

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.02.2021

CORAM

THE HONOURABLE Mr.JUSTICE S.S.SUNDAR

W.P.No.23923 of 2017

and

W.M.P.No.25193 of 2017

P.Raja Gounder (deceased)

2.Sivagami

3.Ramya

4.Rajganesh

5.Balakumar

... Petitioners

Vs

1. District Collector,
Salem.

2. The Tahsildar,
Omalar Taluk.

3. Inspector of Police,
Sooramangalam,
Salem - 5.

... Respondents

(P2 to P5 are impleaded vide order of this Court dated 02.02.2021 in W.M.P.No.695 of 2021 in W.P.No.23923 of 2017)

Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Mandamus forbearing the respondents 1 and 2 from removing sand from the petitioner's patta land situate in S.No.40, Thathaiyangarpatti Village, Omalar Taluk, Salem District.

For Petitioners : Mr.R.Subramaniam

For Respondents : Mr.M.Vengadesh Kumar
Government Advocate

O R D E R

This Writ Petition has been filed for issuance of Writ of Mandamus Writ of Mandamus forbearing the respondents 1 and 2 from removing sand from the petitioner's patta land situate in

S.No.40, Thathaiyangarpatti Village, Omalur Taluk, Salem District.

2. The petitioner claims title to an extent of 2.90 Acres in S.No.40, Thathaiyangarpatti Village, Omalur Taluk, Salem District, on the basis of a registered sale deed dated 20.06.1967 which is registered as document No.1521 of 67. It is the case of the petitioner that the property was purchased by the first petitioner's mother one Chinnammal under the sale deed dated 20.06.1967. It is stated further that after the death of the petitioner's mother, the petitioner is in possession and enjoyment of the property. Stating that the second respondent trespassed into the land belonged to the petitioner and damaged crops and trees and removed substantial soil from the petitioner's patta land, the petitioners have approached this Court by filing this Writ Petition.

3. A counter affidavit has been filed by the respondents denying the title of the petitioners. It is stated that the entire extent of 6.50.5 Hectares equivalent 16.07 Acres in Survey No.40 of Thathaiyangarpatti village, Omalur Taluk, is classified as 'Government poramboke' and 'Vaikkal Kuttai'. It is seen that the petitioners have not produced any revenue records to substantiate that the property was in the registered holdings of the petitioner's mother or her predecessors in interest. Except producing the sale deed dated 20.06.1967, the petitioner has not produced any other document before this Court.

4. The petitioners produced before this Court kist receipts for faslis 1420 and 1414. It is to be noted the the kist receipts refers to the payment of kist for Patta No.589. In other words, the kist receipts produced by the petitioner is in relation to a property to which the petitioners was given patta vide patta No.589. The petitioner has not produced corresponding patta to show that the Government has recognised the petitioner as a registered owner of the property. Therefore, this court based on the stand taken by the respondents in the counter affidavit has to admit that the kist receipt does not relate to the property to which the petitioners claim title in this Writ Petition.

5. The petitioner states that he is in possession of the property. Except producing the death certificate and legal heirship certificate of his mother and the photographs of the land, the petitioners have not produced any document to prove the registered holdings of the petitioner's mother or predecessor's interest. The petitioners have produced before this Court a typed copy of the sale deed. Neither the original nor the certified copy of the original sale deed is produced before this Court. In such circumstances, this Court in a

petition filed under Section 226 of the Constitution of India is unable to accept the title of the petitioner based on the sale deed dated 20.06.1967.

6. The petitioners have come forward with a prayer for which they should approach the Civil Court. This court, hearing a Writ Petition in exercise of its extraordinary jurisdiction under Article 226 of Constitution of India, cannot decide any issues involving disputed questions of fact. Hence, this Court is not inclined to entertain the Writ Petition. However, liberty of the petitioners is preserved to establish his title and enjoyment and seek appropriate relief before the Civil Court, in case the petitioners prove their title and enjoyment.

7. As a result, this Writ Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

bkn

To

1. The District Collector,
Salem.
2. The Tahsildar,
Omalur Taluk.
3. The Inspector of Police,
Sooramangalam,
Salem - 5.

+1cc to Mr.R.Subramaniam, Advocate, S.R.No.6106
+1cc to the Government Pleader, S.R.No.6280

GP(CO)
CS/29/04/2021

W.P.No.23923 of 2017

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