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W.P.No.30235 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.06.2022

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.No.30235 of 2017

V.T.Krishnasamy

... Petitioner

Vs.

1.The Revenue Divisional Officer,
Chengalpattu,
Kancheepuram District.

2.The Tahsildar,
Thirukazhukundram Taluk,
Kancheepuram District.

3.D.Vinayagam

... Respondents

Prayer:

Petition filed under Article 226 of the Constitution of India to issue a Writ of Mandamus directing the second respondent to grant patta to the petitioner in respect of his property of total extent of Acre 1.57 cents in S.No.183/2A and S.No.183/2B, situated at 174-Veerapuram Village, Thirukazhukundram Taluk, Kancheepuram District based on Court Decree passed in O.S.No.129/2011, dated 24.08.2015, on the file of Principal Sub-Court, Chengalpattu.



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For Petitioner : Mr.A.Ramalingam
For Respondents : Mr.G.Krishna Raja for R1 and R2
Additional Government Pleader
Mr.A.Ramu for R3

ORDER

The petitioner has filed this writ petition seeking issuance of Writ of Mandamus directing the second respondent to grant patta to the petitioner in respect of his property of total extent of Acre 1.57 cents in S.No.183/2A and S.No.183/2B, situated at 174-Veerapuram Village, Thirukazhukundram Taluk, Kancheepuram District, based on Court Decree passed in O.S.No.129 of 2011, dated 24.08.2015, on the file of Principal Sub-Court, Chengalpattu.

2.The case of the petitioner is that the petitioner is the owner of the subject property which is half of the property of his vendor, i.e., Acre 1.57 cents. He purchased the same during the year 1989. After five years from the date of his purchase, the third respondent purchased the remaining portion from the petitioner's vendor. According to the petitioner, the third respondent encroached 6 cents of the petitioner's land and obtained patta for his lands including the petitioner's land of 6 cents. Hence, the petitioner filed O.S.No.129 of 2011, on the file of Principal Sub-Court, Chengalpattu, for declaration



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declaring that he is the lawful owner of the property of an extent of Acre 1.57 cents and the said suit was decreed in his favour on 24.08.2015. Thereafter, based on the decree in O.S.No.129 of 2011, the petitioner made application for issuance of patta and since the same has not yet been considered, has filed this writ petition.

3.The third respondent has filed a counter affidavit, wherein, it is stated that he purchased 1.63 acres of land and he never encroached the petitioner's land. It is further stated that the suit filed by the petitioner was dismissed for default on 31.07.2015 itself and the petitioner did not file any restoration petition, however, the petitioner has come along with a decree dated 24.08.2015. Hence, the third respondent has filed a petition to set aside the exparte decree dated 24.08.2015 in SR.No.5327 of 2017 on 17.09.2017 along with condone delay application and it is pending adjudication before the Principal Sub-Court, Chengalpattu.

4.Heard the arguments advanced on either side and perused the materials available on record.

5.The facts in the present case is not in dispute. Admittedly, the



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petitioner filed a suit in O.S.No.129 of 2011, on the file of Principal Sub-Court, Chengalpattu, for declaration declaring that he is the lawful owner of the property of an extent of Acre 1.57 cents and obtained an exparte decree on 24.08.2015. Hence, the third respondent has filed a petition to set aside the exparte decree dated 24.08.2015 in SR.No.5327 of 2017 on 17.09.2017 along with condone delay application and it is pending adjudication before the Principal Sub-Court, Chengalpattu.

6.Hence, if the decree in O.S.No.129 of 2011 passed by the Principal Sub-Court, Chengalpattu, dated 24.08.2015, is still in force and if the same is not set aside, then the Revenue Officials may consider the petitioner's application for issuance of patta, on merits and in accordance with law and pass appropriate orders, after providing opportunity to the petitioner and the third respondent.

7.The writ petition is disposed of with the above observations.

No costs.

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Speaking Order/ Non Speaking Order
Index: Yes/ No Internet: Yes/ No

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To

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Chengalpattu,
Kancheepuram District.
- 2.The Tahsildar,
Thirukazhukundram Taluk,
Kancheepuram District.



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M.DHANDAPANI,J.
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