



**W.P(MD).No.13892 of 2013**

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT**

**DATED : 15.11.2022**

**CORAM:**

**THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR**

**W.P.(MD)No.13892 of 2013**

**and**

**M.P(MD) Nos.1 and 2 of 2013**

J.Vasanthi

... Petitioner

-VS-

1. The Revenue Divisional Officer,  
Aruppukottai – 626 101.

2. The Tahsildar,  
Virudhunagar Taluk,  
Virudhunagar – 626 003.

3. R.Padmanabhan  
4. M.Narmadha Devi  
5. M.Raghuraman

.... Respondents

**PRAYER:** Writ Petition is filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus calling for the records relating to the proceedings in RC.No.B1/5974/2012, dated 30.04.2013 on the file of the first respondent herein and also the consequential order passed in Memo No.Roc.B1/2765/2013, dated 10.07.2013 on the file of the second respondent herein and to quash the



**W.P(MD).No.13892 of 2013**

same, and directing the respondents 1 and 2 to restore the patta No.88 to the petitioner pertaining to Survey No.3/2 to an extent of 2 acres and 17 cents and issue patta in the name of the petitioner pertaining to the lands bearing Survey No.16/1 to an extent of 4 acres and 14 cents together with the land bearing Survey No.16/2, and the building bearing Door No.6/139, Pelampatti Village, Virudhunagar Taluk and District, within a time frame as may be fixed by this Court.

|                |                                                  |
|----------------|--------------------------------------------------|
| For Petitioner | : Mrs.P.Jessi Jeeva Priya<br>for Mr.G.Aravindan  |
| For R-1 & R-2  | : Mr.A.Baskaran<br>Additional Government Pleader |
| For R-3        | : No appearance                                  |
| For R-4 & R-5  | : Mr.T.Antony Arul Raj                           |

### **ORDER**

The present Writ Petition has been filed challenging the order passed by the first respondent herein, under which, he has cancelled the patta standing in the name of the writ petitioner and granted patta in favour of the respondents 3, 4 and one R.Rajeshwari, who is the mother of the respondents 3 and 4 herein.



**W.P(MD).No.13892 of 2013**

WEB COPY

2. According to the learned Counsel for the petitioner, the petitioner had entered into the sale agreement, with the third respondent, on 07.09.1991 with regard to three Survey Nos.16/1, 16/2 and 3/2. The sale deed was not executed by the third respondent and he had filed a suit in O.S.No.97 of 1996. The said suit was partly decreed by the learned Sub Judge, Virudhunagar, on 27.03.2000. The petitioner herein had filed an Appeal in A.S.No.36 of 2000 on the file of the Principal District Court, Virudhunagar at Srivilliputtur, challenging the disallowed portion. The learned Principal District Judge was pleased to allow the appeal, on 08.01.2001 and thereby, decreed the suit in entirety. Since the decree was not complied with, the petitioner had filed E.P.No.22 of 2001.

3. The learned counsel for the petitioner further submits that the defendants in the civil Suit had filed S.A.No.495 of 2002. While the said Second Appeal was pending, the fourth respondent had filed an impleading application to implead herself on the basis of final decree passed in her favour in O.S.No.245 of 1989, dated 04.10.1991. The said Second Appeal was dismissed as withdrawn granting liberty to the fourth respondent herein to pursue her remedy in the partition suit.



**W.P(MD).No.13892 of 2013**

WEB COPY

4. The learned Counsel for the petitioner further submits that the petitioner had filed E.P.No.22 of 2001 and a sale deed was executed in favour of the writ petitioner, on 03.12.2001 under registered Document No.4536 of 2001. Hence, according to the writ petitioner, she is absolute owner of all the three survey numbers which are the subject matters of the sale agreement, dated 07.09.1991,

5. According to the learned counsel for the petitioner, patta was issued in favour of the writ petitioner only for Survey No.3/2 in Patta No.88. Though she was entitled to get patta for Survey Nos.16/1 and 16/2, the said request was not considered for long time. When such was the position, the first respondent herein on an application filed by the fourth respondent, without issuing any notice to the writ petitioner, has allowed the appeal and cancelled the patta standing in the name of the writ petitioner. The first respondent has proceeded to grant patta in favour of the respondents 3 and 4 and also in favour of one R.Rajeswari, who is the mother of the respondents 3 and 4 herein. This order and the consequential order passed by the second respondent herein are under challenge in the present Writ Petition.



**W.P(MD).No.13892 of 2013**

6. According to the learned counsel appearing for the petitioner, in view of sale deed executed in her favour in O.S.No.97 of 1996, she was entitled to entire extent and patta was standing in her name. Without issuing notice to her, the present order impugned in the writ petition has been passed. Therefore, the petitioner prays for allowing the Writ Petition and restoring the patta in favour of the writ petitioner.

