



W.P(MD)Nos.1751 & 17200 of 2013

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 10.11.2022
DELIVERED ON : 24.11.2022

CORAM:

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

W.P(MD)Nos.1751 & 17200 of 2013
and
M.P(MD)No.1 of 2013

(W.P(MD)No.1751 of 2013)

1.M.Mookiah

2.M.Balasubramanian

... Petitioners

Vs.

1.The District Revenue Officer,
Tuticorin District at Tuticorin.

2.The Tahsildar,
Vilathikulam Taluk,
Tuticorin District.

3.S.Shanmugharaj (Died)

4.S.Arumugham

5.S.Ramakrishnan

6.S.Ramamurthy

7.S.Balamurugan

8.S.Sendhurapandi

... Respondents

(Respondent Nos.7 & 8 substituted as legal heirs of the deceased third respondent as per order, dated 17.09.2014, in M.P(MD)No.2 of 2014 in W.P(MD)Nos.1751 & 17200 of 2013)



W.P(MD)Nos.1751 & 17200 of 2013

(Cause title amended as per order, dated 17.09.2014, in M.P(MD)No.1 of 2014 in W.P(MD)Nos.1751 & 17200 of 2013)

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 to the proceedings of the District Revenue Officer, Tuticorin District and made in Na.Ka.No.D2-40416-12, dated 22.10.2012, the first respondent herein and quash the same and consequently direct the first respondent herein and his subordinates to issue joint patta in the names of the legal heirs of late Ramaiah Thevar with respect to the property comprised in S.No.365, Soorankudi Village, Vilathikulam Taluk, Tuticorin District in an extent of Hect.3.79.0 are.

For Petitioners : M/s.R.Govindaraj

For R-1 & R-2 : M/s.B.Saravanan
Additional Government Pleader

For R-3 : Died

For R-4 to R-8 : M/s.H.Arumugam

(W.P(MD)No.17200 of 2013)

R.Suresh

... Petitioner

Vs.

1.The Assistant Engineer,
TANGEDCO / Tuticorin Electricity
Distribution Circle,
Soorankudi, Villathikulam Taluk,
Tuticorin District.



W.P(MD)Nos.1751 & 17200 of 2013

2.M.Mookiah

3.M.Balasubramanian

... Respondents

(Respondent Nos.2 & 3 impleaded as per order, dated 17.09.2014, in M.P(MD)No.1 of 2014 in W.P(MD)No.17200 of 2013)

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 to the impugned order of the respondent in கடித எண். இ.மி.பொ/வி/சூ/கோ.கட்டு/அ.எண்.279/2013, dated 25.09.2013 and quash the same and consequentially direct the respondent to give electricity supply to the petitioner's premises situated in S.No.365, Soorankudi Village, Villalthikulam Taluk.

For Petitioner : M/s.H.Arumugam

For R-1 : M/s.S.Deenadhayalan
Standing Counsel

For R-2 & R-3 : No appearance

COMMON ORDER

W.P(MD)No.1751 of 2013 has been filed challenging an order passed by the first respondent herein, under which, he has rejected the revision filed by the writ petitioners and confirmed the grant of patta in favour of the private respondents.



W.P(MD)Nos.1751 & 17200 of 2013

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2. According to the petitioners, the property in Survey No.365 in Soorangudi Village, Vilathikulam Taluk, Tuticorin District, having an extent of 9.37 acres, originally belonged to late Periya Ramaiah Thevar, who is the grand-father of the first petitioner herein. The said Periya Ramaiah Thevar was allotted the property in dispute in an oral partition among the family members. The said Periya Ramaiah Thevar had died intestate and after the death of said Periya Ramaiah Thevar, it devolved upon his 7 sons and a daughter. Muniasamy Thevar, who is the father of the first petitioner and Senthur Thevar, who is the father of the respondents 3 to 6, are two of the sons of the said Periya Ramaiah Thevar.

