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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.06.2021

CORAM

THE HONOURABLE MR.JUSTICE R. SURESH KUMAR

W.P. No. 9722 of 2017

AR.Senthilnathan

... Petitioner

-vs-

1. The Tahsildar,
Velachery Taluk,
Tharamani,
Chennai - 600 113.

2. Preetha Rathnam Muthanna

... Respondents

PRAYER : Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of Writ of Certiorarified Mandamus calling for the records relating to the impugned order passed by the first respondent in proceedings A2/0291/2017 dated 03.04.2017, quash the same and consequently direct the first respondent to issue patta to the petitioner with respect to his 1/5 share in the land and premises bearing plot No.10, New Beach Road, Thiruvanmiyur, Chennai - 600 041, comprised in Survey No.214/2 of Thiruvanmiyur Village, Saidapet Taluk, Chennai Corporation Limits, by inspecting the premises and effecting subdivision of the same.

For Petitioners:Mr.K.S.Kumar

For Respondents:Ms.Akila Rajendran
Counsel for Government for R1
No appearance for R2

O R D E R

The prayer sought for herein is for a Writ of Certiorarified Mandamus calling for the records relating to the impugned order passed by the first respondent in proceedings A2/0291/2017 dated 03.04.2017, to quash the same and consequently, to direct the first respondent to issue patta to the petitioner with respect to his 1/5 share in the land and premises bearing plot No.10,



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New Beach Road, Thiruvannamiyur, Chennai - 600 041, comprised in Survey No.214/2 of Thiruvannamiyur Village, Saidapet Taluk, Chennai Corporation Limits, by inspecting the premises and effecting subdivision of the same.

2. The landed property in S.No.299 in Thiruvannamiyur Village, measuring five grounds and 443 sq.ft or 1150 sq.mts is the subject matter of the litigation.

3. The said property originally belongs to one RM.AR.AR.RM.AR.Arunachalam. There are seven legal heirs for the said Arunachalam, i.e., his wife, four sons and two daughters. The petitioner is one among the children of the said Arunachalam. Insofar as the subject matter is concerned, after the demise of the said Arunachalam on 14.07.1983, the property devolved among the legal heirs, i.e., seven legal heirs stated above, including the petitioner.

4. Insofar as the two daughters namely AR.Lakshmi and AR.Saratha are concerned, they have given up their rights with their respective shares to and in favour of the brothers. Therefore, the wife of the deceased Arunachalam, i.e., one Valliammai Achi and his three sons namely AR.Arunachalam, AR.Ramanathan and AR.Letchumanan sold separately, their respective 1/5th share to and in favour of the second respondent, namely one Preetha Rathnam Muthanna, in the year 1996, by various registered sale deeds dated 29.03.1996.

5. Thus, the remaining 1/5th of the share, for which the petitioner being one of the son of the deceased Arunachalam is entitled to, has been left to the petitioner.

6. In order to measure the land, i.e., 1/5th share of the property concerned and to issue a separate patta in his favour, the petitioner and his wife one Mangalam, have given a representation to the revenue authorities and since the said representation was not immediately considered, the petitioner had approached this Court by filing a Writ Petition in W.P. No. 25329 of 2016, where, a learned Judge of this Court, by order dated 21.07.2016 has passed the following order:

"This Court, taking into considering the limited scope of prayer sought for by the petitioner and without going into the merits of the same, directs the respondent to consider and dispose of the petitioner's representation dated 01.10.2015 in accordance with law and pass orders within a period of six weeks from the date of receipt of a copy of this order and communicate the decision taken, to the petitioner."



7. Pursuant to the said order passed by this Court, the first respondent / Tahsildar has taken up the file for inquiry and issued notice to both parties, after hearing them, the first respondent / Tahsildar passed an order on 03.04.2017, deferring the matter until the disposal of the Civil Suit in C.S. No. 335 of 2011. The order reads as follows:

"The two daughters have relinquished their rights over the above property in favour of all the four brothers. Thereafter, except Mr.AR.Senthilnathan all the other four have registered their 1/5th share in the above property to and in favour of Mrs.Preetha Rathnam Muthanna as detailed below:

Sl.No .	Name	Document No. & Date (SRO Madras South)
1	Tmt.AR.Valliammai Achi	3342/1996, 29.03.1996
2	Thiru.AR.Arunachalam	3343/1996, 29.03.1996
3	Thiru.AR.Ramanathan	3344/1996, 29.03.1996
4	Thiru.AR.Letchumanan	3345/1996, 29.03.1996

The 1/5th share of the above property therefore remained with AR.Senthilnathan husband of the petitioner. He never sold his share. However, the patta for the above property was issued for the entire extent of 5 grounds 443 sq.ft or 1150 sq.mts in favour of Mrs.Preetha Rathnam Muthanna by the Tahsildar late S.D.Thomas.

Therefore the representation of Mrs.Mangalam is that the 1/5th share of the property should be sub-divided and separate patta issued to her.

