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W.P.No.21054 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.10.2022

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THE HON'BLE **MR.JUSTICE C.SARAVANAN**

W.P.No.21054 of 2017

and

W.M.P.No.21944 of 2017

Subban

... Petitioner

Vs.

1.The Revenue Divisional Officer,
Thiruchengode,
Namakkal District.

2.The Tahsildar,
Paramathi Velur,
Namakkal (District).

3.Marappa Gounder

... Respondents

Prayer: Writ Petition filed under Article 226 of Constitution of India, for issuance of a Writ of Certiorari, calling for the records pertaining to issue the impugned order dated 25.05.2017 having reference Mo.Mu.1614/2021u on the file of the first respondent and quash the same.

For Petitioner : Mr.C.Pushparaj
for M/s.E.P.Senniyangiri

For Respondents : Mrs.N.Senthil Selvi
Government Advocate
For R1 & R2
: Mr.C.Munusamy
For R3



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ORDER

The petitioner has filed this writ petition challenging the impugned order passed by the first respondent, the Revenue Divisional Officer dated 25.05.2017 bearing reference: மு.மு.1614/2012 உ

2. By the impugned order, the first respondent has cancelled the corresponding entries in No.541 for the subject land in S.F.No.236/2V, Elanillai Village. The cause title to the present writ petition itself indicates that the petitioner and the third respondent are brothers and sons of Rangappa Gounder.

3. It is the case of the petitioner that the petitioner is the absolute owner of the land measuring an extent of 0.39 acres, he having purchased from one Ramani and from one Marappa Gounder/third respondent who are none other than the petitioner's elder brother's son and petitioner's younger brother.



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4. According to the petitioner, a partition took place about thirty years back during the petitioner's father lifetime and various properties owned by the family were partitioned between the respective co-parceners in the family.

5. The averments in the affidavit further indicates that with metes and bounds the land measuring an extent of 1.16.0 hectares was divided into three parts equally between Ramani @ Vasu who was allotted 1.13 acre, Subbanan/petitioner was allotted 0.13 acre, and Marappan/third respondent was allotted 1.61 acres and that the respective parties were in absolute possession and enjoyment of the property.

6. It is further case of the petitioner that based on the above partition, the third respondent and Ramani @ Vasu, son of elder brother of the petitioner sold several properties in favour of third parties. Likewise, the property in S.F.No.236/2V was sold by them to various persons leaving 0.26 cents alone.



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WEB COPY 7. It is submitted that apart from the said 0.26 cents of land, neither Ramani @ Vasu, son of elder brother of the petitioner nor the third respondent, younger brother of the petitioner have any share in the property. While so, by registered sale deed dated nil bearing registration Doc.No.365 of 2003, the third respondent sold 0.26 cents of land to the petitioner after receiving consideration and that the petitioner has been in continuous possession of 0.39 acres of land i.e., 0.13 acres that was partitioned and allotted to him and 0.26 cents that was allotted by the third respondent.

8. However, it is further submitted that based on the complaint of the third respondent, the impugned order has been passed cancelling the entry in the Patta No.541 issued to the petitioner for 0.39 cents.

9. It is the case of the petitioner that if at all the third respondent has any right over the land, it was open for the third respondent to have filed a Civil Suit before Court of competent jurisdiction. Cancelling of patta entry long after it was transferred cannot be countenanced and therefore, the writ petition deserves to be allowed.



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WEB COPY 10. There is no representation on behalf of the third respondent. No counter has been filed on behalf of the third respondent. The First respondent has however filed a detailed counter. Paragraph Nos.4, 5 & 6 of the counter filed by the first respondent reads as under:

“4. It is respectfully submitted that based on the petition the enquiry was conducted and statements were collected, it was stated in his statement that after the death of his father Rangappa Gounder, the land belonging to his father Rangappa Gounder was devolved upon three of them, the petitioner and the brothers had shared property in the presence of the panchayathdars and Public, and out of it the share of the third respondent comprised in Survey No.236/2 was sold out except 30 cents of land and that he has constructed a card board house in the land belonging to him in 2000 Sq.ft and has obtained the property tax on it in his name and has obtained the Electricity connection for it and he is living there for the past 17 years and hence he has requested to add his name in the Patta No.541 of the Jamin Illampalli Village, for the Survey No.236/2.

5. It is further submitted that there upon the Village Administrative Officer was examined with respect to the petition above, it was stated that, the Marappan, son of Rangappa Gounder is living in a card board house in the land belonging to him obtained as the legal heir of his father in Survey No.236/2 measuring 30 cents of land and he is living there for the past 17 years and that he has sold all the other lands except the land in which he is living, and that he has sold the land comprised in Survey No.106 by way of Sale Deed No.365/2003 and



since his elder brother Sonkappan also sold his land comprised in Survey No.236/2, through the sale deed Marappan also have signed in the said document and that when the boundaries of the property as written also it was clearly written as the North to Land belonging to Marappan and that the third respondent is still enjoying the 30 cents of land comprised in Survey No.236/2 and hence while transferring the patta based on the above document and without the legal heirship certificate the removal of the name Rangappa Gounder, the father of Marappan is wrong, and hence the name of Rangappa Gounder, the father of the Marappan can be added in the Patta.

6. It respectfully submitted that on examining the statement of the petitioner, village accounts, statement of the Village Administrative Officer, File of the Taluk Office it is clearly came to know that the patta transfer with respect to the property comprised in Survey No.236/2 of Jamin Ilampalli Village is done without a partition deed, or legal heirship certificate and it is done only based on the death certificate. Further it was revealed from the statement of third respondent that there is no signature of the Village Administrative Officer and Zonal Deputy Tahsildar in that. Therefore, this respondent had taken a timely action after providing due opportunity to the parties concern and ordered to the Tahsildar, Paramathi Velur to cancel the order of transfer of the patta done without a partition deed, or legal heirship certificate with respect to the property comprised in Survey No.236/2 of Jamin Ilampalli Village and is ordered to add the name of Rangappa Gounder son of Sengoda Gounder again in the patta with respect to the property comprised in survey No.236/2 of Jamin Ilampalli Village jointly. Hence the averments of the petitioner requires total rejection and no amount of consideration which is against the views of Government as it devoid of merits.”



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WEB COPY 11. Thus, what transpires from reading of the affidavit filed in support of the present writ petition and the counter of the first respondent, the name of the petitioner's and the third respondent's deceased Rangappa Gounder has been added back in the patta by cancelling the entry mutating the patta in favour of the petitioner.

12. There are several disputed question of fact regarding the alleged partition based on which the petitioner claims right over 0.39 acres of land in Survey.No.236/2 in Ilampalli village. If the petitioner wants to establish a right over 0.39 cents on land in favour of him, it is for the petitioner to file a suit for declaration before a competent court of Civil Jurisdiction.

13. Under these circumstances, I do not find any merits in the challenge to the impugned order passed by the first respondent cancelling the entry in Patta No.541.



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WEB COPY 14. With these observations, the writ petition stands dismissed with liberty to the petitioner to workout his remedy before the competent court Civil Jurisdiction. No costs. Consequently connected miscellaneous petition is closed.

12.10.2022

Index : Yes/No
Internet : Yes/No
Speaking/Non-speaking Order
rgm

To

1.The Revenue Divisional Officer,
Thiruchengode,
Namakkal District.

2.The Tahsildar,
Paramathi Velur,
Namakkal (District).



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C.SARAVANAN, J.

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