



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 08.04.2022

CORAM:

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THE HONOURABLE MR.JUSTICE B.PUGALENDHI

W.P(MD)No.9163 of 2010 and
MP(MD) No.2 of 2010

Amutha

...Petitioner

Vs.

1.The District Collector,
Theni District.

2.The Tahsildar,
Theni Taluk, Theni District.

3.The Inspector of Survey,
Survey Department,
Theni District.

4.Tamilarasan

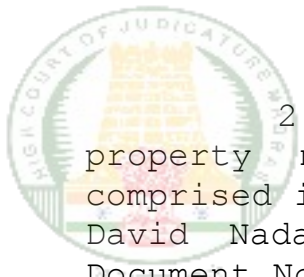
...Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, calling for the records relating with the second respondent's order in R.T.R R 587/10/S.R.93/10/20-20, dated 12.05.2010 and quash the same as illegal and arbitrary and in consequence to direct the second respondent to survey and sub divide the petitioner's property, measuring 24 cents out of 1 acre 45 cents comprised in S.No.72/4 in Palanichettipatti in Theni Taluk as per sale deed dated 12.03.1999 and registered as document No.3551/99, with the help of third respondent and to issue separate patta for the same.

For Petitioner : Mr.R.Suriyanarayanan
For R1 to R3 : Mr.G.Suriyanath
Additional Government Pleader

O R D E R

This writ petition is filed as against the joint patta issued in favour of the petitioner and others by the second respondent in R.T.R R 587/10/S.R.93/10/20-20, dated 12.05.2010.



2.The case of the petitioner is that he purchased a property measuring an extent of 24 cents, out of 1 acre 45 cents, comprised in S.No.72/4 in Palanichettipatti in Theni Taluk, from one David Nadar, by a registered sale deed, dated 12.03.1999, in Document No.3551/99 at Sub Registrar Office, Theni. The grievance of the petitioner is that since the second respondent has issued joint patta, without measuring the land and subdividing the property, he find it very difficult to identify his portion of land. Hence, the petitioner has given an application on 31.03.2010 to the second respondent to survey the land. But, the second respondent has not taken any steps. Hence, the petitioner filed a writ petition in W.P.No.5728 of 2010, before this Court, and this Court also passed an order to dispose his representation, within three months from the date of a receipt of a copy of that order. In the meantime, the fourth respondent herein has also filed a petition to measure his property. The second respondent, without considering the earlier order of this Court, dated 31.03.2010, has issued a joint patta for the subject lands and the same is under challenge in this writ petition.

3.The learned counsel for the petitioner submits that the second respondent has issued the joint patta in a mechanical manner, without considering the earlier order of this Court and the same has to be quashed. He further submits that a positive direction may be issued to the second and third respondents to measure the subject land and direct them to issue a separate patta in favour of the petitioner for his portion of land.

4.The learned counsel for the second respondent submits that the petitioner had purchased the piece of land, which is undivided and not partitioned, from one David Nadar, through his general power of Attorney, namely Manoharan, who is none other than the petitioner's husband and it is not correct to say that the land so purchased is in the physical possession and enjoyment as claimed by the petitioner. He further submits that on close and careful inspection conducted by the survey staff, which reveals, that there are houses already constructed in three cents, a pathway to a width of 8 feet formed East to West for the usage of those residents and an extent of 15 cents encroached by way of fencing in the subject property. It is also noticed that a General power of Attorney executed by five persons had been cancelled by three of them but has been acted upon by the power agent after cancellation. He further submits that all these anomaly has crept in due to the absence of valid partition and non implementation of the sales then and there. He further submits that action was taken to cancel the subdivisions already effected and register the total land of 1.45 acres as it was in 1972 and directed all the vendees to seek remedy through civil



5.This Court paid its anxious consideration to the rival submissions made and perused the materials placed on record.

6.Admittedly, this writ petition is filed for setting aside the joint patta issued in the name of the petitioner and others, without impleading other purchasers as parties to this writ petition. The second respondent has taken a specific stand that this petitioner had purchased a piece of land, from the undivided and not partitioned land. The issue involved in this writ petition can only be decided by the competent civil Court.

7.In view of the above, this writ petition is disposed of with a liberty to the petitioner to file a civil suit for declaration, declaring his portion of land by impleading the necessary parties to the suit. As per the orders of the Civil Court, the respondent concerned shall sub divide the property and issue individual pattas to the petitioner and others. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar(CS-II)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

vrn

To

1.The District Collector,
Theni District.

2.The Tahsildar, Theni Taluk,
Theni District.

3.The Inspector of Survey,
Survey Department, Theni District.

+1 CC to M/s.SPL.GP (SR-17948[F] dated 11/04/2022)

ORDER MADE IN
W.P(MD)No.9163 of 2010 and
MP(MD) No.2 of 2010
08.04.2022

nsn(CO)

TR(28.05.2022) 3P 5C