



WP(MD)No.12570 of 2020

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : **09.10.2023**

CORAM

THE HONOURABLE **MR.JUSTICE N.ANAND VENKATESH**

W.P.(MD)No.12570 of 2020

and

W.M.P.(MD)No.10734 of 2020

R.Sathish Kumar

...Petitioner

/Vs./

1.The District Revenue Officer,
Virudhunagar District, Virudhunagar.

2.The Revenue Divisional Officer,
Sivakasi Revenue Division,
Virudhunagar District.

3.The Tahsildar,
Sivakasi Taluk,
Sivakasi,
Virudhunagar District.

4.S.N.Govindharajulu

...Respondents

PRAYER:- Petition - filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus calling for the records pertaining to the order dated 26.02.2020 in Ne.Mu.No.A2/22952/2018 on the file of the District Revenue Officer, Virudhunagar confirming the order dated 19.06.2018 made in Mu.Mu.No.A1/2465/2017 preferred against the patta transfer order dt 19.09.2016 made in T.R.No.2016/26/04/000018SD on the file of the Tahsildar,



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Sivakasi and quash the same and restore the entries in respect of survey no.491, Subramaniyapuram village, Sivakasi Taluk, Virudhunagar District.

For Petitioner : Mr.A.V.Arun

For Respondents : Ms.D.Farjana Ghoushia (R1 to R3)

Special Government Pleader

ORDER

This writ petition has been filed challenging the impugned proceedings of the first respondent dated 26.02.2020, confirming the order passed by the third respondent through proceedings dated 19.09.2016 and for a consequential direction to the official respondents to restore the entries with respect to the subject property in S.No.491, Subramaniyapuram village, Sivakasi Taluk, Virudhunagar District.

2. Heard Mr.A.V.Arun, learned counsel for the petitioner and Ms.D.Farjana Ghoushia, learned Special Government Pleader for the official respondents.

3. The case of the petitioner is that the subject property totally measures an extent of 4 acres 68 cents and it belonged to one Seenivasa Naicker. The



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said Seenivasa Naicker had three sons, namely, Ramasamy, Perumalsamy and Alagarsamy Naicker. The further case of the petitioner is that the said Seenivasa Naicker along with three sons entered into an oral partition and they divided the shares among each other and this was also subsequently reduced to writing on 20.02.1984. A memorandum to that effect was also executed by the concerned parties. The same was prepared in triplicate and each owner had retained one original memorandum with them.

4. It is stated that on the basis of the partition that was entered into, the property was also allotted to each sharer. The grievance of the petitioner is that two brothers had sold their shares in the property by virtue of the sale deeds dated 07.04.2005 and 21.09.2006. While selling their shares, it was portrayed as if they each are selling 1/3rd undivided share in the subject property. The father of the petitioner executed a settlement deed in favour of the petitioner and settled his share in the property through settlement deed dated 19.08.2011.

5. The grievance of the petitioner is that the shares that were purchased from the brothers by the fourth respondent were shown as if undivided 2/3rd shares were purchased. The patta was also standing in the joint names of the owners. The fourth respondent seems to have submitted an application before



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the third respondent and based on the same, the third respondent had effected subdivision of the property by subdividing the property as S.No.491/1 and S.No.491/2 and pursuant to the same, a separate patta was issued in favour of the fourth respondent with respect to S.No.491/2. According to the petitioner, the fourth respondent, by taking advantage of this patta, is taking hasty steps to encroach upon the portion of the property that was allotted in favour of the petitioner under the oral partition.

6. The petitioner filed an appeal before the second respondent and the second respondent did not act upon on the appeal and aggrieved by the same, the petitioner filed a revision before the first respondent. The first respondent through impugned proceedings dated 26.02.2020 refused to interfere with the order passed by the Tahsildar on the ground that there is a pending suit in O.S.No.46 of 2017 before the District Munsif Court, Sivakasi. Aggrieved by the same, the present writ petition has been filed.