7. Per contra, the learned counsel appearing for the fourth respondent had submitted that originally, the said property belongs to the father of the respondents 3 and 4 namely, Raghupathi Reddiar. After his demise, it devolved upon the said Raghupathi Reddiar's wife R.Rajeswari and the respondents 3 and 4 herein. Thereafter, the fourth respondent had filed a suit in O.S.No.245 of 1989 claiming 1/3<sup>rd</sup> share in the property and in the said suit, the third respondent is also one of the parties. The preliminary decree was passed, on 04.10.1991 granting 1/3<sup>rd</sup> share in favour of the fourth respondent herein. While the said suit was pending, the sale agreement has been executed by the third respondent in favour of the writ petitioner. Only based upon the said sale agreement, the writ petitioner is now making a claim over all the survey numbers.



**W.P(MD).No.13892 of 2013**

WEB COPY

8. The learned Counsel for the respondents 4 and 5 further contended that in O.S.No.245 of 1989, a final decree was passed on 18.06.1996. Thereafter, the fourth respondent herein had filed E.P.No.47 of 2000 and she has taken possession of the properties allotted to her in the final decree proceedings on 09.02.2001. Hence, according to the learned Counsel for the fourth respondent, the fourth respondent has taken possession pursuant to the execution proceedings, in which, the writ petitioner's vendor was also one of the party. Hence, according to the learned Counsel for the fourth respondent, the first respondent has correctly issued patta in favour of the fourth respondent with regard to the properties that were allotted to her and delivery was taken in the partition suit. Hence, he prayed for confirming the order impugned in the Writ Petition.

9. I have carefully considered the submission made on either side.

10. The writ petitioner claims title to the property on the basis of specific performance decree in her favour in O.S.No.97 of 1996. On the other hand, the fourth respondent is claiming title on the basis of the final



**W.P(MD).No.13892 of 2013**

decree made in O.S.No.245 of 1989 and delivery was taken in E.P.No.47 of 2000. It could be seen from the records, that the petitioner claims title only by way of sale agreement said to have been executed by the third respondent herein. In fact, the mother of the respondents 3 and 4 had filed a suit in O.S.No.58 of 1998 seeking 1/3<sup>rd</sup> share in the properties. In the said suit the present writ petitioner had filed an application to get herself impleaded and the said application was dismissed by the trial Court, by an order, dated 17.03.2004. The writ petitioner has challenged the said order in C.R.P.No. 425 of 2004 before this Court. This Court, by an order, dated 22.08.2006 has confirmed the dismissal of the impleading application with an observation that the petitioner would be entitled to the share that is allotted in favour of her vendor, namely, R.Padmanabhan. Hence it is clear that whatever property i.e., allotted to the share of third respondent, the writ petitioner is entitled to. The petitioner's vendor being a party to the partition Suit in O.S.No.245 of 1989 and O.S.No.58 of 1998, the petitioner cannot get more properties than what belongs to her vendors.

11. Hence, it is clear that, in the order impugned in the Writ Petition, patta has been granted in favour of the third respondent also with regard to



**W.P(MD).No.13892 of 2013**

the certain Survey Numbers. However, on the date when the order impugned in the Writ Petition was passed, the third respondent was not having any title to any portion of the property and the writ petitioner alone is having title to the share of R.Padmanabhan. That apart, the patta with regard to Survey Number 3/2 was already standing in the name of the writ petitioner. Hence, without issuing any notice to the writ petitioner, the order impugned in the Writ Petition has been passed.

12. In view of the above said facts, the order impugned in the Writ Petition is set aside and the matter is remitted back to the file of the first respondent herein for passing orders on merits and in accordance with law, after affording due opportunity to the petitioner and the respondents 4 and 5 herein. The first respondent herein is directed to consider the final decree passed in O.S.No.245 of 1989 and the order passed in E.P.No.47 of 2000 and also the final decree passed in O.S.No.58 of 1998 and the order passed by this Court in C.R.P.(MD)No.425 of 2004, dated 22.08.2006.



**W.P(MD).No.13892 of 2013**

WEB COPY

13. In the light of these three orders, the first respondent shall consider the right of the parties and issue patta in favour of the respective parties with regard to the extent as decided by the civil Court.

14. With the above said observation, this Writ Petition stands allowed. There shall be no order as to costs. Consequently, connected Miscellaneous Petitions are closed.

**15.11.2022**

Index : Yes / No  
Internet : Yes / No  
ebsi

To

1. The Revenue Divisional Officer,  
Aruppukottai – 626 101.
2. The Tahsildar,  
Virudhunagar Taluk,  
Virudhunagar – 626 003.



WEB COPY



**W.P(MD).No.13892 of 2013**

**R.VIJAYAKUMAR,J.**

ebsi

**W.P.(MD)No.13892 of 2013**

**15.11.2022**