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W.P.No.3962 of 2017

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.11.2022

CORAM:
THE HON'BLE MR.JUSTICE **M.DHANDAPANI**

W.P.No.3962 of 2017
and
W.M.P.No.4040 of 2017

1. S.Paranthaman
 2. T.Jothi
- ...Petitioners

Vs.

1. The Sub Registrar
Office of Registration Department,
Thandrapattu,
Thiruvannamalai District.
 2. E.Arasu
- ...Respondents

(R2 impleaded, vide order dated 25.11.2022 made in WMP.No.4892 of 2017 in W.P.No.3962 of 2017)

Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the entire records relating to the impugned order passed by the respondent in his proceedings No.148 of 2016, dated 28.09.2016 and quash the same and consequently direct the respondent to remove the unconnected name and insert the petitioners name in the Encumbrance records maintaining by the respondent office in respect of land situated in S.Nos.187/5B2A and 187/5B2B at



W.P.No.3962 of 2017

Thandrapattu Village and Post, Tiruvannamalai District.

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For Petitioners : Mr.C.Prakasam

For Respondents : Mr.G.Krishna Raja, AGP, for R1.

ORDER

The petitioners have filed this Writ petition seeking issuance of a Writ of Ceritorarified Mandamus to call for the records of the respondent in respect of the proceedings No.148 of 2016 dated 28.09.2016, quash the same and to consequently, direct the respondent to remove the unconnected name and insert the petitioners' name in the Encumbrance records in respect of the subject lands

2. The case of the petitioners is that the 1st petitioner has purchased the lands comprised in S.Nos.187/5B and 187/7A, measuring an extent of 11,000 Sq.ft., situated at Thandrapattu Village, Tiruvannamalai District from one Radhammal for a valid sale consideration in the year 1985 and pursuant to the said purchase, the 1st petitioner has obtained patta in his favour and is running a petrol bunk in the name and style of "Sri Saravana Agencies" in the above said property. While so, during the UDR Scheme, the



W.P.No.3962 of 2017

land in S.No.187/5B, which is of vast extent, was sub divided and the portion of land owned by the 1st petitioner was given a new sub division No.187/5B2 (in short 'subject land') and patta in Patta No.349 was also issued in favour of the 1st petitioner. While so, one Sundaramoorthy, under the guise of purchase of the entire land comprised in S.No.187/5B by way of Court auction dated 25.01.1987, arranged for issuing patta in his name and subsequently, his son namely Srinivasan made an application before the Tahsildar for change of patta to his name in respect of the very same land, however, the said application was rejected and the subsequent claim made by him before the District Collector was forwarded to Revenue Divisional Officer, who in turn also rejected the said claim, vide proceedings dated 19.04.2013 bearing No.Na.Ka.M1/21078/2012 and directed the said Srinivasan to approach the competent Civil Court, however, in the very same order, it is stated that the patta in respect of S.No.187/5B2 stands in the name of the said Srinivasan. Immediately, the 1st petitioner made a representation before the revenue officials, pursuant to which, the Deputy Tahsildar admitted that the name of the said Srinivasan was mistakenly added in the computer entry in respect of subject land, however, no action



W.P.No.3962 of 2017

was initiated by the revenue officials to rectify the same. Aggrieved by the inaction on the part of the revenue officials, the 1st petitioner filed a Writ petition in W.P.No.31566 of 2013, seeking direction to pass orders on his representation and this Court, vide order dated 07.12.2015 directed the 3rd respondent therein to dispose of the 1st petitioner's representation. In the meantime, the 1st petitioner sold an extent of 3000 sq.ft., out of the above said 11,000 sq.ft., in favour of the 2nd petitioner and subsequently, the Tahsildar, vide proceedings No.A3/1516/2016 dated 01.03.2016, passed orders and made sub-division of subject land and assigned sub divided S.No.187/5B2A, to an extent of 0.03.0 ares, which was sold to the 2nd petitioner and for the remaining land to an extent of 0.01.0 ares retained by the 1st petitioner was given a sub divided S.No.187/5B2B and revenue records were also mutated in favour of the respective petitioners. However, it is pertinent to note that, the Encumbrance Certificate records does not reflect the petitioners' name and the 2nd respondent's name is reflecting in the same, who is in no way connected with the subject land. Therefore, the petitioners made a representation before the 1st respondent, seeking to remove the name of the 2nd respondent and add the name of the petitioners,



W.P.No.3962 of 2017

however, the 1st respondent, vide proceedings No.146/2016 dated 28.09.2016, rejected the petitioners' claim and directed the petitioners to approach the Civil Court. Challenging the same, the present Writ petition is filed.

3. Learned counsel for the petitioners submitted that, the subject land was originally purchased by the 1st petitioner from his vendor in the year 1985, however, the alleged purchase said to have been made by the said Sundaramoorthy is of the year 1987, which is much later than the purchase made by the 1st petitioner. He further submitted that, even if the 1st petitioner's vendor alienated, the subject land in favour of the said Sundaramoorthy, it is non est in law and the same cannot be done so, without canceling the alienation made in favour of the 1st petitioner. He furthermore submitted that, though the revenue records stands in the name of the petitioners, however, without ascertaining any of the above said facts, the 1st respondent has mechanically rejected the petitioners' claim, which is not sustainable and the 1st respondent has to remove the name of the private respondent from the Encumbrance certificate, however, the same was not done so. Hence, he prayed for appropriate orders.



W.P.No.3962 of 2017

WEB COPY

4. Learned Additional Government Pleader reiterated the stand taken by the respondents in the counter and submitted that without challenging the sale deed dated 16.4.2013 before the competent forum, the claim of the petitioners to include their name in the encumbrance certificate cannot be done.

5. This Court gave its anxious consideration to the submissions advanced by the learned counsel appearing on either side and perused the materials available on record.

6. Though the 1st petitioner claim that he has purchased the subject land prior to the Court auction, however, it appears that after the demise of the said Sundaramoorthy, his legal heirs appointed the said Srinivasan as the Power Agent on strength of which, the said Srinivasan alienated the subject land in favour of the 2nd respondent, vide Doc.No.1072/2013 dated 16/04/2013. While so, without challenging the said sale deed dated 16/04/2013 in the manner known to law, making mere application before the



W.P.No.3962 of 2017

1st respondent for mutation of entries in the Encumbrance certificate is not sustainable.

7. Further, as the issue involved in the present case pertains to disputed questions of facts and is purely a civil dispute between the petitioners and the private respondent, the same cannot be entertained under Article 226 of the Constitution. Hence, the prayer sought for by the petitioners cannot be acceded to and this Court has no intention to interfere with the order impugned in this Writ petition. However, the petitioners are at liberty to workout the remedy in the manner known to law before the Competent Civil Court.

8. For the reasons aforesaid, this Writ petition stand dismissed. No costs. Consequently, connected Miscellaneous petition is closed.

25.11.2022
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Index : Yes/No
Speaking order : Yes/No

7/9



WEB COPY



W.P.No.3962 of 2017

To

The Sub Registrar
Office of Registration Department,
Thandrapattu,
Thiruvannamalai District.

M.DHANDAPANI, J.

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and
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W.P.No.3962 of 2017

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