



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.10.2021

CORAM:

THE HON'BLE MRS. JUSTICE V.BHAVANI SUBBAROYAN

W.P.NO.28864 OF 2019

AND

W.M.P.NOS.28605 & 28606 OF 2019

1. J.Sagunthala

2. K.Jothimani

... Petitioners

Versus

1. The District Collector,
Coimbatore District.

2. The District Revenue Officer,
Coimbatore District.

3. The Sub-Collector,
The Sub-Collector Office,
Pollachi.

4. The Tahsildar,
Pollachi.

5. A.Anandha Kumar

... Respondents

PRAYER:-

Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorari, call for the records pertaining to the impugned order dated 02.07.2019 in Ne.Mu.1558/2019/E1 of the 2nd respondent by confirming the order dated 07.12.2018 in Ne.Mu.No.2710/2018/A1 of the 3rd respondent and quash the same.

For Petitioners : Mr.D.R.Arun Kumar

For RR1 to 4 : Mr.V.Veluchamy
Government Advocate

For R5 : Mr.R.Nanda Kumar



ORDER

This writ petition has been filed challenging the impugned order dated 02.07.2019 in Ne.Mu.1558/2019/E1 passed by the second respondent confirming the order of the third respondent dated 07.12.2018 in Ne.Mu.No.2710/2018/A1.

2. The case of the petitioner is that the properties comprised in S.F.Nos.246/1, 247/1 and 248 measuring an extent of 11.55 acres were originally belonged to the petitioners' maternal great grandmother namely Palaniammal, who executed a settlement deed, dated 02.05.1962 in favour of the petitioners' father namely 1. Periya Kaliappa Gounder, and his brothers 2.Palani Gounder and 3. Chinnakaliappa Gounder, who was a minor and represented by his elder brother Periya Kaliappa Gounder (petitioners' father). The said Chinna Kaliappa Gounder got married one Rajammal. Thereafter, they died without executing any documents in respect of the aforesaid properties. While so, the brother of the said Rajammal namely Karumalaippa Gounder filed a suit for partition in O.S.No.151 of 1996 without the knowledge of the petitioners' father on the basis of unregistered Will dated 07.12.1983 alleging that the said Will was executed by the said Rajammal including the subject property measuring an extent of 4.40 acres. Subsequently, a compromise decree was passed behind the back of the petitioners' father in a clandestine manner. Subsequently, the father of the petitioners filed a suit in O.S.No.168 of 2011 before the District Munsif Court, Pollachi and the same is pending.

3. It is the further case of the petitioner, the said Karumalaippa Gounder filed a suit for permanent injunction in O.S.No.138 of 2008 before the District Munsif Court, Pollachi and the same was decreed on 04.08.2015 in favour of him. Aggrieved by the same, the petitioners had preferred an appeal in A.S.No.16 of 2015 before the Sub-Court, Pollachi, and the same is pending for consideration. At this juncture, the father of the petitioners had preferred Second Appeal in S.A.No.642 of 1999 against his brother Palani Gounder and the same was ordered on 29.01.2013 in favour of the petitioners' father. Meanwhile, the petitioners' father died intestate on 31.08.2017 leaving behind the petitioners and their mother as his sole legal heirs and they are in possession and enjoyment of the said properties till date. In the above said circumstances, the 5th respondent purchased the above said property from the said Karumalaiappa Gounder and also he filed a petition dated 06.09.2018 for transfer of patta in his name. After due enquiry, the same was rejected by the third respondent/Sub Collector. Later on, the 5th respondent preferred a petition before the 3rd respondent/Sub Collector and the 3rd respondent passed an order in Ne.Mu.No.2710/2018/A1, dated 07.12.2018 in favour of the fifth



respondent. Aggrieved by the same, the petitioners preferred a Revision Petition before the second respondent and the same was dismissed vide order in Ne.Mu.1558/2019/E1, dated 02.07.2019 by confirming the order passed by the 3rd respondent. Hence, the petitioners' have come forward with the present writ petition under Article 226 of the Constitution of India.

4. Heard both side and perused the records.

5. On perusal of the records, it is seen that the subject lands in S.F.Nos.246/1 and 247/1 are located in Thippampatti Village, Coimbatore District, measuring an extent of 1.77.5 hectares and 0.91.5 hectares respectively. As per the "A" Register of Thippampatti Village, the said lands were registered in the name of Chinnakaliappa Gounder and Palani Gounder comprised in Patta No.273 and the registered persons are the younger brothers of the father of the petitioners. It is also seen that the fifth respondent had purchased the property having an extent of 4.40 acres from Karumalaiappa Gounder and the same was registered on the file of Negamam Sub Registrar Office vide Doc.No.9666/2015. Moreover, the 5th respondent approached the Zonal Deputy Tahsildar, Pollachi, for transfer of patta and the same was rejected by the Zonal Deputy Tahsildar. Subsequently, he preferred an appeal before the third respondent and the same was ordered by incorporating the name of the 5th respondent in the subject lands. Aggrieved by the order of the third respondent, the petitioners filed a revision before the second respondent and the same was rejected for the reason of A.S.No.16 of 2015 is still pending before the Sub Court, Pollachi for further adjudication. Therefore, the claim of the petitioners has rightly rejected by the third respondent/Sub-Collector.

6. In view of the above facts, I am of the considered view that the petitioners are not entitled for transfer of patta at this point of time. Hence, the petitioners are directed to await the outcome of the A.S.No.16 of 2015 on the file of Sub Court, Pollachi.

7. Accordingly, the writ petition is disposed of. Consequently, connected Miscellaneous Petition Nos.28605 & 28606 of 2019 are also closed. No costs.

Sd/-

Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

msm



To

1. The District Collector,
Coimbatore District.
2. The District Revenue Officer,
Coimbatore District.
3. The Sub-Collector,
Sub-Collector Office,
Pollachi.
4. The Tahsildar,
Pollachi.

+1cc to Mr.D.R.Arun Kumar, Advocate, S.R.No.55757
+1cc to Mr.R.Nanda Kumar, Advocate, S.R.No.56272
+1cc to the Government Pleader, S.R.No.56676

W.P.No.28864 of 2019

PM(CO)
PBS/07/01/2022