



W.P(MD)No.219 of 2015

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 11.09.2023

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P(MD)No.219 of 2015

and

M.P.(MD)No.2 of 2015

1.P.K.S.M.Kattubava Mohideen

2.P.K.S.Mohammed Sultan Mohideen

... Petitioners

Vs.

1.The District Collector,
Tirunelveli.

2.W.Jenkins Fernando

3.Agnes Mary

4.Joseph Xavier Jeyanth

5.Joseph Wilfred Amrit
(R3 to R5 are *suo motu* impleaded
vide order dated 21.08.2023)

... 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 of the 1st respondent in Na.Ka.Aa2. Chi.Ma.No.4/14 dated 14.10.14 and quash the same and consequently direct the 1st respondent to decide the revision on merits and pass such other and further orders.



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For Petitioners : Mr.H.Arumugam
For Respondents : Mr.D.Gandhiraj
Special Government Pleader for R1
: Mr.K.Prabhu for R2
: Mr.K.Jeganathan for R3 to R5

ORDER

Heard both sides.

2. The question that arises for consideration in this writ petition is whose names should be found in the revenue record in respect of Survey Nos.334 & 336, Krishnapuram Village, Palayamkottai Taluk. The petitioners are Kattubava Mohideen and Mohammed Sultan Mohideen. They purchased the petition mentioned properties vide sale deed dated 02.12.1988 executed by one Vadivammal and 8 others. The case of the petitioners is that the said Vadivammal in turn had purchased the property from one Sudalaiammal vide sale deed dated 06.04.1945. The said Sudalaiammal had in turn purchased the property from Sudalai Kannu Thevar and Vellai Kannu Thevar vide document No.961 of 1920 dated 13.05.1920. It is seen that only $\frac{2}{3}$ rd share of $\frac{1}{2}$ share was conveyed in favour of Sudalaiammal. The petitioners would contend that one Subbammal and 7 others were holding the remaining shares and they had executed power of attorney in favour of Vadivammal on 12.10.1988. Thus on 02.12.1988, when Vadivammal sold the property in favour of the petitioners



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herein, she had 2/3rd share of 1/2 share in individual capacity and she was competent to sell the remaining share by virtue of the power of attorney dated 12.10.1988 executed by Subbammal and 7 others. Since one Perumal had also dealt with the same property by executing the gift deed dated 22.12.1975 in favour of his son Athiveeran who had subsequently sold the property in favour of one P.K.Raju and P.K.Sankaran on 30.12.1975, Vadivammal obtained release deed from the said Athiveeran, Raju and Sankaran on 21.10.1988. Thus, according to the petitioners herein, Vadivammal was fully competent to sell the property. While so, one Kodiarasan managed to get his name entered as pattadhar. Kodiarasan subsequently sold the property in favour of Jenkins Fernando. This development had taken place behind the back of the petitioners herein. When the petitioners became aware of the same, they appealed to the jurisdictional Tahsildar for cancellation of the patta issued in favour of Kodiarasan. The Tahsildar negatived the application. Questioning the same, the petitioners went before the jurisdictional Revenue Divisional Officer who accepted their appeal. Aggrieved by the same, Jenkins Fernando went before the District Revenue Officer, Tirunelveli who restored the revenue record in favour of Jenkins Fernando. Challenging the same, the present writ petition came to be filed. During the pendency of the writ petition, Jenkins Fernando passed away and his legal heirs have come on record.



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3. The learned counsel appearing for the petitioners reiterated all the contentions set out in the affidavit filed in support of the writ petition. He called upon this Court to set aside the impugned order and grant relief as prayed for.

4. The learned Special Government Pleader appearing for District Revenue Officer, Tirunelveli as well as the learned counsel for the private respondents would contend that the impugned order is well founded and that it does not call for interference. They pressed for dismissal of the writ petition.

5. I carefully considered the rival contentions and went through the materials on record. SLR as well as 'A register' in respect of Survey Nos.334 & 336 originally reflected the names of one Murugan and 6 others. I do not find the name of Vadivammal. But the patta issued in the year 1987 reflected the names of as many as 10 persons. It contains the names of Murugan and 6 others and also the names of the second petitioner herein namely Mohammed Sultan Mohideen and Raju and Sankaran. The said Raju and Sankaran are none other than the purchasers of the petition mentioned land from Athiveeran who was already referred to. The said Athiveeran after selling the property in



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favour of Raju and Sankaran on 30.12.1975 unilaterally cancelled the same on 02.01.1976. As rightly pointed out by the learned counsel appearing for the private respondents, such unilateral cancellation cannot be recognized. Be that as it may, the petitioner's case is that the said Athiveeran, P.K.Raju and P.K.Sankaran jointly released their interest in the petition mentioned land in favour of Vadivammal on 21.10.1988. But the genuineness of the document of release is seriously questioned by the private respondents herein. It is not possible for the writ court to go into the said controversy at this point of time. The fact remains that Kodiarasan purchased the property on 24.01.2005 from Adivveeran, P.K.Raju and P.K.Sankaran. Mutation was made in favour of Kodiarasan in the same year. There is nothing on record to show that before effecting mutation in the name of kodiarasan, the other incumbent pattadhars were put on notice. Jenkins Fernando appears to be a bonafide purchaser. Since patta reflected the name of Kodiarasan, he had purchased the property of Kodiarasan on 21.03.2007 through a registered sale deed.

6. A mere look at the factual aspects mentioned above would indicate that mutation made exclusively in favour of Kodiarasan appears to be in clear breach of the principles of natural justice. Jenkins Fernando traces his title ultimately through P.K.Raju and Sankaran. Their names are found in the revenue record. Therefore, while the parties may have to eventually fight out



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their case before the jurisdictional civil Court, the revenue record should reflect

the names of not only the petitioners herein but also that of the legal heirs of Jenkins Fernando. The patta in respect of the petition mentioned properties shall reflect the names of the petitioners herein and also that of R3 to R5. Who has title over what extent etc., will have to be decided only by the jurisdictional civil Court. The impugned order is modified accordingly. The Writ Petition is partly allowed. No costs. Consequently, connected miscellaneous petition is closed.

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Index : Yes / No
Internet : Yes/ No
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To

The District Collector,
Tirunelveli.



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G.R.SWAMINATHAN, J.

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