



W.P.(MD)No.25487 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 10.11.2022

CORAM

THE HONOURABLE Mrs. JUSTICE V.BHAVANI SUBBAROYAN

Writ Petition (MD) No.25487 of 2022

- 1.Periyathambi Nadar, S/o.Arumugam
- 2.Chockalingam Nadar, S/o.Arumugam
- 3.S.Ramesh, S/o.Sorimuthu Nadar
- 4.S.Arumuga Raj, S/o.Sorimuthu Nadar
- 5.S.Selvan, S/o.Sorimuthu Nadar

.. Petitioners

Versus

- 1.The District Registrar,
Office of the District Registrar,
Tenkasi District.
- 2.The Sub-Registrar,
Office of the Sub-Registrar,
Surandai,
Tenkasi District.

.. Respondents

Prayer :- Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorarified Mandamus, calling for the records in connection with Refusal Check Slip in Refusal No.RFL/Surandai/23/2022, dated 13.10.2022, quash the same and consequently, direct the second respondent to register the petitioners' partition deed, pertaining to the agricultural land, in Survey No.537/2A, admeasuring 4 Acres and 20 Cents, situated at Kaluneerkulam Village, Alankulam Taluk, Tenkasi District, within a time frame.

For Petitioners : Mr.K.Anand

For Respondents : Mr.K.S.Selvaganesan

Additional Government Pleader



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ORDER

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The petitioners have prayed for issuance of a Writ of Certiorarified Mandamus, to quash the impugned Refusal Check Slip in Refusal No.RFL/Surandai/23/2022, dated 13.10.2022, and consequently, direct the second respondent to register their partition deed, pertaining to the agricultural land, in Survey No.537/2A, admeasuring 4 Acres and 20 Cents, situated at Kaluneerkulam Village, Alankulam Taluk, Tenkasi District, within a time frame.

2. Heard Mr.K.Anand, learned counsel appearing for the petitioners and Mr.K.S.Selvaganesan, learned Additional Government Pleader, who takes notice for the respondents.

3. According to the petitioners, the property comprised in S.No.537, situated at Kaluneerkulam Village, Alankulam Taluk, Tenkasi District, originally belonged to their deceased great grandfather namely, Sorimuthu Nadar. He passed away about 85 years ago, leaving behind his sons, namely, Arumuga Nadar, Kuthalinga Nadar, Periyathambi Nadar, Vadamalai Nadar and Arunchala Nadar as his legal heirs. Thereafter, the said Vadamalai Nadar, who had no issues, died. After the death of the petitioners' great grandfather Sorimuthu Nadar, the property was orally partitioned among the legal heirs.



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Thereafter, the said Periyathambi Nadar died leaving behind one Sorimuthu Nadar, Arumuga Nadar, Subbiah @ Kuthalinga Nadar. Meanwhile, the said Sorimuthu Nadar died leaving behind Periyathambi Nadar, Sivanantha Perumal. Thereafter, Arumuga Nadar, who is the son of Periyathambi Nadar, died leaving behind the petitioner, Chockklinga Nadar, Sorimuthu Nadar. Therefore, as per oral partition, the legal heirs of the said Chockkalinga Nadar, Sorimuthu Nadar and Periyathambi Nadar are enjoying the property in S.No. 537/2.

4. The petitioners and others filed a suit in O.S.No.273 of 2001 before the District Munsif Court, for declaration of title and permanent injunction in respect of the properties in S.Nos.537/1 and 537/2 against one Murugesan and others. The said Murugesan claimed that the said properties belonged to his grandfather namely, Chidambara Nadar. The learned District Munsif, Tenkasi, dismissed the suit in respect of the land in S.No.537/2, measuring an extent of 4 Acres and 28 Cents and decreed the suit in respect of S.No.537/1. Aggrieved over the same, the petitioner filed First Appeal in A.S.No.72/2005 before the Additional Sub-Court, Tenkasi, and the same was decreed in favour of the petitioners on 20.03.2008 in respect of the land in S.No.537/2. Hence, the said Murugesan and others have filed Second Appeal in S.A.(MD)No.1102 of 2008 before this Court and the same is pending till date, however, the miscellaneous petition filed therein was closed on 22.04.2016.



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5. The petitioners submitted that the legal heirs of Chokkalinga Nadar, Sorimuthu Nadar and Periyathambi Nadar are now enjoying the property in S.No.537/2A and the Tahsildar, Alankulam, issued Patta in respect of S.No. 537/2A in favour of the first petitioner, Chokkalinga Nadar and Sorimuthu Nadar. When the petitioners presented a partition deed before the second respondent for registration, he refused to register the same and issued the impugned refusal check slip on the ground that the second appeal filed by the said Murugesan and others is pending. Challenging the same, the petitioners have filed the present Writ Petition.

6. The learned counsel appearing for the petitioners submitted that the petitioners have challenged the same by stating that the partition deed executed by them would be subject to the final decision of the second appeal in S.A.(MD)No.1102 of 2008 and the aggrieved parties can proceed against the execution of the partition deed under Section 52 of the Transfer of Property Act, 1882 and it will be hit by the principles of *lis pendens*. The second respondent cannot decide the right of the property before the execution of the partition deed. There is no bar in registering the partition deed, even though the second appeal is pending.



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7. On a perusal of the material available on record, it is seen that in respect of the subject property, one Murugesan and others filed S.A.(MD)No. 1102 of 2008 before this Court against the judgment and decree, dated 20.03.2008, passed in A.S.No.72 of 2005, on the file of the Additional Sub-Judge, Tenkasi and the same is pending and no interim order has been granted so far. Though the second appeal is pending from the year 2008, the petitioners have not chosen to proceed with the same. That being the case, the second respondent in order to avoid further litigations, has rejected the petitioners' claim stating the pendency of the said second appeal.

8. In view of the aforesaid facts and circumstances of the case, this Court is not inclined to accept the prayer of the petitioners and the petitioners can partition the property after disposal of the second appeal. The petitioners are also at liberty to seek registration of the said deed after getting orders in the second appeal from this Court.

9. In the result, this Writ Petition is dismissed. No costs.

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V.BHAVANI SUBBAROYAN, J.

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Order made in
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