



WEB COPY

WP No.3805 of 2



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 18-04-2023

CORAM

THE HONOURABLE MR.JUSTICE S.M.SUBRAMANIAM

WP No.3805 of 2017

And

WMP No.3870 of 2017

R.Gomathi

... Petitioner

Vs.

1.The Tahsildar,
Coimbatore (North),
Coimbatore.

2.S.Manimegalai

3.S.Manikandan

4.S.Manoranjan

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari, calling for the records pertaining to the impugned order passed by the first respondent in Na.Ka.No.4816/2016/E2, dated 30.12.2016 and to quash the same.



For Petitioner : Mr.V.Chandra Prabu
For Respondent-1 : Mr.T.Arunkumar,
Additional Government Pleader.
For Respondents-2 to 4 : Mr.N.Manokaran

ORDER

The patta and sub division granted by the first respondent in proceedings dated 30.12.2016 in favour of the respondents 2 to 4, is sought to be quashed in the present writ petition.

2. The petitioner states that she is the absolute owner of the property comprised in S.F. No.743, bearing Door No.7/44A, Kalapatti Village, Coimbatore Taluk and District and the husband of the second respondent was the tenant in the said house property.

3. The dispute aroused between the petitioner and the husband of the second respondent, who is the father of the respondents 3 and 4 and the parties were resorted to civil litigations and the Second Appeal No.782 of 2006 ended in favour of the respondents 2 to 4.



4. The SLP filed by the petitioner in SLP (Civil) No.8980 of 2016 was also dismissed by the Hon'ble Apex Court of India on 13.05.2016.

Thus the civil rights of the parties were crystallised through civil proceedings upto the Apex Court of India. Hence, there is no infirmity in respect of the patta and sub division granted by the Tahsildar in favour of the respondents 2 to 4.

5. The learned counsel for the petitioner mainly raised a ground that at the time of delivering the judgment in Second Appeal No.782 of 2016, the husband of the second respondent died and therefore, the judgment delivered against the dead person is null and void. In this connection, Order 22, Rule 6 of the Code of Civil Procedure stipulates that “no abatement by reason of death after hearing”.

6. The Code of Civil Procedure contemplates that “Notwithstanding anything contained in the foregoing rules, whether the cause of action survives or not, there shall be no abatement by reason of the death of either party between the conclusion of the hearing and the pronouncing of the judgment, but judgment may in such case be pronounced



notwithstanding the death and shall have the same force and effect as if it had been pronounced before the death took place.”

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7. As far as the Second Appeal between the parties are concerned, the hearing was completed during the lifetime of the husband and the second respondent and the death occurred after hearing and therefore, the contention raised on behalf of the petitioner that the judgment delivered in the Second Appeal becomes null and void is unacceptable.

8. The Apex Court in the case of **N.P. Thirugnanam vs. Dr.R. Jagan Mohan Rao [(1995) 5 SCC 115]**, wherein in paragraph-3, it has been held as under:-

“3. Rule 6 of Order 22 provides that:

“6. No abatement by reason of death after hearing.— Notwithstanding anything contained in the foregoing rules, whether the cause of action survives or not, there shall be no abatement by reason of the death of either party between the conclusion of the hearing and the pronouncing of



the judgment, but judgment may in such case be pronounced notwithstanding the death and shall have the same force and effect as if it had been pronounced before the death took place.”

In the face of the explicit language in Rule 6 of Order 22, there can be no abatement by reason of the death of any party between the conclusion of the hearing and the pronouncement of the judgment. It may be pronounced, notwithstanding the death, and shall have the same force and effect as if the judgment had been pronounced before the death took place. Therefore, the contention that the judgment and decree of the appellate court is a nullity is devoid of substance.”

9. Therefore, the Tahsildar issued the patta and sub division based on the civil rights, which were crystallised between the parties. Thus this Court do not find any infirmity or perversity in respect of the patta and sub division granted by the Tahsildar in favour of the respondents 2 to 4.



10. Accordingly the present writ petition is devoid of merits and it stands dismissed. However, there shall be no order as to costs. Consequently, the connected miscellaneous petition is also dismissed.

18-04-2023

Index : Yes/No
Internet: Yes/No
Speaking order/Non-Speaking order
Neutral Citation : Yes/No
Svn



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To

The Tahsildar,
Coimbatore (North),
Coimbatore.



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S.M.SUBRAMANIAM, J.

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