



WP (MD) No. 9339 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 28.08.2023

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CORAM:

THE HONOURABLE MR. JUSTICE B. PUGALENDHI

WP (MD) No. 9339 of 2023

Varshasri

...Petitioner

Vs.

1. The Director,
Directorate of Town and
Country Planning Department,
Virudhunagar District.

2. The Joint Sub Registrar No. 2,
Virudhunagar District.

3. The District Registrar,
Virudhunagar District.

4. C. Vishnupriya

5. N. Jeyabalan

6. Kanagajayanthi

7. C. Rajagopal

8. R. Shanmugarajan

9. Kamaraj

10. P. Saravanakumar

...Respondents

PRAYER: Writ Petition filed under Article 226 of the
Constitution of India, to issue a writ of



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certiorarified mandamus to call for the records
relating to the proceedings of the impugned order in
ROC.No.449/2023/VRN/2022/TCP dated 08.03.2023 on the
file of the 1st respondent and to quash the same and
consequently directing the 3rd respondent to cancel
the registration of the document viz., settlement
deed dated 06.04.2023 executed by the respondent No.4
to 10 in favour of the government of Tamil Nadu and
registered as document No.2441 of 2023 in the the
office of the 2nd respondent.

For Petitioner : Mr.G.Prabhu Rajadurai
For Respondent : Mr.PT.Thiraviyam,
Nos.1 to 3 Government Advocate
For Respondent : Mr.K.Chellapandian,
Nos.4 to 10 Senior Counsel,
assisted by
Mr.VR.Shanmuganathan

ORDER

The petitioner, daughter of one late
VKS.Ganesan, has filed this writ petition as against
the orders of the 1st respondent in
ROC.No.449/2023/VRN/2022/TCP, dated 08.03.2023 that
the layout of the subject land, which was approved by
the 1st respondent is her ancestral property and as a
co-parcener she is having share in the property.



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She has also filed a suit for partition in OS.No.24

of 2013 through her mother natural guardian, before the Principal District Court, Virudhunagar. Pending the partition suit, some documents have been created by her father on her behalf also and therefore, it is not binding on her and if the property is allowed to be sold based on this layout, further encumbrances would be made in the property. The partition suit will be further delayed and ultimately her right will be affected.

2.The brief background of this case is as follows:

(i)The suit property in S.Nos.5/2, 6/2, 7/1 and 15/1 having an extent of 23.67 hectares in Kullour Santhai Village in Virudhunagar District belongs to the petitioner's grandfather one late VK.Srinivasan. The petitioner's grandfather died in the year 2012 and her father died in the year 2015. VK.Srinivasan was having two wives, viz., the petitioner's grandmother one Perammal and another wife by name Radha



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Lakshmi. The petitioner's father was an alcoholic and he was taken control over by some elements in order to grab the properties and he was also murdered. The petitioner and her mother were living separately. On behalf of the petitioner, her mother has filed a suit for partition as against VKS.Ganesan before the Principal District Court, Virudhunagar in OS.No.24 of 2013. Pending the suit for partition VKS.Ganesan has sold the suit properties in favour of the 5th respondent N.Jeyabalan by registered document dated 31.05.2023. Thereafter, the very same properties were also purchased by the respondents 4 to 10 through sale deed dated 29.03.2019 from Radhalakshmi/ the 2nd wife.

(ii)The partition suit filed in the year 2018 has been re-numbered as OS.No.21 of 2018 on the file of the Additional District Court, Virudhunagar and the same is also ripe for trial. In the meantime, the respondents 4 to 10 have applied before the 1st respondent / the Director of Town and Country Planning and obtained an order for settling a portion



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of land in favour of local bodies for the approval

for layout in the above mentioned properties.

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The petitioner is residing in abroad and therefore, she has filed her objection through her mother natural guardian before the 1st respondent. The 1st respondent without considering her objections had proceeded by approving the layout and permitted respondents 4 to 10 to execute a gift deed in favour of the local bodies.

3.The learned Counsel for the petitioner submits that pending the partition suit, the 5th respondent purchased the subject property and the property has been sold on behalf of the petitioner by the said VKS.Ganesan vide sale deeds dated 30.05.2013. This property is the petitioner's ancestral property and as a co-parcener, the petitioner is having share in the property and she is also claiming her share through her mother and natural guardian before the competent civil Court. After the sale vide documents dated 30.05.2013, the very same properties were purchased by the respondents 4 to 10 from



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Radhalakshmi, the 2nd wife of the the petitioner's grand father VK.Srinivasan vide sale deeds dated 29.03.2019. The said Radhalakshmi is not having any right over the properties of VK.Srinivasan. However, documents have been registered in the year 2019 to create further encumbrances. If respondents 4 to 10 are allowed to execute the settlement deed and to proceed with the layout, then they would create documents and further encumbrances in her property and the suit may also be delayed by the purchasers by filing impleading petitions.

