



W.P.(MD).No.21446 of 2022

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED :28.11.2022

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THE HONOURABLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

W.P(MD)No.21446 of 2022

and

W.M.P(MD)No.15600 of 2022

R.Karuppanan

... Petitioner

VS.

1.The District Revenue Officer,
Theni District.

2.The Revenue Divisional Officer,
Periyakulam,
Theni District.

3.The Tahsildar,
Taluk Office,
Andipatti,
Theni District.

4.The Executive Engineer,
Tamil Nadu Electricity Generation and
Distribution Corporation (TANGEDCO),
Municipal Commercial Complex,
Vaigai Road,
Periyakulam,
Theni District.

5.R.Natarajan

... Respondents

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PRAYER: Writ Petition is filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, to call for the order passed by the District Revenue Officer of Theni, the 1st respondent herein vide Na.Ka.No.5159/2019/D4(D2), dated 28.02.2022 confirmed the order passed by the Revenue Divisional Officer of Periyakulam, the 2nd respondent herein vide Na.Ka.No.6395/2009A1, dated 23.01.2019 and quash the same as illegal and without jurisdiction and consequently direct the respondents to issue joint patta in respect of the common well and common channel in S.No.133 at Balakombai Village, Andipatti Taluk, Theni District.

For Petitioner	: Mr.R.Rajaraman
For R1 to R3	: Mr.A.Kannan Additional Government Pleader
For R4	: Mr.S.Deenadhayalan
For R5	: Mr.J.Senthilkumariah

ORDER

This Writ Petition has been filed challenging the order passed by the District Revenue Officer, Theni, the 1st respondent herein vide Na.Ka.No.5159/2019/D4(D2), dated 28.02.2022, confirming the order



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passed by the Revenue Divisional Officer, Periyakulam, the 2nd respondent herein vide Na.Ka.No.6395/2009A1, dated 23.01.2019 and to quash the same and consequently direct the respondents to issue joint patta in respect of the common well and common channel in S.No.133 situated at Balakombai Village, Andipatti Taluk, Theni District.

2. The case of the petitioner is that the property in S.No.133 to an extent of 2 acre and 45 cents situated at Balakombai Village, Andipatti Taluk, Theni District originally belongs to the petitioner's father viz., Ramasamy Moopar. The agricultural land consisting of common well and common channel with the electricity connection in S.C.No.521 with electrical motor and other equipment. Till the life time of his father viz., Ramasamy Moopar, the land was enjoyed by his family members without any division and after his demise, there was an oral partition made among his four sons namely 1.Muthaih Moopar, 2.Chokkalingam Moopar, 3.Marutha Moopar and 4. Karuppanan Moopar and the land in S.No.133 also sub divided into 133/2 133/3 133/4 and 133/5. The common well and common channel with the electricity connection in S.C.No.521 with



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electrical motor and other equipment situated in S.No.133/4. Even after the oral partition and sub division among the brothers, the common well and common channel was enjoyed by the brothers without hindrance to other brothers. The electricity connection originally given on 04.03.1985 in the petitioner's name. Even though the electricity connection stands in the name of petitioner, from the year of 1985, the common well water and the electricity connection was enjoyed by all the coparcener without hindrance to other coparcener.

3. It is the further case of the petitioner that due to economic conditions of Marutha Moopar, his land in S.No.133/4 was alienated in favour of third parties. The 5th respondent Natarajan has purchased the property in S.No.133/4 to an extent of 58 cents. Under such circumstances, the other co-owners have applied for joint patta for the common well and the common channel before the third respondent Tahsildar, Andipatti. The third respondent has also issued a joint patta in respect of the common well and common channel for all the co-owners i.e., RTR No.1685/2006, dated 21.12.2006 in favour of co-



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owner/coparcener Chokkalingam, S/o.Ramasamy Moopar, RTR No. 1969/2009, dated 30.11.2009 in favour of co-owner/coparcener Karuppanan S/o.Ramasamy Moopar and Chinnasamy. The fifth respondent, with the *mala fide* intention filed an appeal before the Revenue Divisional Officer, the second respondent herein and the second respondent, without considering the facts, passed the impugned order dated 23.01.2019 in favour of the 5th respondent. The District Revenue Officer, Theni, the 1st respondent also confirmed the order passed by the Revenue Divisional Officer, dated 28.02.2022. Challenging the same, the present writ petition has been filed.

4. In support of his contention, the learned counsel for the petitioner relied on a decision of the High Court of Karnataka reported in ***2020 (0) Supreme (Kar) 35 (Jayamma, W/o.Late Kalegowda vs. State of Karnataka)***.

