



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 04.02.2020

CORAM

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

W.P.(MD).No.14189 of 2016

G.Ramasamy

.. Petitioner

Vs.

1.The District Collector,
Sivagangai District,
Sivagangai.

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

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

4.The Tahsildar,
Thiruppuvanam Taluk,
Sivagangai District.

5.A.Pannerselvam

.. Respondents

(Respondent 5 is impleaded vide Court order dated 29.01.2020 made in WMP (MD) No.2003 of 2018 in W.P.(MD) No.14189 of 2016 by SSSRJ)

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Mandamus directing the respondents to delete the name of Vairavan Servai, son of Namachivayam and include the name of Ramasamy, Ganapathy Servai in the Patta and Chitta for the property situated in Survey No.39/10B at Thiruppuvanam Pudur Village, Old Manamadurai Taluk at present Thiruppuvanam Taluk, Sivagangai District.

For Petitioner : Mr.M.Kannan

For Respondents : Mr.C.Ramar

1 to 4 Additional Government Pleader

For Respondent 5 : Mr.S.Krishnan

ORDER

This Writ Petition is filed for issuance of a Writ of Mandamus directing the respondents to delete the name of Vairavan Servai, son of Namachivayam and include the name of Ramasamy, Ganapathy Servai in the Patta and Chitta for the property situated in Survey No.39/10B at Thiruppuvanam Pudur Village, Old Manamadurai Taluk at present Thiruppuvanam Taluk, Sivagangai District.

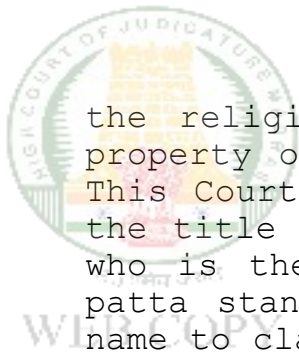
2.Heard the learned Counsel appearing for the petitioner, the learned Additional Government Pleader appearing for the respondents 1



to 4 and the learned Counsel appearing for the fifth respondent.

3.The petitioner states that the property measuring an extent of 1.06.0 hectare in Survey No.39/10B in Thiruppuvanam Pudur Village, Old Manamadurai Taluk at present Thiruppuvanam Taluk, Sivagangai District belonged to Kailasamadam Trust. The patta stands in the name of one Vairavan Servai @ Bala Servai. The petitioner states that he is one of the legal heirs of Vairavan Servai @ Bala Servai. It is stated that a trust was created with certain religious obligations and that the properties were dedicated for proper administration of the trust known as Kailasam Servai Madam. It is also stated that the expenses for the endowment should come from the properties of the trust. It is admitted that a suit came to be filed by some of the members of the family of the founder on the basis of a Will alleged to have been executed by one of the family members. In short, the suit is for declaration of title in favour of the individuals who claimed title on the basis of the Will. It is admitted that another suit in O.S.No.11 of 1985 came to be filed by some of the family members of the founder for declaration that the property is the property of Kailasa Servai Madam and for consequential injunction. This suit was also filed against some of the members of the family who claimed title to the property on the basis of the Will stated to have been executed by Bala @ Vairavan Servai in his individual capacity. The suit was decreed after holding that the suit property belonged to Trust known as Kalasa Madam Trust. An appeal was filed by some of the defendants aggrieved by the judgment of the lower Court in A.S.No.828 of 1989. The appeal also came to be dismissed by a judgment and decree dated 17.12.2007 by this Court. Thereafter, the petitioner filed a petition before the Tahsildar to delete the name of Vairavan Servai and to include the name of Ramasamy son of Ganapathy Servai. Since the application filed by the petitioner to change the patta in tune with the judgment of the Civil Court is pending, the petitioner has approached this Court by filing the above Writ Petition.

4.It is admitted that Vairavan Servai @ Bala Servai is no more and therefore, the said name has to be removed from the revenue records. Though the petitioner seeks to include his name as joint pattadhar, having regard to the declaration by civil court that the property belonged to Kailasa Madam Charitable Trust, the entry also should be in tune with the Civil Court's verdict. The learned Counsel appearing for the fifth respondent submitted that the respondent may also be directed to include his name in the joint patta. The fifth respondent herein is the fourth defendant in O.S.No.11 of 1985. The suit filed by one Ponnaiah Servai and others for declaration that the property belonged to the Trust was decreed as prayed for. Aggrieved by the judgment and decree, the fifth respondent herein/fourth defendant in the suit, filed appeal in A.S.No.828 of 1989 and the same was dismissed confirming the judgment and decree of the trial Court holding title in favour of



the religious trust. The fifth respondent claimed title to the property of Trust on the basis of the entries in revenue records. This Court while holding the judgment of the trial Court declaring the title of the trust has also observed that the fifth respondent who is the first appellant and other appellants cannot rely upon patta standing in their name or revenue records standing in their name to claim exclusive title to the property. The fifth respondent has admitted that he is the one who claimed title adverse to the Trust in prior proceedings. Though the fifth respondent claimed title on the basis of the Will, the learned Counsel appearing for the petitioner stated that the fifth respondent is not a person belonged to the family and that the Will is a fraudulent document. The question before the Civil Court was whether the Will was genuine or not. But it is stated that the Civil Court has observed that the fifth respondent is not a legal heir of the testator Vairavan Servai who executed the Will.

5. Having regard to the conduct of fifth respondent claiming title adverse to the interest of trust, the fifth respondent is not qualified to be a trustee of the Kailasa Servai Arakattalai or Kailasa Madam Trust whatever be the name in which the trust is called. The fifth respondent is one of the person who claimed to be a beneficiary under the Will dated 16.11.1981 executed by Vairavan Servai. As against the claim of petitioner and his group that the property belonged to Kailasa Madam Trust, the fifth respondent contended that the property is the exclusive property of Vairavan Servai. The title has been declared in favour of the Trust and the fifth respondent cannot now claim any right as a person belong to the family of the founder of the trust. Having taken a stand adverse to the interest of the trust, this Court is unable to accept the contention of the fifth respondent. The fifth respondent's heirs may claim such right as persons belonging to the family of the founder provided the relationship of fifth respondent as a descendant of founder of the trust is established. but not the fifth respondent himself. Hence, this Writ Petition is disposed of with the a direction to the Tahsildar/fourth respondent to dispose of the petition on the basis of the judgment and decree made in O.S.No.11 of 1985 and confirmed by this Court in A.S.No.828 of 1989, dated 17.12.2007. The patta should be issued only in favour of the Trust not in favour of individuals, namely, either the petitioner or any one in the family. No costs.

Sd/-

Assistant Registrar (CO)

// True Copy //

/ /2020

Sub Assistant Registrar (CS)



SRM

To

1.The District Collector,
Sivagangai District,
Sivagangai.

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

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

4.The Tahsildar,
Thiruppuvanam Taluk,
Sivagangai District.

+1 CC to M/s.M.KANNAN, Advocate (SR-4703[F] dated 04/02/2020)

+1 CC to M/s.SPL.GP (SR-4780[F] dated 05/02/2020)

ORDER MADE IN
W.P. (MD) .No.14189 of 2016
04.02.2020

SMA/25/02/2020/4P/7C