



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.01.2022

CORAM

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

W.P.No.28476 of 2017

and

W.M.P.No.30585 of 2017

R.Dhanasekaran

.. Petitioner

..Vs..

1.The District Revenue Officer,
Villupuram,
Villupuram District.

2.The Revenue Divisional Officer,
Kallakurichi,
Villupuram District.

3.The Tahsildar,
Chinna Salem Taluk,
Villupuram District.

4.Sundarrajan

.. Respondents

PRAYER : Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus calling for the records pertaining to the impugned dated 26.05.2017 (served on 27.09.2017) made in Na.Ka.No.A3/13184/2016 passed by the 1st respondent reversal of the order dated 24.06.2016 made in Na.Ka.No.A4/1290/2015 passed by the 2nd respondent, quash the same and consequently direct the authorities to restore the mutation entries in respect of 51 cents exclusively in my name in Patta No.1365 relating to S.F.No.103/2B, Vadakanandal Village, Chinna Salem Taluk, Villupuram District.

For Petitioner : Mr.N.Manokaran
For R1 to R3 : Mr.V.Jeevagiridharan,
Additional Government Pleader

For R4 : Mr.T.Sundaravadanan

O R D E R

This writ petition is filed to issue a Writ of Certiorarified Mandamus, to call for the records pertaining to



the impugned dated 26.05.2017 made in Na.Ka.No.A3/13184/2016 passed by the 1st respondent by reversing the order dated 24.06.2016 made in Na.Ka.No.A4/1290/2015 passed by the 2nd respondent, quash the same and consequently direct the authorities to restore the mutation entries in respect of 51 cents exclusively in petitioner's name in Patta No.1365 relating to S.F.No.103/2B, Vadakanandal Village, Chinna Salem Taluk, Villupuram District.

2.The case of the petitioner is that the property ad-measuring 1.39 acres comprised in S.No.103/2, Vadakananthall Village, Chinna Salem Taluk, Villupuram District originally owned by one A.Arumugam Pillai. He executed a Will dated 20.07.1959 registered by Doc.No.8/1959 in favour of his 2nd wife and also his 3rd wife in respect of the Schedule A and B properties. After the demise of the said Arumugam Pillai in the year 1962, the Will dated 20.07.1959 came into effect. While that being so, the 2nd wife's daughter one Rajathiammal filed a suit in O.S.No.585 of 1964 on the file of the District Munsif Court, Kallakurichi for declaration and permanent injunction and the same was decreed by judgment and decree dated 27.11.1965 in respect of the property for an extent of 1.39 acres, in which the said Rajathiammal was allotted 88 cents and the 3rd wife Jagadambal was allotted 51 cents. Again, the 3rd wife Jagadambal filed another suit in O.S.No.284 of 1987 on the file of the District Munsif Court, Kallakurichi as against the daughter of the 2nd wife, i.e. Rajathiammal for declaration of title over 51 cents and also for permanent injunction. The said suit was decreed by judgment and decree dated 25.09.1991 in O.S.No.284 of 1987 by confirming the title and possession of the property, ad-measuring 51cents in favour of the 3rd wife Jagadambal.

3.On verification of Revenue Records and Encumbrance Certificate, it is seen that the petitioner's father had purchased the said property, ad-measuring 51 cents comprised in S.No.103/2 by registered sale deeds dated 07.08.1997 and 26.02.2001, ad-measuring for 25 ½ cents. Thereafter, the petitioner's father was also issued Patta in Patta No.309, by sub-division of the property as S.F.No.103/2B.

4.While that being so, the 4th respondent, who is the son of the 2nd wife's Rajathiammal daughter filed another suit in O.S.No.471 of 1996 on the file of the District Munsif Court, Kallakurichi, as against the petitioner's father's vendor namely, Jagadammal and others, for declaration and recovery of possession in respect of the subject property, which was purchased by the petitioner's father. The property ad-measuring 39 cents out of the total extent of 1.39 acres comprised in S.No.103/2 is part of the property purchased by the petitioner's father. The said suit was dismissed by judgment and decree dated



02.07.1999 and the same was also confirmed in the Appeal Suit in A.S.No.56 of 2002 by judgment and decree dated 20.06.2002 on the file of the Additional District Court, Kallakurichi. After purchase of the subject property by the petitioner's father, he executed a settlement deed in favour of the petitioner by a registered settlement deed dated 10.02.2010. On the strength of the settlement deed, the petitioner applied for Patta and he had obtained Patta in Patta No.1365.

