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W.P.(MD).No.4161 of 2016

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

ORDER RESERVED ON : 03.08.2022

ORDER PRONOUNCED ON : 08.08.2022

CORAM:

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

**W.P.(MD).No.4161 of 2016
and
WMP(MD).No. 3742 of 2016**

A.Johnson

...Petitioner

Vs

1.The District Revenue Officer
Kanyakumari District
Nagercoil

2.The Revenue Divisional Officer
Padmanabhapuram
Thuckalay

3.Gideon Raj

....Respondents

Prayer: This Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, calling for the records of the first respondent in M4/31403/2014 dated 11.02.2016 confirming the order of the second respondent in Na.Ka.AA3/3592/2014 dated 17.09.2014 and quash the same.

For Petitioner

: Mr.C.Godwin

For R1 and R2

: Mr.P.Thambidurai

Government Advocate

For R3

: Mr.T.Antony Arulraj



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ORDER

The writ petitioner has been filed challenging the order passed by the first respondent herein on 17.09.2014 under which the name of the writ petitioner was deleted from the joint Patta and the Patta was restored in the name of one Yakobu.

2.The petitioner had contended that Survey No.24/15 in Kothanalloor Village, Kalkulam Taluk originally belonged to his grand father late. Yakobu in Patta No.4326. During the settlement proceedings, Patta was issued in his name. Thereafter, the Patta was transferred in the name of the writ petitioner. The petitioner had further contended that he had executed a settlement deed on 20.08.2013, settling two cents and 500 square links of land out of 3 ares in favour of his son John Dinesh as per his right under Patta No.4326. Hence, according to the petitioner, the entire 3 ares of land is in his possession and the possession of his son John Dinesh.

3.The petitioner had further contended that one Githionraj had addressed a complaint to the Tahsildar relating to Survey No.24/14. In the said complaint, he has not claimed any right over the disputed survey number 24/15. The second respondent after conducting an enquiry, by his order dated



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17.09.2014, deleted the name of the petitioner and his son from Patta No. 4326. The petitioner preferred a revision before the first respondent herein and the first respondent by his order dated 11.02.2016 confirmed the order passed by the second respondent herein. The said order is under challenge in the present writ petition.

4. According to the petitioner, the complaint made by the third respondent herein is only relating to Survey No.24/14 and the third respondent had never made any complaint with regard to the disputed survey number namely 24/15. According to the learned counsel for the petitioner, the petitioner had inherited 3 ares of land from his grandfather Yakobu and has transferred 2.500 cents of land to his son and only on the basis of the said settlement, his son name was also included in the Patta.

5. The learned counsel had further contended that the third respondent has not produced any document to the effect that he has got any right for Survey No.24/15 and in the said circumstances, the authorities ought not to have directed the writ petitioner to approach the Civil Court. Hence, he prayed for allowing the writ petition.

6. Per contra, the learned counsel for the third respondent has contended that the original owner of the property is one Yakobu. The said



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Yakobu died leaving behind his four children namely Dhasan, Aron, Gnanavadiyu and Natchathiram. The writ petitioner has one more brother by name Wilson. The third respondent is none other than the son of Dhasan. According to the third respondent, the entire survey number is being utilised as a graveyard of family for number of years and more than 50 bodies have been buried in the said graveyard. The entire disputed survey number is the grave garden of Yakobu's family. The petitioner is attempting to knock away with the property by just introducing his name in the Patta along with Yakobu. Hence, he contended that the revenue authorities were right in deleting the name of the writ petitioner and restoring the Patta in the name of the original owner Yakobu. Hence, he prayed for dismissal of the writ petition.

7.I have considered the submissions made on either side and perused the materials available on record.

8.The petitioner had claimed right over Survey No.24/15 on the basis of inclusion of his name in Patta No.4326 along with his grandfather's name Yakobu. The petitioner has also relied upon a settlement deed said to have been executed by him in favour of his son John Dinesh on 20.08.2013 to claim right over the disputed property. The petitioner has also produced a



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computer Patta which shows the name of Yakobu along with Yesudasan, the writ petitioner and his son.

9.In the writ affidavit, the petitioner has not chosen to challenge the relationship between the parties, even though the same was considered and a finding was arrived at by the respondents 1 and 2 in their impugned order. The settlement deed said to have been executed by the writ petitioner in favour of his son just relied upon Patta No.4326 and in no other way the title has been traced. The adangal extract produced on the side of the writ petitioner in his typed set of papers indicates that Survey No.24/15 stands in the name of the Yakobu and in the remarks column, it is mentioned as graveyard. The revenue authorities have further found that the petitioner is attempting to create a pathway through the said graveyard garden on the basis of a settlement deed.

10. Neither the petitioner nor the third respondent have produced any records before the revenue authorities to establish their respective rights over the property. Hence, the revenue authorities were constrained to restore the Patta in the name of Yakobu. Thereafter, they have directed the parties to approach the Civil Court.



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11.In view of the above said discussion, this Court finds that the petitioner having not disputed the relationship in the writ affidavit and the adangal extract clearly establishes that it is a grave garden standing in the name of the said Yakobu and hence, the revenue authorities were right in restoring the patta in the name of Yakobu and directing the parties to approach the Civil Court.

12.In view of the above said discussion, there is no infirmity or illegality in the order passed by the first respondent. The writ petition is devoid of merits and the same is dismissed. No costs. Consequently, connected miscellaneous petitions is closed.

08.08.2022

Internet : Yes/No
Index : Yes/No
msa

To

1.The District Revenue Officer
Kanyakumari District
Nagercoil

2.The Revenue Divisional Officer
Padmanabhapuram
Thuckalay



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R.VIJAYAKUMAR, J.

msa

Pre-delivery order made in

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