4.The learned Counsel appearing for the respondents 4 to 10 submits that based on the Will dated 13.08.1998 executed by VK.Srinivasan, in favour of his son VKS.Ganesan, the 5th respondent has purchased the above property by registered sale deed dated 30.05.2013. In the suit filed by one Vignesh as against VK.Srinivasan and VKS.Ganesan, the learned Sub Judge, Srivilliputhur in IA.Nos.552 to 554 of 2012 in OS.No.71 of 2011 by order dated 31.07.2014 held that VKS.Ganesan is not a legal heir of



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Court in CRP(MD)No.130 to 133 of 2017 and therefore,
according to the learned Counsel, the petitioner is
not having any right to claim share in the subject
properties and the competent civil court has declared
that VKS.Ganesan is not the legal heir of
VK.Srinivasan and based on her objections, the 1st
respondent cannot be prevented from proceeding
further based on the documents registered in the year
2013 and 2019.

6.This Court considered the rival submissions
and perused the materials placed on record.

7.The respondents 4 to 10 claim title over the
property based on the documents registered in the
year 2013 and 2019. The subject properties were
originally purchased by the 5th respondent from
VKS.Ganesan based on a will dated 13.08.1998. After
the orders in IA.No.552 to 554 of 2012, dated
31.07.2014, the properties were purchased once again
from Radhalakshmi, wife of VK.Srinivasan. Admittedly
the subject properties are ancestral properties of



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VK.Srinivasan. The learned Sub Judge, Srivilliputhur

in IA.Nos.552 to 554 of 2012 dated 31.07.2014 has

held that VKS.Ganesan is not the legal heir of

VK.Srinivasan and one Rahdalakshmi, was the only

legal heir of VK.Srinivasan. This order dated

31.07.2014 passed in IA.Nos.552 to 554 of 2012

was also confirmed by this Court in CRP(MD)Nos.130 to

133 of 2017.

8.The learned Counsel appearing for the petitioner has also relied on the decree passed by the learned District Munsif, Aruppukottai in OS.No.96 of 2012, dated 20.07.2012, which was a suit for declaration filed by VKS.Ganesan as against his father VK.Srinivasan and the said Radhalakshmi, wherein the Court has declared that the plaintiff VK.Ganesan, is the legal heir of the 1st defendant Seeni Naikcer @ VK.Srinivasan through his wife Perammal.

9.A suit was filed by Radhalakshmi and VKS.Ganesan as against one Veluchamy and two others



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before the District Munsif Court, Aruppukottai in
OS.No.15 of 2013 and in that suit Radhalakshmi has
sworn that she is the 2nd wife of the VK.Srinivasan
and Perammal is the 1st wife of VK.Srinivasan.
Perammal died in the year 2009.

10.A similar stand was taken by Radhalakshmi in
her written statement in OS.No.150 of 2012 filed by
Veluchamy as against Radhalakshmi before the
Sub Court, Aruppukottai where she confirmed herself
to be the second wife and VKS.Ganesan as the son of
VK.Srinivasan. Further, in OS.No.71 of 2011 before
the Sub Court, Srivilliputhur, the said Radhalakshmi
deposed as PW3 that she is the 2nd wife of
VK.Srinivasan and she is not having any children and
her husband VK.Srinivasan @ Seeni Naicker has
obtained these properties through one Thayammal and
one Sundaraja Naicker and has also executed a Will in
favour of VKS.Ganesan.



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11.On the other hand in IA.Nos.552 to 554 of

2012, vide order dated 31.07.2014, the Sub Judge, Srivilliputhur has given a finding that VKS.Ganesan is not the legal heir of VK.Srinivasan and also held that Radhalakshmi is the legal heir of VK.Srinivasan. This order has been confirmed by this Court in CRP(MD)Nos.130 to 133 of 2017. However, the findings in IA.Nos.552 to 554 of 2012 is contrary to the evidence of Radhalakshmi in OS.No.71 of 2011.

12. The learned Counsel for the petitioner relied on the judgement of the Hon'ble Supreme Court in **Varadarajan v. Kanakavalli** reported in [2020 (11) SCC 598] wherein it was held that a decision under Order 22 Rule 5 of Civil Procedure Code would not act as *res judicata* in a subsequent suit between the same parties or persons claiming through them. Similarly the decision in IA.Nos.552 to 554 of 2012 cannot be held to be binding on subsequent suits.

13.The fact remains that the petitioner has also filed a suit for partition as against her father



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VKS.Ganesan in the year 2013 and the same is ripe for

trial. Considering the fact that the suit filed by the petitioner for partition is lying without any progress, in view of the encumbrances already made, this court is inclined to grant the relief to the petitioner as if any further encumbrance is made, it would delay the suit for partition.

14.In view of the same, this Court disposes of this writ petition with the following directions:

(i)The Additional District Court, Virudhunagar shall dispose of the suit in OS.No.21 of 2018 as expeditiously as possible preferably within a period of six months from the date of receipt of a copy of this order. The learned Counsel appearing for the petitioner and the respondents 4 to 10 undertakes before this Court that they will extend their fullest co-operation for the early disposal of the suit.

(ii) As discussed above, there is a cloud in the title of the property and therefore,



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the 1st respondent shall not proceed further with the

layout approval till the outcome of the suit in

OS.No.21 of 2018. No costs.

28.08.2023

dsk

To

- 1.The Director,
Directorate of Town and
Country Planning Department,
Virudhunagar District.
- 2.The Joint Sub Registrar No.2,
Virudhunagar District.
- 3.The District Registrar,
Virudhunagar District.
- 4.The Additional District Judge,
Virudhunagar.



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B. PUGALENDHI, J.

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ORDER MADE IN
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