BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 16.06.2023

CORAM:

THE HONOURABLE MS.JUSTICE P.T.ASHA

W.P.(MD) No.11118 of 2020
and
W.M.P.(MD) Nos.9734, 9736 and 9737 of 2020

Krishnamurthy .. Petitioner

Vs.

1.The District Revenue Officer,
Tirunelveli, Tirunelveli District.

2.The Revenue Divisional Officer,
Tirunelveli, Tirunelveli District.

3.The Tahsildar,
Palayamcottai,
Tirunelveli District.

4.Jeybakumar Paramanandan Jacob .. Respondents

Prayer :- Petition filed under Article 226 of the Constitution of India, praying for issuance of Writ of Certiorarified Mandamus calling for the records relating to the ex-parte impugned order of the first respondent in Na.Ka.AA2/R.P No.3/14 dated 14.10.2014 and the consequential impugned order of the first respondent in O.Mu.AA2/49828/2019 dated

24.01.2020 quash the same and consequently direct the first respondent herein to restore the Patta No.1958 for Survey No.633/2B conduct proper enquiry in the matter.

For Petitioner	:	Mr.K.Muthu Ganesa Pandian
For RR1 to 3	:	Mr.T.Amjadkhan Government Advocate
For R4	:	Mr.R.Rajamohan

ORDER

The above writ petition is filed challenging the dismissal of the review petition filed by the petitioner before the first respondent on the ground that no second review petition would lie.

2. The facts briefly set out are as follows:

The petitioner would submit that he had purchased 32 cents of land in S.No.633/2B of Kulavanigarpuram Village, Melapalayam, Palayamcottai, Tirunelveli, under a registered sale deed dated 12.10.2004. This sale deed came to be executed pursuant to a decree for specific performance that the petitioner had obtained against his vendor Tmt.Saratha in O.S.No.242 of 1997. Pursuant to the decree and sale deed in his favour, the revenue records were also mutated in the name of the petitioner for the southern portion of S.No.633/2. The property purchased by the petitioner was subdivided as S.No.633/2B. The petitioner would submit that he has also been put in possession of the property and had thereafter, appointed a Power of Attorney to take care of the property. The petitioner would state that the suit property is a portion of a larger extent of land measuring 64 cents which had been jointly purchased by the petitioner's vendor and her sister Mary Margaret Susilabai. It appears that the fourth respondent, who is none else than the son of Mary Margaret Susilabai, had filed a revision petition before the first respondent stating that there was a dispute between his mother and the vendor of the petitioner with reference to the entire extent of 64 cents resulting in the filing of a suit in O.S.No.489 of 2002, which was latter compromised between the parties.

3. It is his case that a partition was entered into between the petitioner's vendor and the fourth respondent's mother, wherein the northern side was allotted to the petitioner's vendor and the southern side fell to the share of the fourth respondent's mother and despite the

compromise, the said Saratha has executed a sale deed with reference to the southern portion which under the partition was allotted to the fourth respondent's mother. The petitioner would submit that he has not received any notice in the said revision and an *ex parte* order appears to have been obtained against the petitioner. The petitioner had come to know about the same only when persons tried to enter his property and on enquiry, he came to know about the *ex parte* order. Therefore, he had filed a review petition before the first respondent himself seeking to review the *ex parte* order. However, the first respondent has treated the said petition as a revision petition and dismissed it saying that a second revision would not lie.

4. A counter affidavit has been filed by the first respondent submitting that under the compromise, the southern portion was allotted to the share of the fourth respondent's mother and not the petitioner's vendor and further, the sale deed in the suit for specific performance had been executed only by the Court and not by Saratha and therefore, the order impugned cannot be found fault with.

5. The learned counsels more or less rested their arguments on the pleading set out by them.

6. The entire basis on which the first respondent has cancelled the patta in the name of the petitioner is that there has been a partition between the petitioner's vendor and the fourth respondent's mother. However, this partition deed is an unregistered one. Further, the execution proceedings filed by the petitioner against his vendor Saratha would show that physical possession has been handed over through Court to the petitioner. The original order of the District Revenue Officer dated 14.10.2014 had been passed without notice to the petitioner herein. The order would clearly show that the petitioner herein, who was the respondent before the first respondent has not appeared before the the first respondent and all the notices have only been sent by ordinary post and nothing has been produced to show service of notices on the petitioner.

7. Considering the fact that an *ex parte* order has been passed without taking note of the various legal documents that stand in the name of the petitioner including judicial proceedings, the order dated 14.10.2014 passed by the District Revenue Officer, Tirunelveli, has to necessarily be set aside.

8. The order dated 24.01.2020 would demonstrate the absolute non-application of mind on the part of the first respondent. What has been filed is an application to review the earlier order. The said petition has been dismissed by the first respondent on the ground that it is a second revision. Therefore, the order dated 24.01.2020 is set aside and taking into consideration the fact that the original order dated 14.10.2014 of the first respondent is an *ex parte* order passed without hearing the petitioner, the same is also set aside and the matter is remitted back to the first respondent for fresh consideration of the petition filed by the fourth respondent, after affording a personal hearing to all parties concerned and pass orders thereafter.

9. In the result, this Writ Petition is allowed. No costs. Consequently, connected miscellaneous petitions are closed.

16.06.2023

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

abr

To

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P.T.ASHA, J.

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