



1

W.P.(MD)NO.618 OF 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

WEB COPY

RESERVED ON : 03.03.2023

PRONOUNCED ON : 22.06.2023

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P.(MD)No.618 of 2022 AND
W.M.P.(MD)No.498 of 2022

S.Atchaya

... Petitioner

Vs.

1. The Commissioner / Principal Secretary,
O/o.Commissioner of Land Administration,
Ezhilagam, Chepauk,
Chennai.
2. The District Collector,
Theni District.
3. The District Revenue Officer,
Theni District.
4. The Sub Collector,
Periyakulam Division, Theni Taluk / District.
5. The Tahsildar,
Theni Taluk, Theni District.
6. V.T.Narayanasamy
7. Manimozhi
8. Packiashree
9. Balambika



10. Ramesh Babu

... Respondents

WEB COPY

Prayer: Writ petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records relates to the order of the third respondent, in Na.Ka.No.12276/2021/T1, dated 14.12.2021 confirming the order of the fourth respondent in Na.Ka.No.2987/2020/A1, dated 09.03.2021 and quash the same as it is arbitrary and illegal and in consequence to cancel the patta to the lands in S.No.1434/3, 1471/6(now 1471/6A & 6B), 1479/2 and 3, 1479/1A, 1B1 & 1B2, 55/1(now 55/1A & 1B) in Veerapandi Village in Theni Taluk and to restore the same in the name of its original owners, Rajarathinam and Thonthiraj till the partition is effected.

For Petitioner : Mr.R.Suriya Narayanan
For R-1 to R-5 : Mr.A.K.Manikkam,
Special Government Pleader.
For R-6 : Mr.M.Sricharan Rangarajan,
Senior counsel,
for Mr.C.Jeganathan.
For R-7 & R-8 : Mr.R.Murugan

* * *

ORDER

Heard both sides.

2. The petitioner challenges the order dated 14.12.2021 passed



by the District Revenue Officer, Theni, dismissing the revision petition filed by the petitioner.

3. The case of the petitioner is as follows:-

The petition mentioned lands belonged to her maternal grandfather Rajarathinam and his brother Thonthiraj. Rajarathinam died on 29.06.1999 leaving behind five children. One of them, namely, Kannan entered into partition with Thonthiraj on 19.04.2000 without involving his sisters. On that basis, he obtained patta in his name. Questioning the same, Kannan's sisters filed an appeal before the Sub Collector, Periyakulam Division. The appeal was dismissed. Thereafter, revision was filed before the District Revenue Officer, Theni who vide order dated 24.05.2005 held that the deed of partition is invalid. Thereupon, the Tahsildar, Theni Taluk cancelled the patta issued in the name of Kannan and restored the joint patta in the name of Rajarathinam and Thonthiraj. Kannan's appeal before the Commissioner of Land Administration was dismissed on 10.05.2006. Thereafter, Kannan obtained release from his sisters except Latha who was a spinster. Thereafter, Kannan sold the lands in favour of the sixth respondent V.T.Narayanasamy. Thereupon, Latha filed O.S.No.12 of 2017 on the file of the District Court, Theni seeking partition and other reliefs. On



03.11.2018, preliminary decree was passed. An injunction was granted.

Questioning the same, the sixth respondent filed A.S.No.74 of 2019.

During its pendency, Latha passed away. The case of the petitioner is that as early as on 31.01.2005, Latha had executed a registered Will in her favour. Subsequently, an unregistered Will was created in favour of the minor daughter of Kannan, namely Oviya and notwithstanding the injunction decree, sale deed was executed in favour of the sixth respondent. Upon coming to know the same, the petitioner filed O.S. No.61 of 2020 for declaration and O.P.No.54 of 2020. Both are pending.

4. The petitioner came to know that patta was mutated by the fifth respondent. Questioning the same, the petitioner filed an appeal before the fourth respondent. The appeal was dismissed on 09.03.2021. Challenging the same, the petitioner filed revision before the third respondent who also dismissed the same on 14.02.2021. Challenging the same, the present writ petition came to be filed.

5. The learned counsel appearing for the petitioner reiterated all the contentions set out in the affidavit filed in support of the writ petition and called upon this Court to set aside the impugned order and



grant relief as prayed for.

WEB COPY

6. The primary argument of the petitioner's counsel is that when the injunction decree is operating in favour of the petitioner and A.S.No.74 of 2019 is pending, mutation could not have been made. The learned counsel also submitted that pendency of O.S.No.61 of 2020 and O.P.No.54 of 2020 could not have operated as a bar for exercise of jurisdiction.

7. The learned Senior counsel for the contesting respondent submitted that the impugned order is sound and well reasoned and that interference is not warranted. The learned Special Government Pleader appearing for the official respondents also submitted that the impugned order does not call for interference.

8. I carefully considered the rival contentions and went through the materials on record.

9. The stand of the petitioner's counsel is anchored on the preliminary decree dated 03.11.2018 made in O.S.No.12 of 2017 in favour of Latha. The stand of the contesting respondent is that Latha executed a Will dated 19.11.2019 in favour of her niece Oviya, D/o.Late Kannan. The learned Senior counsel appearing for the contesting respondent would claim that through his Will, Latha had cancelled her



earlier Will dated 31.01.2005 executed in favour of the petitioner herein.

Latha passed away on 28.11.2019. The issue turn on whether the Will dated 31.01.2005 executed in favour of the petitioner is still holding good or it has been superceded by the subsequent Will dated 19.11.2019. The petitioner's counsel would contend that the subsequent Will projected by the contesting respondent is not genuine.

10. These are factual aspects. Neither the revenue Court nor the writ Court can go into this controversy. Admittedly, the petitioner has already initiated civil proceedings. The rights of the parties will abide by the outcome of the same. The revenue authorities were justified in holding their hands back. It is for the parties to establish their respective claims before the jurisdictional civil Court. Granting liberty to the petitioner to pursue her remedy in the pending civil proceedings, this writ petition stands disposed of. No costs. Consequently, connected miscellaneous petition is closed.

22.06.2023

Index : Yes / No

Internet : Yes/ No

PMU



To:

WEB COPY

1. The Commissioner / Principal Secretary,
O/o.Commissioner of Land Administration,
Ezhilagam, Chempauk,
Chennai.
2. The District Collector,
Theni District.
3. The District Revenue Officer,
Theni District.
4. The Sub Collector,
Periyakulam Division,
Theni Taluk / District.
5. The Tahsildar,
Theni Taluk,
Theni District.



WEB COPY



8

W.P.(MD)NO.618 OF 2022

G.R.SWAMINATHAN,J.

PMU

W.P.(MD)No.618 of 2022

22.06.2023