5. The learned counsel appearing for the petitioner would submit that the title for the common well and the common channel can be



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decided only by the competent civil Court and not by the revenue authority and without jurisdiction, the respondents 1 and 2 have passed the impugned order. On the strength of the impugned order passed by the respondents 1 and 2, the fifth respondent attempted to change the electricity connection in his name. Now, the E.B. officials are trying to take appropriate action on the petitioner and issued a notice to appear before them on 11.09.2022 at 11.00 a.m., and give an explanation regarding the ownership by producing appropriate documents, otherwise they will disconnect the said connection, which is given in the name of the petitioner herein for the S.No.133/4 at Balakombai Village, Andipatti Taluk.

6. Mr.S.Deenadhayalan, learned counsel appearing for the fourth respondent would submit that as and when the petitioner produced certain documents, they will decide the same in his favour.

7. The fifth respondent has filed a counter stating that he has purchased the lands in S.Nos.133/4, 133/3 and 136/6 situated at



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Balakombai Village, Andipatti Taluk, Theni District, by way of registered sale deed. He is the only person having absolute right over the land and well set up with electrified motor pump set with S.C.No.12 in S.No. 133/4. After verifying all the revenue records, the Tahsildar, Andipatty Taluk has issued separate patta in his name in Patta No.1138. Thereafter, he came to know that the writ petitioner has applied for joint patta with forged documents. The 3rd respondent Tashildhar without hearing/issuing any notice to him, issued joint Patta on 21.12.2006 pertains to S.No. 133/4 by including the name of the petitioner. Thereafter, on 22.09.2009, he sent legal notice to the 4th respondent officials to disconnect the service connection in S.C.No.537-001-521 stands in the name of the petitioner. On 08.10.2009, the 4th respondent asked to produce the revenue documents. He has produced all the revenue documents, but the 4th respondent without passing any order has denied his request by saying that well situated in S.No.133/4 was having joint patta. To disconnect the electricity service connection, he has filed a writ petition in W.P.(MD).No.5435 of 2020 before this Court. On 17.06.2022, this Court directed the fourth respondent officials to pass final order, by



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considering the orders passed by the first and second respondents. In order to drag on the proceedings of the fourth respondent, the petitioner has filed the present writ petition, without having any right over the property.

8. Heard Mr.R.Rajaraman, learned counsel appearing for the petitioner, Mr.A.Kannan, learned Additional Government Pleader appearing for the respondents 1 to 3, Mr.S.Dheenadhayalan, learned counsel appearing for the fourth respondent and Mr.J.Senthilkumariah, learned counsel appearing for the fifth respondent.

9. On going through the averments and also the documents available on record, it is seen that originally the property in S.No.133 belongs to the petitioner's father viz., Ramasamy Moopar. After his demise, there was an oral partition made among his four sons viz., 1.Muthaih Moopar, 2.Chokkalingam Moopar, 3.Marutha Moopar and 4. Karuppanan Moopar and the land in S.No.133 also sub-divided into 133/2, 133/3, 133/4 and 133/5. S.No.133/5 was allotted to the petitioner.



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The fifth respondent has purchased other three shares of the brothers and one share is pending with the petitioner. Even though the petitioner has right over the well in S.No.133/4, which was given electricity connection in the year 1985, his claim has not been supported by the documents. The sale deed dated 27.01.1999 executed in favour of the fifth respondent viz., Natarajan by Chinnasamy, S/o. Marudha Mooper shows that S.No. 136/6 is a land and in S.No.133/4, there is a well and in that, 1/3rd share has been sold to him.

10. That being the case, the authorities ought to have considered that there is only a share on the well has been sold and only three shares have been purchased by the fifth respondent and one share is in favour of the petitioner and there is a civil dispute and this Court cannot look into all the title or what is the share available to the respective parties and this has to be decided not by the revenue authorities nor by the E.B. authorities/ the Executive Engineer, TANGEDCO and the same has to be decided only by the competent civil Court and the petitioner and the fifth respondent can only approach the competent civil Court to prove their



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share. Hence, this Court directs the petitioner to approach the competent civil Court. The E.B. officials cannot decide the same, based on the revenue records as there is a dispute regarding the alleged share in the well, which is situated in the land of the third party fifth respondent.

11. With the above observation, this Writ Petition is disposed of.

No costs. Consequently, the connected Miscellaneous Petition is closed.

28.11.2022

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To

- 1.The District Collector,
Collectorate Complex,
Madurai District,
Madurai.
- 2.The Chief Engineer,
Public Works Department,
Madurai Region,
Chinnachokkikulam,
Tallakulam,
Madurai.

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3. The Tahsildar,
Madurai West Taluk,
Madurai.



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V.BHAVANI SUBBAROYAN,J.

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