3. According to the petitioners, all the legal heirs of Periya Ramaiah Thevar had entered into a Koor Chit on 18.03.1970 and in the said document, the present survey number was shown as the fifth schedule and the same was retained as a common property, without being subjected to partition. In patta No.685, it was enjoyed as a joint family property, without any partition. Thereafter, without any notice to the other sharers, the father



W.P(MD)Nos.1751 & 17200 of 2013

of the respondents 3 to 6, namely, Senthur Thevar got it mutated in his individual name in patta No.373. When this mischief came to the knowledge of the other family members, they approached the Special Tahsildar, UDR Scheme, Vilathikulam and cancelled the said separate patta and a joint patta was granted in patta No.1026 on 25.06.1985. The petitioners have further submitted that thereafter, without notice to the other sharers, the respondents 3 to 6 have approached the revenue authorities and got a separate patta in their name in patta No.1576. Several representations were sent by the petitioner to cancel patta No.1576 and restore the joint patta. By an impugned order, dated 22.10.2012, the first respondent herein has rejected the said request on the ground that, already the District Revenue Officer has passed an order on 24.10.2007, holding that the respondents 3 to 6 are entitled to patta and the said order has become final. This order is under challenge in the present writ petition.

4. According to the learned Counsel for the petitioners, the order, dated 24.10.2007, was between the other branch, namely, S.R.Mookiah and the legal heirs of Senthur Thevar. The petitioners or other family members of Periya Ramaiah Thevar were not parties to the said proceedings. Hence,



W.P(MD)Nos.1751 & 17200 of 2013

the present impugned order has been passed, without properly appreciating the effect of order, dated 24.10.2007. Hence, he prayed for allowing the writ petition.

5. Per contra, the learned Counsel appearing for the private respondents had contended that the survey number in dispute was originally the absolute property of Periya Ramaiah Thevar, who had executed a registered settlement deed in favour of Senthur Thevar on 16.02.1962. Thereafter, separate patta was granted in favour of Senthur Thevar in patta No.373. Without notice to the said Senthur Thevar, the writ petitioners had managed to obtain a joint patta in patta No.1026. Thereafter, the legal heirs of Senthur Thevar have approached the revenue authorities and got it rectified and obtained a separate patta in the name of legal heirs of Senthur Thevar in patta No.1576. Hence, according to the learned Counsel for the private respondents, the private respondents are relying upon a registered settlement deed of the year 1962 to claim title to the property. But on the other hand, the petitioners are making a claim that it is a common property, based upon an un-registered partition deed, dated 18.03.1970.



W.P(MD)Nos.1751 & 17200 of 2013

6. The learned Counsel for the respondents have further contended that one S.R.Mookiah Thevar @ Vellaisamy Thevar and S.R.Ramasamy @ Krishnasamy Thevar have already filed O.S.No.9 of 2008 on the file of the District Munsif Court, Vilathikulam, for the relief of declaration and recovery of possession. In the said suit, the first petitioner is the 34th defendant and after his demise, the second petitioner has been impleaded as the 38th defendant along with other legal heirs. The pendency of the said suit has been suppressed in the writ petition. When a civil suit is pending from the year 2008 onwards, the petitioners are in the habit of approaching the revenue authorities again and again to cancel the separate patta in the name of the legal heirs of Senthur Thevar and to convert the same into a joint patta. Hence, the order impugned in the writ petition may be sustained and the writ petition may be dismissed.

7. I have carefully considered the submissions made on either side.

8. It is not in dispute that one Periya Ramaiah Thevar and Chinna Ramaiah Thevar are the sons of one Vellaiya Thevar through their two wives Petchiammal and Ammaniammal. Periya Ramaiah Thevar is the son



W.P(MD)Nos.1751 & 17200 of 2013

of Vellaiya Thevar through Ammaniammal. The said Periya Ramaiah Thevar had 7 sons and a daughter. Out of them one Muniasamy Thevar (father of first petitioner) and Senthur Thevar (father of respondents 3 to 6) are the two sons of Periya Ramaiah Thevar.

9. Chinna Ramaiah Thevar had two sons, namely, S.R.Mookiah Thevar @ Vellaisamy Thevar and S.R.Ramasamy @ Krishnasamy Thevar. According to the legal heirs of Senthur Thevar, Periya Ramaiah Thevar had executed a registered settlement deed on 16.02.1962 in favour of Senthur Thevar with regard to the disputed survey number and they claim title and possession based upon the said document. However, according to the legal heirs of another son Muniasamy Thevar, Periya Ramaiah Thevar had died intestate and after his death all the legal heirs of Periya Ramaiah Thevar had entered into an un-registered partition deed on 18.03.1970, in which, the disputed survey number was agreed to be kept in common. Hence, according to the legal heirs of Muniasamy Thevar, only a joint patta has to be issued in favour of all the legal heirs of Periya Ramaiah Thevar. However, the legal heirs of Senthur Thevar, based upon a registered settlement deed, dated 16.02.1962, claim exclusive patta.



