

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 10.02.2021

CORAM

THE HONOURABLE MR. JUSTICE S.S.SUNDAR

W.P.No.15798 of 2017

G.Mazher
S/o.S.Gulsheer

... Petitioner

Vs.

The Thasildar,
Mambalam-Taluk,
Office of Thasildar, Mambalam-Taluk,
New No.1, Old No.2,
Bharathidasan Salai,
K.K.Nagar, Chennai-600 078.

... Respondent

Prayer: Petition filed Under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, to call for the records of the respondent in letter No.Na.Ka.Ka.A2/2816/2017 dated 05.05.2017, impugned herein and quash the same and consequently direct the respondent to issue patta for the property land measuring 305 sq.ft., in Survey Nos.124/7 & 124/9, T.S.No.49, of Saligramam Village, in the name of the petitioner without insisting for "Probate" of the will dated 19.05.2003 reg.doc.No.82/2003 at SRO-Avadi, of the testator Abdul Jabbar.

For Petitioner : Mr.G.B.Sabari Das

For Respondent : M/s.A.Madhumathi

Special Government Pleader,

सत्यमेव जयते
ORDER

The writ petition has been filed for issuing a Writ of Certiorarified Mandamus, to call for the records of the respondent in letter No.Na.Ka.Ka.A2/2816/2017 dated 05.05.2017, impugned herein and quash the same and consequently direct the respondent to issue patta for the property land measuring 305 sq.ft., in Survey Nos.124/7 & 124/9, T.S.No.49, of Saligramam Village, in the name of the petitioner without insisting for "Probate" of the will dated 19.05.2003 reg.doc.No.82/2003 at SRO-Avadi, of the testator Abdul Jabbar.

2. In the affidavit that has been filed in support of the writ petition, it is stated that the petitioner is the owner of the property at Door No.13-A/7, first street, Hammeediya Mosque Garden, Saligramam, Chennai-93, land measuring 305 sq.ft, in Survey Nos.124/7 & 124/9, T.S.No.49, of Saligramam Village, having purchased under Sale deed dated 17.04.2012 and by Rectification Deed dated 06.02.2013. The property originally belonged to one Sheik Abdut Kapoor and he had executed a settlement deed in favour of his son Abdul Jabbar. The said Abdul Jabbar had, in-turn, executed a Will dated 19.05.2003, which was registered as document No.82/2003 before the Sub Registrar Office in favour of his son A.Ibrahim. The said A.Ibrahim subsequently died on 11.03.2007. Later Abdul Jabbar died on 04.05.2010. The legal heirs of A.Ibrahim, namely, Subethiya, Habiba, Abdul Gani have thus inherited the subject property. Since, the legal heirs of A.Ibrahim conveyed the property infavour of the petitioner, the petitioner claimed that he is entitled to get the patta on the basis of the documents and the Will dated 19.05.2003. When the petitioner approached the respondent for getting patta to the property, the respondent returned the application by directing the petitioner to submit the documents along with the proof that the Will is proved before Court. Challenging the said order dated 05.05.2017, the present Writ Petition is filed.

3. From the facts, it is seen that the Will was executed by Abdul Jabbar in favour of his son A.Ibrahim. The petitioner claimed the property through the legal heirs of said A.Ibrahim. The respondent can entertain the application for the transfer of patta, if the petitioner is able to prove that the other legal heirs of Abdul Jabbar had no objection for acting upon the Will of Abdul Jabbar. The respondent has to see whether the testator had patta for the property. Even if no probate is necessary, the genuineness can be gone into by issuing notice to interested persons.

4. The learned counsel for the petitioner states that this Court may direct the respondents to consider the request of the petitioner after issuing notice to the parties interested.

5. The learned Special Government Pleader has no objection to consider the request of the petitioner after issuing notice.

6. Accordingly, the writ petition is disposed of in the following directions:-

The impugned order passed by the respondent dated 05.05.2017 is set aside. The respondent is directed to consider the application submitted by the petitioner for granting of patta within a period of 12 weeks from the date of receipt of a copy

of this order, after issuing notice to the persons who are interested including the legal heirs of the A.Ibrahim. No Costs.

-s/d-
Assistant Registrar

True copy
Sub-Assistant Registrar

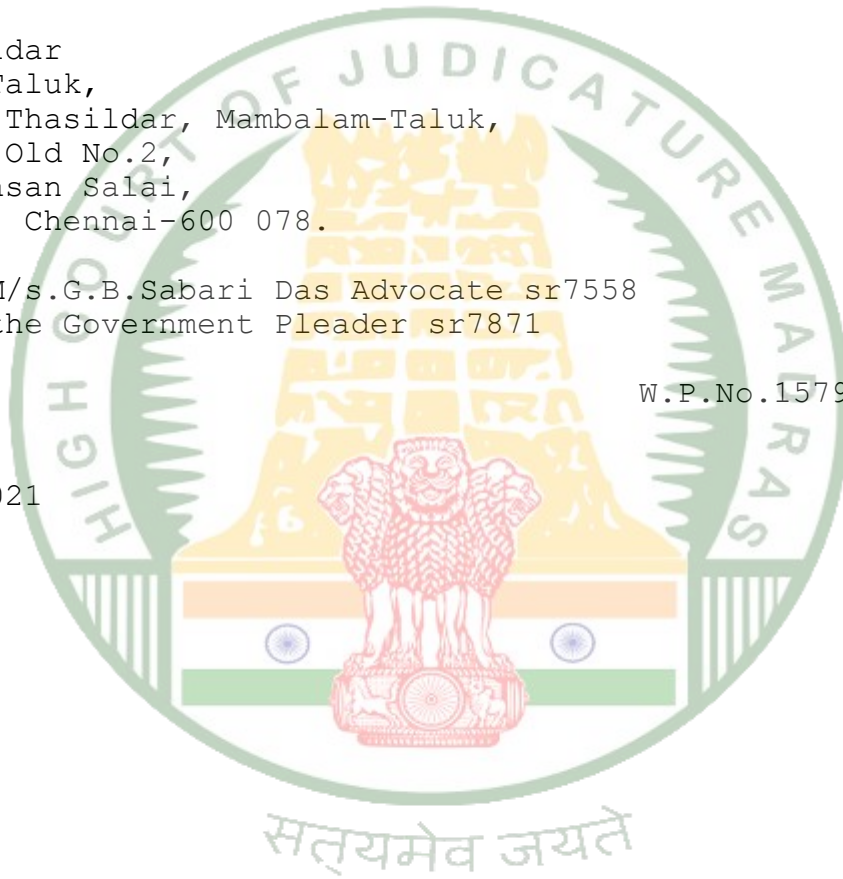
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To
The Tahsildar
Mambalam-Taluk,
Office of Thasildar, Mambalam-Taluk,
New No.1, Old No.2,
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K.K.Nagar, Chennai-600 078.

+1 cc to M/s.G.B.Sabari Das Advocate sr7558
+1 cc to the Government Pleader sr7871

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