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THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 21.02.2022

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.NO.21748 OF 2008

1. Ponnusamy
2. Bakkiam
3. Rajammal
4. Rajalingam
5. Surumbayee
6. Saroja
7. Ilanjiyam
8. Lalitha

.. Petitioner

Versus

1. The Commissioner
   Land Administration,
   Chepauk, Chennai.

2. The District Revenue Officer,
   Karur.

3. The Revenue Divisional Officer,
   Kulithalai, Karur District.

4. The Tahsildar,
   Krishnarayapuram Taluk,
   Karur District.

5. R.Angusamy

..Respondents

Petition filed under Article 226 of The Constitution of India praying to issue a Writ of Certiorari calling for the records of the first respondent in Pa.Mu.(K3) R.P.22/2002 (10591/2002) dated 21.01.2006 and quash the same.

For Petitioner : Mr.P.Srinivas

For Respondents : Mr.A.Anandan RR1 to 4
Government Advocate
Mr.L.P.Balajiram R5

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O R D E R

The petitioner has filed this writ petition seeking to quash the order passed by the first respondent in Pa.Mu.(K3) R.P.22/2002 (10591/2002) dated 21.01.2006.

2. The facts of the case are as follows:

The property situated in S.F.No.177/1 and 177/2, an extent of 50 cents in Panjapatti Village, Krishnarayapuram Taluk, Karur District belongs to the petitioners. The old survey number for the said extent is S.F.No.177. The property is measuring East West 361 metres and North South 5.4 metres. West of the said property S.F.No.119/2 an extent of 6.36 Acres situated at Pothuravuthampatti Village, Krishnarayapuram Taluk.

3. It is the further case of the petitioner that the above said property purchased by one Rajalingam Pillai during the year 1921 from one Guruvayee and Subba Pillai. The property was specifically purchased by the said Rajalingam Pillai only for the purpose of having access to use survey No.119/2 of Pothuravuthampatti Village. From the date of purchase, the said Rajalingam Pillai and his two sons were using the said property as a cart track to reach the property in S.F.No.119/2. In the meanwhile, legal heirs of the said Rajalingam Pillai divided the property by virtue of registered partition deed dated 29.07.1955. In the partition deed, 25 cents in S.F.No.177/1 allotted to Subramanian and 25 cents in same survey number allotted to pitchai, who are the legal heirs of the said Rajalingam Pillai. Insofar as the S.No.119/2 is concerned, Rajalingam and his sons were equally divided. The said Pitchai sold his property in S.F.No.119/2 to the first petitioner by sale deed dated 03.08.1960. Likewise, the said Subramanian sold an extent of 1.25 acres in the said survey number to the first petitioner by way of registered sale deed dated 13.07.1966.

4. In the meanwhile, the said Subramanian, son of Kandasamy Udayar of Pothuravuthampatti Village, claimed a right with regard to the pathway in respect of the property owned by the petitioners. Therefore, the petitioners filed a suit in O.S.No.169 of 2004 on the file of the District Munsif Court, Kulithalai for the relief of declaration. When the suit was came up for hearing, the petitioners came to know that there is a proceedings before the first respondent on the basis of the revision filed by the said Subramanian with respect to S.F.No.177/1. The first respondent advised the parties to challenge the issue before the Court vide proceedings dated 28.05.2001. The proceedings originally started by the 5th respondent by filing an objection to the 4th respondent challenging the issuance of patta No.958 in favour of

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Subramanian and one Ponnusamy. The said objection was considered by the 4th respondent and upheld the patta issued in the name of Subramanian S/o.Rajalingam. As against the said proceedings of the 4th respondent, the 5th respondent herein filed an appeal before the 3rd respondent. The 3rd respondent was pleased to allow the appeal and directed the Tahsildar to enquire into the matter in respect of the S.F.No.177/1 for the inclusion of the name along with Angusamy, Ayyakannu and V.Palani and directed to cancel the names, if it is wrongly included. As against the said order the said Subramanian filed a revision before the second respondent and he also confirmed the said order of the 3rd respondent. Aggrieved by the same, the said Subramanian filed a revision before the first respondent. In the meantime, the said Subramanian passed away on 24.05.2005 leaving behind the legal heirs who are the petitioners 2 to 8 herein. On 21.01.2006, the first respondent passed an order to keep the S.F.No.177/2 as common pathway and change the mutation entries to that effect, without hearing the legal heirs. Challenging the said order of the first respondent, the present writ petition has been filed.

5. The learned counsel for the petitioners submitted that the petitioners have already filed a suit with regard to the pathway and the same is pending. The disputed facts cannot be decided by the revenue officials and therefore, this Court may permit the petitioners to canvas all the points before the competent civil court. This Court may grant liberty to the succeeding parties to file appropriate application before the competent revenue authorities, after disposal of the suit, with regard to the subject matter of property.

6. The learned counsel for the 5th respondent have no objection for the contention raised by the learned counsel for the petitioners.

7. Heard the learned counsel for the petitioner, the learned Government Advocate appearing on behalf of the Government and the learned counsel for the 5th respondent and perused the materials available on record.

8. The facts of the case are not in dispute. There is a dispute with regard to the usage of pathway between the petitioners and the 5th respondent. The petitioners have filed a suit in O.S.No.169 of 2004 on the file of the District Munsif Court, Kulithalai and the same is pending for the very same dispute. When the suit is pending with regard to the disputed land, the revenue officials have no power to grant patta in favour of any person.

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9. In view of the above discussion, this Court passes the following order:

(i) The order of the first respondent in Pa.Mu. (K3) R.P.22/2002 (10591/2002) dated 21.01.2006 is set aside;

(ii) the District Munsif, Kulithalai shall pass orders in O.S.No.169 of 2004 on merits, without influencing the impugned order passed by the first respondent, as expeditiously as possible;

(iii) After disposal of the suit in O.S.No.169 of 2004 on the file of the District Munsif Court, Kulithalai, the succeeding parties are directed to file appropriate petition/application before the respective revenue officials with regard to the subject matter; and

(iv) On receipt of such application, the revenue officials shall pass orders based on the decree passed by the trial Court.

10. With the above directions, this Writ Petition is disposed of. No costs.

Sd/-
Assistant Registrar(CS-VIII)

//True Copy//

Sub Assistant Registrar

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To
1. The District Munsif,
   Kulithalai, Karur District.
2. The Commissioner
   Land Administration,
   Chepauk, Chennai.
3. The District Revenue Officer, Karur.
4. The Revenue Divisional Officer,
   Kulithalai, Karur District.
5. The Tahsildar,
   Krishnarayapuram Taluk,
   Karur District.

+1cc to Mr.P.Srinivas, Advocate, S.R.No.11820
+1cc to Mr.L.P.Balajiram, Advocate, S.R.No.11818
+1cc to the Government Pleader, S.R.No.11985

W.P.No.21748 of 2008

PMK(CO)
RLP(25/03/2022)

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