In that circumstances, notices were issued to Mrs.S.Mangalam and Mrs.Preetha Rathnam Muthanna to appear for enquiry on 02.03.2017 and put forth their case together with the documentary evidence in support of their respective claims. Mrs.S.Mangalam appeared for enquiry on 02.03.2017 and issued a detailed statement supported with records as referred to supra. Whereas Mrs.Preetha Rathnam Muthanna did not appear for enquiry on the appointed date. Therefore notices were sent by RPAD and also by courier to Mrs.Preetha Rathnam Muthanna who in turn responded to the notice and produced the affidavit filed in Civil Suit No.335 of 2011 and orally represented that in as much as the Civil



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Suit No.335 of 2011 is pending before the High Court of Judicature at Madras, no decision could be taken for the present as the matter is sub judice.

Accordingly, the decision in the matter is deferred until the disposal of the Civil Suit No.335 of 2011 before the Hon'ble High Court of Judicature at Madras.

Sd/- XXX

Tahsildar

Velachery Taluk"

8. Aggrieved over the said order passed by the first respondent / Tahsildar, the petitioner has filed the present Writ Petition with the aforesaid prayer.

9. Mr.K.S.Kumar, learned counsel appearing for the petitioner would submit that, the major ground on which the Tahsildar had chosen not to act on the representation of the petitioner was that, there exists a Civil Suit on the file of this Court in C.S. No. 335 of 2011, i.e., filed by the petitioner against his three brothers, second respondent and one another third party. The learned counsel would submit that, the prayer sought for in the Suit is for partition of the various schedule mentioned properties of the estate of the father of the petitioner, wherein, in schedule-A, Item No.1 relates to the present property and in order to appreciate the same, he relies upon the Item No.1, Schedule-A of the plaint, which reads thus:

SCHEDULE - A

ITEM-1

"Piece and parcel of the land comprised in Survey No.214/2, No.140, Thiruvanmiyur Village, Saidapet Taluk, Corporation Limits, situated in Plot No.10, Door No.22, New Beach Road, Thiruvanmiyur, Chennai - 41 measuring about 12465 sq.ft and bounded on the South by : Property belonging to Simbumull Sowcar, East by : Plot No.11, South by : 40 feet Road, West by : Plot No.9, South to North 138 feet, East to West 90 feet within the Sub-Registration Office, Joint-1, Saidapet, Registration District Office of Chennai South."

10. By relying upon the aforesaid Schedule, Item No.1 in the plaint, the learned counsel appearing for the petitioner would further submit that, among various properties, the subject matter is one of the property, which is measuring about 12465 sq.ft, out of which, only 8000 sq.ft alone have been



sold by the three brothers and the mother of the petitioner in various sale deeds in the year 1996 to and in favour of the second respondent.

11. Therefore, they themselves have left 1/5th share of the said subject matter with the intention to leave the share of the petitioner, who is one among the four sons of the deceased Arunachalam.

12. Insofar as the Item No.1 in Schedule-A of the plaint property is concerned, in view of the sale already undertaken by the other share holders as early as in the year 1996 as referred to above, leaving 1/5th share to the petitioner, there can be no much quarrel for devolving the remaining 1/5th share of the Item No.1 of Schedule-A property to and in favour of the petitioner and the said 1/5th share can very well be measured and a separate patta can be issued in favour of the petitioner.

13. Therefore, the learned counsel appearing for the petitioner would submit that, the said reasons cited by the first respondent through the impugned order, stating that, C.S. No.335 of 2011 is pending before this Court is not acceptable. Therefore, till a decision is taken in the said Civil Suit, the plea of the petitioner to get a separate patta of 1/5th share of the property in the subject matter is concerned would not be considered, is not a proper reason to not act on the representation and therefore, that reason would not be sustained in the eye of law insofar as the aforesaid facts are concerned. Therefore, the learned counsel appearing for the petitioner seeks indulgence of this Court to interfere with the said impugned order and to give a suitable direction to the first respondent.

14. I have heard Ms.Akila Rajendran, learned counsel for the Government appearing for the first respondent, who, having reiterated the said reasons stated in the impugned order, has also relied upon the averments made in the counter affidavit filed by the first respondent and in this regard, she relies upon the following averments made in the said counter:

"5. With regard to the averment made in paragraph 4 of the affidavit, it is submitted that the writ petitioner himself has admitted that 1/5th share of the un-divided share of the subject property is lying without demarcation. Without any demarcation, it may not be possible to identify the land in the subject property of the writ petitioner. Hence, the claim of the writ petitioner's power of attorney viz.,



Tmt.Mangalam, wife of the writ petitioner cannot be considered and sub-division of the specified land of the writ petitioner could not be made."

15. Therefore, it is the contention of the learned counsel for the Government that, even if the first respondent makes an attempt to measure the land for giving separate patta to and in favour of the petitioner, that would become practically impossible, as there has been no schedule or demarcation of the 1/5th share of the total property to be earmarked to and in favour of the petitioner and that is the reason why, the first respondent, through the impugned order, has stated that, let the issue be decided by the civil side of this Court in the Civil Suit referred to above filed by the petitioner and the revenue authorities would act depending upon the outcome of the decree and judgment to be made in the Civil Suit. Therefore, the learned counsel for the Government would submit that, the said reasoning stated in the impugned order in the given facts and circumstances are to be sustained. Hence, the impugned order does not require or warrant any interference from this Court.

