitioner's father in his favour. The fifth respondent again claims title on the basis of another Will stated to have been executed by petitioner's mother. The contention of the fifth respondent is that the property belonged to her mother and not father. In view of the Will executed by the mother, it is further contended that the fifth respondent is the absolute owner of the property.

3.The fact that the name of petitioner's father was shown as owner of the property as per revenue record, is not in dispute. The petitioner contended that the property is grama natham and that therefore, the patta granted in favour of petitioner would show that the property is the exclusive property of petitioner's father. Relying upon the proceedings of Tahsildar granting patta in favour of petitioner's father under natham settlement, it is contended by the petitioner that the fifth respondent without preferring an appeal as against the order of natham settlement Tahsildar, preferred an appeal before the Revenue Divisional Officer. Since the Revenue Divisional Officer is not the Appellate authority, as against the order granting patta in favour of petitioner's father, it is contended that the Revenue Divisional Officer namely third respondent has passed an order without jurisdiction.

4.As against the submission of the learned counsel appearing for the petitioner, it is contended by the fifth respondent that the property originally belonged to petitioner's mother. It is further stated that parties have admitted the position that two items of property were purchased by the petitioner's mother from the petitioner's father. In those circumstances, it is pointed out by the learned counsel for the fifth respondent that patta ought to have been granted either in

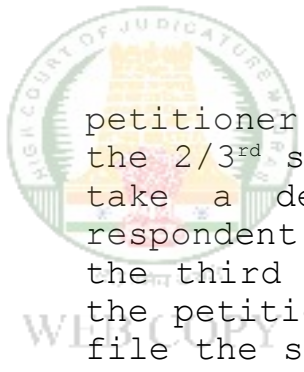


favour of the fifth respondent or to the petitioner's mother. It is further stated that the conclusion reached by the Revenue Divisional Officer regarding title is unavoidable in view of the admitted facts. This Court considered the submissions of rival parties. If the property is the property of mother, the petitioner and fifth respondent along with their father are the legal heirs. Though the property stands in the name of petitioner's father as per revenue records, it should be deemed that the father of petitioner was shown as owner in his representative capacity as the head of the family.

5. Having admitted that the property was sold by the father to the petitioner's mother, the petitioner's father cannot claim property as his exclusive property so as to get separate patta. In such circumstances, it is appropriate for the authorities to restore patta in the name of petitioner's father, petitioner and petitioner's sister as legal heirs of petitioner's mother.

6. The petitioner claims title on the basis of a registered Will stated to have been executed by the petitioner's father. The fifth respondent claims right on the basis of another Will stated to have been executed by her mother. Since the petitioner and fifth respondent are the legal heirs of petitioner's mother, the revenue records should be restored in the name of both petitioner and fifth respondent as legal heirs of the mother. Since the rival claim is based on respective Will propounded by the petitioner as well as the fifth respondent independently, the truth, validity, genuineness of the two separate Will one in favour of the petitioner and another in favour of the fifth respondent can be decided only by the Civil Court. The Will relied upon by the petitioner is not admitted by the fifth respondent. Similarly, the Will propounded by the fifth respondent is not admitted by the petitioner. It is not for the revenue official to mutate or modify revenue records on the basis of disputed Wills. Now the title of mother has been admitted by the father himself by executing the sale deed in her favour, the petitioner's father cannot claim exclusive right to deal with the property after the life time of petitioner's mother.

7. Hence, the petitioner is given liberty to approach the Civil Court for claiming exclusive right on the basis of the Will or the unregistered release deed it is admissible in evidence. If the Will executed by the mother is true and valid, the Civil Court may declare the absolute right of the fifth respondent on the basis of the Will executed by the mother in her favour. If the Civil Court holds that the Will executed by the petitioner's mother is not valid, the property will have to be shared by the petitioner and the fifth respondent. If the Civil Court holds that the Will executed by the petitioner's father in favour of the



petitioner is valid, the Civil Court may also grant a decree as to the 2/3rd share of the petitioner. Till such time the Civil Court take a decision declaring the exclusive title of the fifth respondent or the share of petitioner in the manner stated above, the third respondent is directed to restore patta in the name of the petitioner and fifth respondent. The Civil Court, if any one file the suit, may dispose of the suit uninfluenced by any of the observations of this Court in this order.

8.With the above direction, this writ petition is disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CS-II)

// True Copy //

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Sub Assistant Registrar(CS)

TM

To

1.The District Collector,
Sivagangai District, Sivagangai.

2.The District Revenue Officer,
Sivagangai District, Sivagangai.

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Devakottai, Sivagangai District.

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+1 CC to M/s.RAJIVGANTHI, Advocate (SR-6945[F] dated 18/02/2020)

+1 CC to M/s.SPL.GP (SR-7055[F] dated 19/02/2020)

+1 CC to M/s.K.P.NARAYANAKUMAR, Advocate (SR-7230[F] dated 20/02/2020)

W.P. (MD).No.6500 of 2015

18.02.2020

PK(CO)

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