W.P(MD)Nos.1751 & 17200 of 2013

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10. S.R.Mookiah Thevar @ Vellaisamy Thevar and S.R.Ramasamy @ Krishnasamy Thevar, who are the sons of Chinna Ramaiah Thevar had approached the first respondent herein, making a claim over the disputed survey number. In the said proceedings, legal heirs of Senthur Thevar were parties. However, the legal heirs of Muniasamy Thevar were not parties. The first respondent by his order, dated 24.10.2007, had arrived at a finding that the property belongs to Senthur Thevar and proceeded to confirm the patta in favour of his legal heirs. The said proceedings were initiated by one S.R.Mookiah Thevar @ Vellaisamy Thevar, who is the son of Chinna Ramaiah Thevar. However, the present proceedings before the first respondent have been initiated by M.Mookiah, son of Muniasamy Thevar. The first respondent herein without understanding the difference between S.R.Mookiah and M.Mookiah had proceeded to arrive at a finding that already the District Revenue Officer, Tuticorin had passed an order on 24.10.2007, granting patta to the legal heirs of Senthur Thevar and hence, the present revision by M.Mookiah son of Muniasamy Thevar is not maintainable. The first respondent has miserably failed to distinguish between S.R.Mookiah and M.Mookiah. Without entertaining the revision on



W.P(MD)Nos.1751 & 17200 of 2013

merits, he has proceeded to dismiss the revision relying upon an order, dated 24.10.2007, which is not binding upon the present writ petitioners.

11. From the records, it could be seen that at no point of time, the legal heirs of Periya Ramaiah Thevar, namely, Muniasamy Thevar and Senthur Thevar had fought against each other in anyone of the revenue proceedings. On all the occasions, the application filed by one of the parties has been decided, without notice to the other party. Their pleadings and documents of one of the party has not been confronted with the other party. Hence, this Court finds that the order impugned in the writ petition has been passed on a misunderstanding of the binding nature and applicability of the order, dated 24.10.2007, on the present writ petitioners.

12. In view of the above said discussion, the order impugned in the writ petition is set aside. The matter is remitted back to the file of the first respondent herein. The first respondent shall issue notice to the writ petitioners and all the legal heirs of Senthur Thevar and pass orders on merits and in accordance with law, after affording due opportunity to the parties concerned. The said exercise shall be completed within a period of

10/13



W.P(MD)Nos.1751 & 17200 of 2013

twelve (12) weeks from the date of receipt of a copy of this order.

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13. W.P(MD)No.17200 of 2013 has been filed by the grand-son of Senthur Thevar (Son of S.Ramakrishnan). The said writ petition has been filed challenging an order passed by the first respondent herein, under which, he has rejected the request of the petitioner for grant of electricity service connection to Survey No.365 on the ground that, the second respondent (first petitioner in W.P(MD)No.1751 of 2013) had raised an objection. The said order is under challenge in the present writ petition.

14. According to the petitioner, he had proposed to construct two shops in the above said survey number and he had also obtained a building plan approval from the Panchayat. Thereafter, the petitioner had applied for commercial electricity service connection from the first respondent herein. The said request has been rejected under the impugned order, citing the pendency of the W.P(MD)No.1751 of 2013. Now that, the said writ petition is being disposed of by way of this common order, the petitioner shall approach the first respondent herein, after disposal of the patta proceedings by the District Revenue Officer, Tuticorin.



W.P(MD)Nos.1751 & 17200 of 2013

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15. With the above said observation, W.P(MD)No.1751 of 2013 stands allowed and remitted to first respondent and W.P(MD)No.17200 of 2013 stands disposed of. There shall be no order as to costs. Consequently, connected Miscellaneous Petition stands closed.

24.11.2022

Index : Yes / No
Internet : Yes / No
btr

To

- 1.The District Revenue Officer,
Tuticorin District at Tuticorin.
- 2.The Tahsildar,
Vilathikulam Taluk,
Tuticorin District.
- 3.The Assistant Engineer,
TANGEDCO / Tuticorin Electricity
Distribution Circle,
Soorankudi, Villathikulam Taluk,
Tuticorin District.



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W.P(MD)Nos.1751 & 17200 of 2013

R.VIJAYAKUMAR, J.

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Order made in
W.P(MD)Nos.1751 & 17200 of 2013

24.11.2022