16. Though notice has been served on the second respondent and the counsel has entered appearance, whose name also has been shown in the cause list, there is no representation for the second respondent.

17. I have considered the said submissions made by the learned counsel appearing for the parties and have perused the materials placed before this Court.

18. It is no doubt that, the petitioner is one of the legal heirs of the deceased Arunachalam. Therefore, he is entitled for his share for the entire estate of the deceased Arunachalam. It is seen that, there are number of properties with the said estate of the said Arunachalam and there has to be a fair partition among the brothers and other legal heirs. The petitioner has already approached this Court on the original side and filed a Civil Suit in C.S. No. 335 of 2011 for partition.

19. In the said suit, as stated by the petitioner, in schedule-A, Item No.1, the subject land or property is mentioned.

20. Insofar as the Item No.1 in schedule-A is concerned, all the share holders, who are the brothers and sisters as well as the mother of the petitioner have acted upon strictly in accordance with their share, that each of them are entitled to.



21. In this context, it is to be noted that, the two daughters of the deceased Arunachalam, who are the sisters of the petitioner, have relinquished their right, to and in favour of the brothers, i.e., three brothers. Therefore, the three brothers as well as the wife of the deceased, who is the mother of the petitioner, had sold the property under various sale deeds to the second respondent in the year 1996, leaving strictly $1/5^{\text{th}}$ share of the subject land towards the petitioner's share.

22. Thus it has become clear that the petitioner's $1/5^{\text{th}}$ share has been left unencumbered. The petitioner can encumber or exploit his share of the property in the manner already done by the co-share holders, who have already sold their share in the year 1996 to a third party, who is none other than the second respondent.

23. Therefore, if at all, the first respondent has to identify the boundaries of the $1/5^{\text{th}}$ share earmarked for the petitioner, that authority need not enter into any trouble as he can very well verify the schedule provided under various sale deeds dated 29.03.1996, executed between the brothers and the mother of the petitioner and the second respondent. If the four sale deeds dated 29.03.1996 are verified, definitely, the schedule for the respective properties of the other share holders would have been mentioned and by taking them into account, the first respondent can easily find out, what are the four boundaries for the mentioned $1/5^{\text{th}}$ share, which is meant for the petitioner.

24. In this context, the first respondent can very well measure the entire land and demarcate the boundaries of the $1/5^{\text{th}}$ share belonging to the petitioner, by taking into account, the boundaries already provided in the sale deeds executed in the year 1996.

25. Without any four boundaries specifically earmarked in the said sale deeds, the second respondent, who is the present purchaser of the $4/5^{\text{th}}$ share of the total extent of land, cannot also enjoy the property. Therefore, it is better that the first respondent to issue notice to the petitioner as well as the second respondent and in their presence, based on the schedule in the already registered sale deeds in the year 1996 to and in favour of the second respondent, the four boundaries of the remaining $1/5^{\text{th}}$ share belonging to the petitioner can be identified and accordingly, after identifying the four boundaries and the extent of the $1/5^{\text{th}}$ share, the first respondent / Tahsildar can take further steps to issue separate patta in favour of the petitioner.



26. If such separate patta is issued in favour of the petitioner, it is needless to mention that, the second respondent would also be entitled to get separate patta for her share, i.e., purchased property, which is equal to $4/5^{\text{th}}$ share of the entire extent of the property.

27. If such separate pattas are given to the petitioner as well as the second respondent after completing the demarcation, that will have no bearing in the claim made by the petitioner in the Civil Suit, as all the legal heirs of the deceased Arunachlam, insofar as Item No.1 in Schedule-A of the plaint scheduled mentioned above, have acted upon as per their respective entitlement alone.

28. Therefore, at that time, this development can also be taken care of the Civil Court while deciding the Civil Suit filed by the petitioner, insofar as the Item No.1 of the plaint schedule is concerned.

29. In that view of the matter, this Court is inclined to dispose of this Writ Petition with the following orders:

"(i) That the impugned order is quashed and the matter is remitted back to the first respondent for reconsideration. While reconsidering the same, the first respondent / Tahsildar shall issue notice to both the petitioner as well as the second respondent and after having verified the four sale deeds dated 29.03.1996 taken place between the other share holders and the second respondent, based on which, the four boundaries of the $1/5^{\text{th}}$ share belonging to the petitioner shall be identified and accordingly, a separate patta shall be issued for the said $1/5^{\text{th}}$ share in the total extent, which is nothing to do with, Item No.1 of the schedule-A of the plaint in C.S. No. 335 of 2011, to the petitioner.

(ii) The aforesaid needful shall be undertaken by the first respondent within a period of three months from the date of receipt of a copy of this order."



30. With these directions, this Writ Petition is ordered on the terms indicated above. However, there shall be no order as to costs.

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Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

vji
To

The Tahsildar,
Velachery Taluk,
Tharamani,
Chennai - 600 113.

+1cc to the Government Pleader Sr.30395
+1cc to M/s.K.S.Kumar, Advocate Sr.30356

W.P. No. 9722 of 2017

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srg 06/08/2021