



W.P.No.30947 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 21.11.2022

CORAM:

THE HONOURABLE MR. JUSTICE **M.DHANDAPANI**

W.P.No.30947 of 2022

Sarojini

... Petitioner

Vs.

1. State by Sub Registrar,
Sulur Sub Registry,
Sulur Taluk Coimbatore.

2. The Tahsildar,
Sulur Taluk,
Coimbatore.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Mandamus, directing the first respondent to rectify the encumbrance certificate as requested in representation dated 17.06.2022 and directing the second respondent to transfer the patta in the name of the petitioner.

For Petitioner	:	Dr.S.N.Amarnath
For Respondents	:	Mr.C.Kathiravan Special Government Pleader



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ORDER

This Writ Petition has been filed seeking issuance of a Writ of Mandamus to direct the first respondent to rectify the encumbrance certificate as requested in representation dated 17.06.2022 and directing the second respondent to transfer the patta in the name of the petitioner.

2. The case of the petitioner is that, the petitioner's father executed a Will on 09.01.1976 in favour of the petitioner. After the demise of the petitioner's father, in respect of the Will, the petitioner had applied for a probate of the Will under Indian Succession Act before the District Court, Coimbatore in P.O.P.No.72 of 2009 and the same was granted on 26.11.2009. In the meanwhile, one D Leorex Sebastian and J.Immaneul, the third parties filed an application in I.A.No.612/2015 in P.O.P No.72 of 2009 before the learned District Judge, Coimbatore, alleging that they have interest over the property which is the subject matter of the probate, seeking for cancellation of the probate itself. The learned Judge allowed the application cancelling the probate order in total, as against which, the petitioner filed Civil Revision Petition before this Court in CRP No.1823 of



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2021, and this Court allowed the Revision Petition by order dated 26.04.2022 and restored the POP. However, the Revenue Records were not mutated in favour of the petitioner and the encumbrance also reflected the name of said Leorex Sebastian and J.Immanuel. Therefore, the petitioner made a representation dated 16.05.2022 before the first respondent along with the copy of the order in CRP No.1823 of 2021 to remove the endorsement regarding the encumbrance made by the third parties, namely Leorex Sebastian and J.Immanuel. Similarly, the petitioner also made another representation dated 17.06.2022 before the second respondent, seeking to transfer Patta in the name of the petitioner, vide Patta No.374. Since the said representations were not considered by the respondents, the petitioner had filed the present Writ Petition.

3. The learned counsel for the petitioner submitted that, it would suffice, if this Court issues a direction to the respondents to consider the petitioner's representations dated 16.05.2022 and 17.06.2022 and pass orders on the same within a stipulated time that may be fixed by this Court.



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4. Heard the learned counsel for the petitioner as well as the learned Special Government Pleader appearing for the respondents and perused the materials available on record.

5. Admittedly, the petitioner claims to be the owner of the subject property, for which, the petitioner's father had executed an un-registered Will in favour of the petitioner on 09.01.1976 and subsequently, the petitioner's father passed away on 05.05.1983. In order to execute the Will, the petitioner filed probate O.P. in P.O.P.No.72 of 2009 before the Principal District Judge, Coimbatore and the same was allowed on 26.11.2009, pursuant to which, Leorex Sebastian and Immanuel claims that, they have purchased the subject property from one C.R.Palanisamy Gounder and Manickavasagam in the year 1997 and the said C.R.Palanisamy Gounder and Manickavasagam purchased the subject property from the petitioner's father in the year 1976, based on which, the said Sebastian and Immanuel filed an application in I.A.No.612 of 2015 and the same was allowed and the probate order was set-aside. Challenging the same, the petitioner filed Civil Revision Petition before this Court in C.R.P.No.1823 of 2021, and this Court by order dated



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26.04.2022 allowed the revision petition and the order in I.A.No.612 of 2015 was set aside and the relevant paragraph is extracted hereunder:

“5. In the result, this revision is allowed, and the order in I.A.No.612/2015 in P.O.P.No.72/2009 is set aside. No costs. It is yet again clarified that, mere grant of probate does not vest the legatee with title to the property, and in case of dispute, the legatee has to establish the same separately.”

6. A perusal of the records makes it clear that the title dispute cannot be decided by the probate order, and in case of dispute with regard to title, it has to be established before the Civil Court independently. When, the petitioner intended to remove the encumbrance made in favour of Sebastian and Immanuel, and she made application, however, the same was not considered, on the ground that the interested persons are not added as parties in this Writ Petition. In such circumstances, the petitioner has to establish his title before the appropriate forum. However, without exhausting such remedy granted by this Court, filing the present Writ Petition is not maintainable.



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7. Accordingly for the reasons aforesaid, the relief sought for cannot be granted and this Writ Petition is dismissed. No costs.

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Speaking Order : Yes/ No

Internet: Yes/ No

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To

1. Sub Registrar,
Sulur Sub Registry,
Sulur Taluk Coimbatore.

2. The Tahsildar,
Sulur Taluk,
Coimbatore.

M.DHANDAPANI, J.



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