



WEB COPY

W.P.(MD).No.15374 of 2021

THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 16.11.2021

CORAM

THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN

W.P. (MD) .No.15374 of 2021

and

W.M.P (MD) No.12267 of 2021

1.R.Vasuki

2.R.Kannappan

3.R.Meenal

4.R.Sakundhala

... Petitioners

Vs.

1.The District Revenue Officer,
Collectorate Campus, Madurai.

2.The Revenue Divisional Officer,
Collectorate Campus, Madurai.

3.The Tahsildar,
Melur Taluk,
Madurai District, Madurai.

4.U.Kannappan

... 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 pertaining to the impugned order made in Ni.Mu.No.G2/85115/2011 passed by the first respondent dated 31.05.2021 and quash the same.

For Petitioners : Mr.P.R.Prithviraj

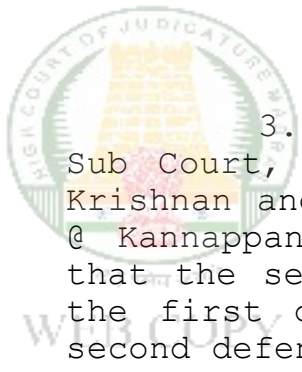
For R-1 to R-3 : Mr.D.Gandhiraj

Special Government Pleader

ORDER

This Writ Petition has been filed in the nature of Certiorari seeking interference with an order of the first respondent / the District Revenue Officer, Collectorate Campus, Madurai, passed in proceedings Ni.Mu.No.G2/85115/2011 dated 31.05.2021.

2. Heard Mr.P.R.Prithviraj, learned counsel for the petitioners and Mr.D.Gandhiraj, learned Special Government Pleader who took notice for respondents 1 to 3.



3. Originally, O.S.No.18 of 2011 had been filed before the Sub Court, Camp Court at Melur, Madurai by two brothers K.N.Bala Krishnan and K.N.Ramamoorthy against two defendants namely U.Kannan @ Kannappan and K.N.Somasundaram. It can be reasonably presumed that the second defendant is another brother of the plaintiffs and the first defendant is the father of the two plaintiffs and the second defendant.

4. The said suit was filed with respect to the property which had been described as being situated in Survey No.34/17 which measures to an extent of 0.45.0 hectares in Attukulam Village, Melur Taluk, Madurai District. What has been not stated in the plaint is that the said survey number was of the year 2007 but it was subdivided into Survey No.34/18 measuring 0.05.0 hectares and that particular portion has been classified as a pathway (Poosthuthi Pathai) and the Survey No.34/19 which measures 0.40.0 hectares.

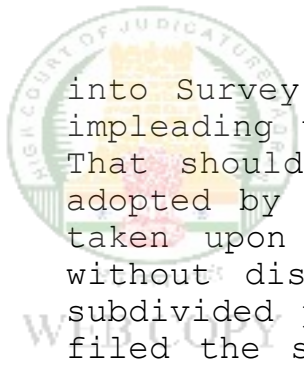
5. In effect, the schedule given in the plaint is not the correct lay of the land and did not reflect that the Survey No.34/17 had been further subdivided with one portion being described as pathway. The said suit proceeded in its own natural way when a father and brother are impleaded as defendants and the said father and the brother remained exparte and an exparte decree was granted.

6. Learned counsel for the petitioners placed much reliance on the said exparte decree. But he should also take into consideration that in the schedule to the plaint and in the schedule to the decree, the property which had been subdivided and had been categorized as a pathway was not brought to the knowledge of the learned District Munsif.

7. Placing reliance on that particular decree, a further proceedings before the revenue authorities were initiated. The first respondent, had passed the impugned order on 31.05.2021. As against the order of the first respondent, the proper approach would be to file a civil suit. However, the learned counsel for the petitioners stated that there are materials in the order of the first respondent which necessitate interference by this Court under Article 226 of the Constitution of India.

8. Once again, it must be mentioned that the decree relied on was only an exparte decree. The decree can be examined only on the facts in the said suit. The fact that the Survey No.34/17 had been further subdivided as 34/18 which had been categorized as pathway had not been disclosed in the schedule to the plaint by the plaintiffs.

9. I therefore hold that the petitioners will necessarily have to once again rework their remedies by filing a civil suit before the competent Court questioning the order of the first respondent by disclosing that Survey No.34/17 had been subdivided



into Survey No.34/18 which has been classified as pathway and also impleading the revenue authorities as defendants in the said suit. That should have been the proper approach which should have been adopted by the plaintiffs in the first instance. Rather, they had taken upon themselves to file a suit within the family members without disclosing the subdivision of the property and that the subdivided portion has been classified as a pathway. Two brothers filed the suit as against their father and another brother. The father and the other brother remained exparte. A decree naturally followed.

10. The property shown in the schedule to the plaint did not disclose that there was a pathway and that the pathway was a common pathway and that the Government has existing rights over the said pathway. I am confident that had these details been shown, then the District Munsif would have examined them and would himself or herself had called upon the plaintiff to implead the revenue authorities as defendants in the suit. The exparte decree cannot therefore come to the rescue of the petitioners herein.

11. The first petitioner is the widow of the second plaintiff in the said suit. She will have to pursue her remedies by questioning the order of the first respondent by filing a civil suit as provided in the statute and also by disclosing the subdivided portions as a pathway and also implead as defendants the revenue authorities also.

12. The order of the first respondent was passed on 31.05.2021. The present Writ Petition had been filed on 18.08.2021. The period of limitation might be put against the petitioners herein if a civil suit is instituted. The petitioners can take advantage of the extension of limitation period as stated by the Hon'ble Supreme Court and also by our High Court and also take advantage of Section 14 of the Limitation Act for *bona fide* prosecuting in a wrong forum. This forum is not the correct forum. The proper forum is to agitate the rights before the civil Court.

13. With these observations, this Writ Petition is dismissed. There shall be no order as costs. Connected miscellaneous petition is closed.

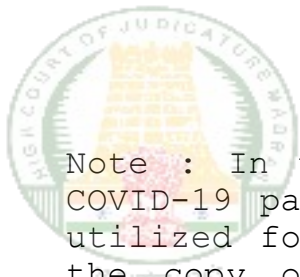
Sd/-

Assistant Registrar(CS-)

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/ /2021

Sub Assistant Registrar(CS)



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

- 1.The District Revenue Officer,
Collectorate Campus,
Madurai.
- 2.The Revenue Divisional Officer,
Collectorate Campus,
Madurai.
- 3.The Tahsildar,
Melur Taluk,
Madurai District, Madurai.

+1 CC to M/s.SPL GP (SR-34746[F] dated 17/11/2021)

**W.P. (MD) .No.15374 of 2021
16.11.2021**

svn(CO)
TR/SKN(25.11.2021) 4P 5C