5.While that being so, the 4th respondent, after dismissal of the Appeal Suit in A.S.No.56 of 2002 by judgment and decreed dated 20.06.2002, filed an application before the 2nd respondent on 07.04.2015 to cancel the patta issued in favour of the petitioner in Patta No.1365. The 2nd respondent, after considering the judgment and decree passed in the suits, rejected the application filed by the 4th respondent. Aggrieved by the said order, the 4th respondent filed revision petition before the 1st respondent. The 1st respondent had concluded that the 4th respondent is entitled to get title in respect of the property comprised in S.No.103/2 for an extent of 39 cents as per Will dated 20.07.1959. Since the property should ultimately go to the male class heir, the 4th respondent is the grand-son of the said Arumugam Pillai, born through his daughter Rajathiammal, who born to the second wife of the said Arumugam Pillai.

6.A perusal of the counter affidavit filed by the 4th respondent revealed that before execution of the Will dated 20.07.1959, the said Arumugam Pillai had executed the settlement deed in favour of his second wife Panjali on 10.07.1942 in respect of property comprised in S.No.103/2 for an extent of 88 cents. However, the 4th respondent failed to aver about the settlement deed dated 10.07.1942. The 4th respondent further claimed that the third wife Jagadammal was allocated with other landed property of 2 acres and 90 cents and apart from the lands, one house was also allocated with tobacco garden of an extent of 50 cents and 600 sq.ft and other properties. The subject property was allocated with 1 acre, since the calculation was mistaken and would not have taken place, since after execution of settlement deed, the remaining extent of 51 cents alone would have to be divided into two shares, but it has not been done after allocation of 39 cents to the 4th respondent's mother and only 12 cents were left out and it ought to have been allocated, but it was mistakenly entered as 1 acre in the Will.

7.As stated supra, after execution of Will dated 20.07.1959, there were two suits and two suits were decreed as per Will dated 20.07.1959. Accordingly, the 3rd wife namely, Jagadammal was allotted 51 cents and in both the suits, she had been



declared in respect of the subject property, ad-measuring 51 cents, comprised in S.No.103/2, as per Will dated 20.07.1959. Though the suit filed by the 4th respondent in O.S.No.471 of 1996 for declaration and recovery of possession, was dismissed, the Trial Court concluded the first issue therein against the 3rd wife, namely, the petitioner's father's vendor on the ground that the Will dated 20.07.1959 was executed by the said Arumugam Pillai bequeathing the subject property in favour of the third wife with the condition that the subject property can be enjoyed by the 3rd wife and thereafter by her daughter Sadayammal and thereafter, the absolute right goes to the male issues of the daughter of the third wife.

8. Admittedly, the third wife had grand-son through her daughter Sadayammal. The petitioner's father had purchased the subject property from Jagadammal, the third wife of the said Arumugam Pillai, Sadayammal who is the daughter of the third wife Jagadammal and sons namely, Jaishankar and Gopi sons of the said Sadayammal by the registered sale deed dated 26.02.2001. Therefore, as per the Will, the grand-sons of the 3rd wife of Arumugam Pillai had got absolute right over the subject property. They, along with their mother and grand-mother executed, the sale deed in favour of the petitioner's father. Therefore, the Will dated 20.07.1959 had been acted upon. Without considering these issues and without reading the entire recital of the Will dated 20.07.1959, the Trial Court answered the issues against the petitioner's father's vendor and other male legal representatives. The 1st respondent, as per the findings of the Trial Court made in O.S.No.471 of 1996, cancelled the patta in favour of the petitioner and directed to issue patta in favour of the 4th respondent.

9. In view of the above facts and circumstances of the case, the impugned order passed by the 1st respondent dated 26.05.2017, cannot be sustained and it is liable to be set aside. Accordingly, the impugned order made in Na.Ka.No.A3/13184/2016 dated 26.05.2017 passed by the 1st respondent is set aside. The writ petition is allowed. No costs. Consequently, connected writ miscellaneous petition is closed. However, the 4th respondent is at liberty to workout his remedy in manner known to law.

Sd/-

Deputy Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

smv



To,

1. The District Revenue Officer,
Villupuram,
Villupuram District.

2. The Revenue Divisional Officer,
Kallakurichi,
Villupuram District.

3. The Tahsildar,
Chinna Salem Taluk,
Villupuram District.

+1cc to Mr.N.Manokaran, Advocate, S.R.No.5747

+1cc to the Government Pleader, S.R.No.5671

W.P.No.28476 of 2017

and

W.M.P.No.30585 of 2017

SSM(CO)
CT 16/02/2022