7. The main grievance that was expressed by the learned counsel for the petitioner is that there was an oral partition between the brothers and their father in the year 1984 and the same was also reduced to writing and a memorandum was entered into, which were signed by all the parties. As per this



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memorandum, the petitioner was allotted to eastern portion of the property.

According to the petitioner, this oral partition was concealed by both the brothers and they have sold their shares in the property in favour of the fourth respondent as if the property remains undivided. Taking advantage of the same, the fourth respondent has approached the third respondent and the third respondent without issuing notice to the petitioner, had subdivided the property as S.No.491/1 and 491/2 and as per this subdivision, the fourth respondent has been given a separate patta for subdivision S.No.491/2 and the petitioner has now been allotted the southern side of the property in subdivided S.No.491/1. This seems to be the main grievance expressed by the petitioner and the petitioner has taken a very specific stand that the third respondent undertook this exercise without putting the petitioner on notice.

8. The petitioner apprehended that the portion that was allotted to him under oral partition was forcibly sought to be taken over by the fourth respondent. Hence, the petitioner wanted to safeguard his right over the property and accordingly, the petitioner filed a suit in O.S.No.46 of 2017 before the District Munsif Court, Sivakasi.



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9. On carefully going through the plaint, it is seen that whatever has been stated supra has been clearly recited and the cause of action has been traced to the sale deeds that were executed by the brothers in favour of the fourth respondent and the subsequent attempt that was made by the fourth respondent to dispossess the petitioner from his portion of the property, which was allotted to the petitioner under the oral partition. The petitioner has sought for the relief of declaration and for permanent injunction. In the suit, the brothers of the petitioner's father and also the subsequent purchaser namely viz., fourth respondent have been added as parties.

10. The suit will substantially determine the right of the petitioner under the oral partition that was entered into in the year 1984 and which was also reduced to writing by way of a memorandum. In view of the same, the subdivision order that was passed by the Thasildar, will be subject to the final result in the suit. It will not have any bearing in the suit that has been filed by the petitioner. This fact was taken into consideration by the first respondent, while considering the revision that was filed by the petitioner against the subdivision order passed by the third respondent and the patta that was issued in favour of the fourth respondent pursuant to the same.



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11. If there is any threat of dispossession for the petitioner with respect to the portion of the property that was allotted under the oral partition, the same has to be properly redressed only before the concerned Court where the suit is pending. That apart, at the risk of repetition, it is made clear that the proceedings of the Tahsildar dated 19.09.2016 subdividing the property and granting a separate patta in favour of the fourth respondent, will not have any bearing in the pending suit and the same will be subject to the final result in the suit.

12. The trial Court will not give any weightage to the proceedings of the Tahsildar and the *interse* rights between the parties will be decided independently on its own merits and in accordance with law after appreciation of evidence. This clarity will sufficiently take care of the grievance expressed by the petitioner. Ultimately, based on the final decision in the suit, the proceedings of the revenue authorities will have to be tested.

13. If the petitioner succeeds before the civil Court, the proceedings of the Tahsildar will automatically become unenforceable and the petitioner will always be entitled to apply for an independent patta in his favour based on the civil Court decree. If on the other hand, the petitioner fails in the civil suit, the



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proceedings of the revenue authority will stand confirmed. Hence, this Court need not go into the proceedings of the revenue authorities for the present and it is left to the final decision that will be taken by the competent civil Court in the pending suit.

14. In the light of the above discussion, this writ petition is disposed of. There shall be a direction to the learned District Munsif Court, Sivakasi, to dispose of the suit in O.S.No.46 of 2017 within a period of three months from the date of receipt of a copy of this order. No costs. Consequently, connected Miscellaneous Petition is closed.

09.10.2023

NCC : Yes/No
Internet :Yes/No
Index :Yes/No
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N.ANAND VENKATESH, J.

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