



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 19.01.2021

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THE HONOURABLE MR.JUSTICE V.PARTHIBAN

WEB COPY

W.P. (MD) No.667 of 2021

and

W.M.P. (MD) No.557 of 2021

C.Ramasamy

.. Petitioner

Vs

1.The Revenue Divisional Officer,
Revenue Divisional Office,
Thirumangalam,
Madurai District.

2.The Tahsildar,
Thirumangalam Taluk,
Madurai District.

3.Nachaar

4.Jeyavel

5.Ganesan

6.K.M.P.Seeniayya

.. Respondents

PRAYER:Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus, calling for the records pertains to impugned order of 1st respondent in proceedings in Na.Ka.No.3935/2020/A3 dated 02.12.2020, quash the same as illegal and unconstitutional and consequently direct the 1st respondent to restore the patta in the petitioner's name in S.Nos.21/9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 2B and 29/8, 29/1 and 35/5A1A Situated at Melakkottai Village Thirumangalam Taluk Madurai District.

For Petitioner

: Mr.S.Prabhu

For R1 & R2

: Mr.R.Murugan

Additional Government Pleader

ORDER

According to the petitioner, his adoptive father, one Thangaiah Gounder, had executed a Will in his favour and the same was registered as Doc.No.37/1992 before the Sub Registrar, Thiruparankundram on 29.07.1992. During the life time of the



petitioner's adoptive father, the schedule property was mortgaged to one Rajendra Darda and his sons for a sum of Rs.5,00,000/- and a mortgage deed was also executed and registered before the Sub Registrar, Thirumangalam on 23.01.1998, vide Doc.No.228/1998. The petitioner's father died on 28.12.1998. In terms of the Will, the petitioner became the owner of the property. In the meanwhile, the mortgagee has filed a suit in O.S.No.114 of 2008 for recovery of money before the I Additional District Court, Madurai and the same was decreed as *ex parte*.

2.In the year 2012, the respondents 3 to 5, according to the petitioner, created forged documents as if they are the legal heirs of the deceased Thangaiah Gounder and mutated the patta in their names in the revenue records, relating to the subject property. The petitioner, therefore, approached the 2nd respondent to cancel the patta standing in the names of the respondents 3 to 5. The 2nd respondent conducted detailed enquiry, by affording opportunity to the parties and passed a detailed order to change the entries and ordered to mutate the patta in the name of the petitioner, by his proceedings, dated 12.11.2020. The respondents 3 and 4 have preferred an appeal before the 1st respondent and the 1st respondent, by way of an interim order, granted stay of the proceedings, dated 12.11.2020 on 02.12.2020, without prior notice to the petitioner. Immediately after the interim order was passed by the 1st respondent, the patta was restored in the name of the respondents 3 and 4. Challenging the same, the petitioner is before this Court.

3.The learned counsel appearing for the petitioner would submit that while the petitioner has succeeded in the proceedings before the 2nd respondent and when the appeal being entertained, it is beyond the power of the appellate authority to pass an order of interim stay without hearing the petitioner and on that basis, the patta ought not to be restored in the name of the respondents 3 and 4 as the action would amount to allowing the appeal without hearing the petitioner.

4.According to the learned counsel nothing prevented the 1st respondent from disposing of the main appeal itself after hearing the parties. The learned counsel would submit that the impugned order is nothing but a colourable exercise of power. Therefore, it is not appropriate and just to restore the patta of the rival claimants during the pendency of the appeal, behind the back of the petitioner.

5.Mr.R.Murugan, learned Additional Government Pleader has entered appearance on behalf of the respondents.



6.This Court is in agreement with the submission made on behalf of the petitioner. The 1st respondent has no right to grant any interim orders adverse to the interest of the petitioner without hearing him. In any case, it is not legally permissible to restore *status quo ante*, when the appeal itself is under consideration by the 1st respondent. As rightly contended by the learned counsel appearing for the petitioner, nothing prevented the 1st respondent from disposing of the appeal expeditiously, in which case, there was no requirement for grant of interim order of *status quo ante* in the matter.

7.In consideration of the above narrative, this Court is of the view that the impugned order, dated 02.12.2020 is *per se* illegal and liable to be interfered with. In the fitness of things, this Court is of the view that the 1st respondent is to be directed to dispose of the appeal itself, by giving sufficient opportunity to the parties at an early date, so that the '*lis*' is resolved one way or the other as between the parties, expeditiously.

8.In the said circumstances, the impugned order passed by the 1st respondent in Na.Ka.No.3935/2020/A3 dated 02.12.2020 is hereby set aside and the 1st respondent is directed to pass appropriate final orders on the appeal, after affording sufficient opportunity to the petitioner as well as the other rival claimants. In the meanwhile, the status quo as on date shall be maintained till the disposal of the appeal. The 1st respondent is also directed to pass orders within a period of 8 weeks from the date of receipt of a copy of this order.

9.The Writ Petition stands allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(AD-I)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

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To

1.The Revenue Divisional Officer,
Revenue Divisional Office,
Thirumangalam, Madurai District.



2.The Tahsildar,
Thirumangalam Taluk,
Madurai District.

+1 CC to M/s.GP (SR-1385[F] dated 20/01/2021)

W.P. (MD) No. 667 of 2021
19.01.2021

MJ(CO)

TR(08.02.2021) 4P 4C