



W.P.(MD) No.4910 of 2020

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 05.04.2023

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THE HONOURABLE Ms.JUSTICE P.T.ASHA

W.P.(MD) No.4910 of 2020

V.Eswaran

... Petitioner

/vs./

- 1.The District Collector,
Theni,
Theni District.
- 2.The District Revenue Officer,
Theni,
Theni District.
- 3.The Revenue Divisional Officer,
Office of Revenue Divisional Office,
Tahsildar Nagar, Thamaraikulam,
Periyakulam,
Theni District.
- 4.The Tahsildar,
Office of the Tahsildar,
Ullavar Sandai Road,
Theni, Theni District.



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5.The Zonal Tahsildar,
Office of the Tahsildar,
Ullavar Sandai Road,
Theni, Theni District.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Mandamus, directing the 1st respondent to enquire into the petitioner complaint dated 30.12.2019.

For Petitioner : Mr.R.Senthilkumar
For Respondents : Mr.T.Amjadkhan
Government Advocate

ORDER

The petitioner has approached this Court for the issue of a Mandamus directing the first respondent to enquire the petitioner's complaint dated 30.12.2019.

2.It is the case of the petitioner that the properties, in respect of which the present proceedings have been initiated, belonged to one Veerathevar and Sivanammal. One S.Chinnathai had filed a suit O.S.No.71 of 1985 on the file of the Subordinate Court, Periyakulam, claiming partition of her share in the suit 'A' and 'B' schedule properties. The suit was filed against her mother and siblings.

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3.The petitioner would submit that Chinnathai is his mother-in-law's sister.

After an elaborate trial, the learned Sub Judge, Periyakulam, had decreed the suit stating that Chinnathai and the others were entitled to 1/6th share in the 'A' schedule property and dismissed the suit with reference to the 'B' schedule property stating that the 'B' schedule property was the self acquired property of the mother of the plaintiff and the defendants 2 to 6 in the suit. An appeal was preferred against the said judgment and decree by the fourth defendant therein in A.S.No.57 of 1993 before the Principal District Court, Madurai. A cross appeal was also filed by Chinnathai with reference to the disallowed portion. The appeal was dismissed and the cross appeal was allowed, thereby granting a partition with reference to both the 'A' and 'B' schedule properties. The cross appeal was allowed holding that the plaintiff and the defendants 2 to 6 were entitled to 1/6th share in the 'A' and 'B' schedule properties. The fourth defendant, Swaminathan, has preferred a second appeal before this Court in S.A.No.1773 of 1996 and when the second appeal was posted for final hearing, the appellant died leaving behind the respondents 1 and 2 as his legal heirs. Since no steps were taken to bring on record the legal heirs, the second appeal was dismissed as abated. Thereafter, proceeding for passing of final decree was initiated.



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4.It is the further case of the petitioner that one Chinnasamy, who was the third defendant and the maternal uncle of his wife, had executed a Will in respect of his 1/6th share in favour of the petitioner's wife, Malathi. Pending the final decree proceedings, Malathi, the wife of the petitioner herein, had died on 01.12.2015. It is the case of the petitioner that when he was cleaning the house after her demise, he discovered the Will executed by Chinnasamy in favour of Malathi. Therefore, he had filed an interlocutory application in I.A.No.152 of 2016 to mark the said Will. This application was allowed on 09.03.2016. In the light of the Will, it is the case of the petitioner that he had to be included as joint pattadhar and he had made an application to the fourth respondent. However, there has been no response to the same. Hence, the above writ petition.

5.When the matter was taken up today, the learned Government Advocate for the respondents has produced a proceeding of the fourth respondent dated 28.02.2019 to show that the request for grant of patta has been rejected on 28.02.2019, against which an appeal has been filed by the petitioner on 18.03.2019 even before the filing of this writ petition. This fact has been suppressed by the petitioner.



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6.In the said order, it has been clearly stated that the final decree proceedings were yet to attain finality and without the final decree, especially when there was serious contest to the Will, the fourth respondent was not in a position to grant patta and stating so, the request has been rejected. No exception can be taken to this order. This order has not been quoted by the petitioner.

7.Therefore, the Writ Petition is dismissed. However, there shall be no order as to costs.

Speaking : Yes / No
NCC : Yes / No
Internet : Yes / No
Index : Yes / No

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P.T.ASHA, J.

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