



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 16.11.2021

CORAM

THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN

W.P. (MD) .No.13894 of 2021

and

W.M.P (MD) Nos.10854, 10856 and 14046 of 2021

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Kalimuthan

... Petitioner

Vs.

1.The Sub Divisional Magistrate Cum,
Revenue Divisional Officer,
Sivagangai.

2.Selvi

3.Kannan

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari, calling for the records relating to the impugned order passed by the first respondent in his proceedings in Na.Ka.No.A3/6507/2018, dated 28.06.2021 and quash the same.

For Petitioner : Mr.B.Prahalad Ravi

For R-1 : Mr.S.Shanmugavel

Additional Government Pleader

For R-2 :Mr.M.S.Jeyakarthick

ORDER

The Writ Petition has been filed in the nature of Certiorari seeking interference with an order of the first respondent / the Sub Divisional Magistrate Cum Revenue Divisional Officer in Sivagangai District, passed in proceedings Na.Ka.No.A3/6507/2018 dated 28.06.2021.

2. The second and third respondents, Selvi and Kannan are said to be the daughter and son of one Paulsamy @ Palanisamy. The property in question, measuring a larger extent of about 4.76 cents, in Survey No.387/4A which was originally 387/22, originally belonged to the mother of the second and third respondents by name Rajammal. She had also built a house in the said property. After her death, the property vested with the legal heirs namely her husband Paulsamy, her daughter Selvi, who is the second respondent



and her son Kannan, who is the third respondent.

3. The patta stood in the name of Paulsamy. It is the complaint of the learned counsel for the second respondent that the revenue records were thereafter changed by deleting the name of the second respondent Selvi, but rather including the name of the third respondent Kannan.

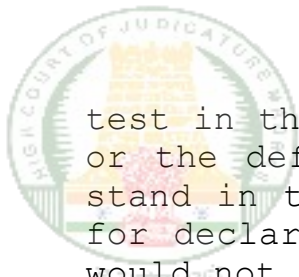
4. The petitioner Kalimuthan had purchased the property from Kannan to an extent measuring 2 cents. The petitioner claims that he had also constructed a house measuring about 872 square feet in the said property which is situated at Salaigramam Village in Sivagangai District.

5. The contention of the second respondent is that this change in the revenue records from Paulsamy to Kannan was done surreptitiously and fraudulently and is actually an act of fraud and forgery. In this connection, a complaint had also been given to the police officials and my attention is drawn to a copy of the First Information Report in Crime No.37/2019 which is now pending on the file of the District Crime Branch of Sivagangai.

6. It is the contention of the learned counsel for the petitioner that further proceedings or further investigation in the said First Information Report had been stayed by an order of this Court in separate proceedings in CRL.OP(MD).No.15263 of 2021 by order dated 06.10.2021.

7. Be that as it may, the Tahsildar had given a report stating that the patta should be in the name of Paulsamy and it should have been changed thereafter only in the names of both Selvi / the second respondent and Kannan / the third respondent. This particular report was taken note of by the first respondent / the Sub Divisional Magistrate Cum Revenue Divisional Officer who had passed an impugned order, wherein, he had accepted that particular claim and had directed the Tahsildar, to record the name of Paulsamy in the revenue records. This has naturally agitated the petitioner herein since he claims to have purchased a portion of the property herein from the third respondent Kannan. This has given rise to the filing of the present Writ Petition in the nature of Certiorari.

8. In the midst of all these, it is also seen that the second respondent had filed a suit as against the third respondent seeking partition and separate possession in O.S.No.65 of 2010 pending before the District Munsif Court at Ilayangudi. The petitioner herein is also shown as the second defendant in the said suit. It is claimed by learned counsels that the said suit is only for a partition and that the title has not been put to



test in the said suit. An option is given to either the plaintiff or the defendants therein, since in a partition suit the parties stand in the same footing and the same right is conferred to seek for declaration of title of the property. The change in the patta would not confer on title on anybody.

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9. It is claimed by the learned counsel for the second respondent that the second respondent is in possession. This particular aspect is disputed by the learned counsel for the petitioner who claims that the petitioner is in title. Therefore the title of the property, the possession of the property, the entitlements of the parties to the property, the shares to which they are entitled to, whether the revenue records are binding in the Civil Court are all issues to be examined only after the trial and only after giving an opportunity to the parties herein to adduce evidence. The Writ Court can never examine these particular issues.

10. Insofar as the impugned order is concerned, the order only reflects that the name of Paulsamy should be incorporated in the revenue records. Paulsamy is not a party either in the suit or in the present Writ Petition. I am confident that as a neutral person and father of the second and third respondents, his name in the revenue records would not affect either the petitioner herein or the second and third respondents.

11. In view of the above reasons, I am not inclined to interfere with the order of the first respondent. The parties are relegated to the civil Court. Since it is stated that the suit is now dismissed for default, an option is given to the petitioner herein to approach the civil Court seeking declaration of title.

12. With the above observations, the relief of Certiorari is denied. This Writ Petition is disposed of. There shall be no order as to costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

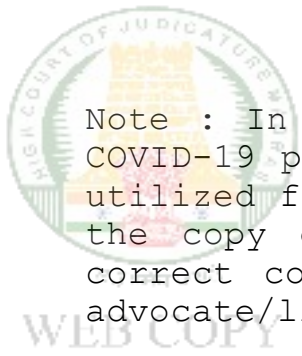
Assistant Registrar (RECORDS)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

Lm/Nsr



Note : In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

The Sub Divisional Magistrate Cum,
Revenue Divisional Officer,
Sivagangai.

+1 CC to M/s.M.S. JEYAKARTHIK, Advocate (SR-34677[F] dated 16/11/2021)

+1 CC to M/s.B. PRAHALAD RAVI, Advocate (SR-34867[F] dated 17/11/2021)

+1 CC to M/s.SPL GP (SR-34764[F] dated 17/11/2021)

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AM(CO)
SB(29.11.2021) 4P 5C