



W.P.(MD).No.13002 of 2020

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 20.07.2023

CORAM

THE HONOURABLE MRS.JUSTICE S.SRIMATHY

**W.P.(MD).No.13002 of 2020
and
W.M.P.(MD).No.10948 of 2020**

- 1.S.Gnanaselvam
- 2.M.G.Arul Arasu
- 3.M.G.Austin Arasu
- 4.M.G.Helin Arasi
- 5.M.G.Edhazhsan Arasu
- 6.M.G.Edilson Arasu
- 7.G.Meetpin Arasi
- 8.M.G.Uivick Arasu

... Petitioners

Vs.

- 1.The District Collector,
Nagercoil,
Kanyakumari District.
- 2.The District Revenue Officer,
Kanyakumari District,
Nagercoil.



W.P.(MD).No.13002 of 2020

3.The Sub Collector,
Padmanabapuram,
Kanyakumari District.

4.The Tahsildar,
Padmanabapuram,
Kanyakumari District.

5.G.Selvaraj

... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, to call for the records relating to the impugned order dated 08.11.2018 in Na.Ka.M.4/23730/2016 passed by the second respondent and quash the same.

For Petitioners : Mr.S.Suresh Kumar

For R-1 to R-4 : Mr.C.Baskaran,
Government Advocate.

ORDER

This Writ Petition is filed to quash the order dated 08.11.2018 passed by the second respondent.

2. The petitioners and the fifth respondent are relatives. Originally, the land in Survey No.579/7A to an extent of 10 ½ cents situated in Nullivilai Village of Kalkulam Taluk, Kanyakumari District, belongs to the petitioners deceased grandfather namely, Maria Gnanaprakasam. The said Maria



W.P.(MD).No.13002 of 2020

Gnanaprakasam has two sons, namely, M.G.Mariadasan and G.Selvaraj / 5th respondent. The petitioners herein are wife, sons and daughters of the deceased Mariadasan (1st petitioner's husband and 2 to 8 respondents' father). The contention of the petitioners is that the grandfather was the absolute owner of the property in the aforesaid survey number. After the death of grandfather Maria Gnanaprakasam, the property devolved around the deceased M.G.Mariadasan and G.Selvaraj. The 5th respondent without any notice to the said deceased Mariadasan preferred a petition before the Tahsildar and obtained patta. Aggrieved over the same, the said Mariadasan had preferred an appeal before the Revenue Divisional Officer and the same was confirmed. Aggrieved over, the deceased Mariadasan preferred an revision before District Revenue Officer. Pending revision, the said Mariadasan died and the legal heirs are impleaded and they were contesting the case.

3. The claim of the 5th respondent is that the property was bequeathed to him through a Will dated 06.12.1995. After the demise of Maria Gnanaprakasam, the Will has come into force and hence, he is claiming right over the property. The contention of the learned counsel appearing for the petitioners is that the Will was not probated and hence the revenue officials cannot rely on the Will and grant patta.



W.P.(MD).No.13002 of 2020

WEB COPY

4. This Court is of the considered opinion that the contention of the petitioner is absolutely right. Without probating, the revenue authorities have accepted the Will, which is against the settled legal proposition. The Revenue Authorities has no jurisdiction to probate the Will. If they are allowed to do so, then it would amount to allowing the revenue authorities to function as Civil Court, which cannot be entertained.

5. The 5th respondent ought to have approached the Civil Court and after probation of Will, the 5th respondent ought to have claimed right over the property. Without doing so, he has approached the revenue authorities to change the patta, which is illegal. Therefore, the impugned order is quashed. The first respondent is directed to restore the patta in name of the grandfather namely, Maria Gnanaprakasam and the said exercise shall be completed within a period of four (4) weeks from the date of receipt of a copy of this order. The 5th respondent may file a suit, if so advised. The petitioners are also at liberty to file suit for partition, if so advised. After the outcome of the suit, the parties right shall be determined.



W.P.(MD).No.13002 of 2020

WEB COPY

6. In view of the above, this Writ Petition is allowed. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

20.07.2023

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

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W.P.(MD).No.13002 of 2020

S.SRIMATHY, J.

Nsr

W.P.(MD).No.13002 of 2020

20.07.2023