BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 09.08.2023

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P(MD)No.9115 of 2015
and
M.P.(MD)Nos.1, 2& 3 of 2015

A.Raju ... Petitioner

Vs.

1.The Revenue Divisional Officer,
Palani,
Dindigul District.

2.The Tahsildar,
Palani Taluk,
Dindigul District.

3.V.Muthathal ... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari, to call for the records relating to the order dated 29.05.2015 passed by the first respondent in her proceedings in Na. 523/15/A1 and quash the same as illegal.

For Petitioner : Mr.T.Lenin Kumar

For Respondents : Mr.D.Gandhiraj
Special Government Pleader for R1 & R2
: Mr.G.Prabhurajadurai for R3

ORDER

Heard both sides.

2. The question that calls for consideration is whether the Revenue Divisional Officer, Palani was justified in allowing the appeal filed by the third respondent and cancelling the mutation made in favour of the petitioner in the revenue record.

3. The basic facts are not in dispute. The petition mentioned property belonged to the family of one Periya Subba Naidu. The land owners namely Periya Subba Naidu, Bagawathysamy and minor Krishnasamy executed a power of attorney dated 15.03.1983 in favour of one Mariappan. The power of attorney was registered. Based on the said power of attorney, Mariappan sold the property in favour of Vellaisamy Thevar on 21.09.1994. While so, the said Peria Subba Naidu, Bagawathysamy and one Bangaruvel executed power of attorney in favour of Sarguru on 23.12.2008. The said Sarguru in his capacity as power agent executed two deeds of sale dated

02.08.2012 conveying the very same property in favour of the petitioner. The petitioner applied to the jurisdictional Tahsildar and got his name entered in the revenue record. Vellaisamy Thevar passed away in the year 2010. Thereafter, his wife Muthathal came to know about the mutation. She thereupon filed the aforesaid appeal which was also allowed by the Revenue Divisional Officer, Palani.

4. The stand of the petitioner is that the Revenue Divisional Officer, Palani cannot go into the disputed question of title. He relied on the decision of the Hon'ble Division Bench reported in ***2011 (5) CTC 94 (Vishwas Footwear Company Ltd., Vs. The District Collector)***. According to him, the third respondent should be relegated to move the jurisdictional Civil Court for relief. He pointed out that even though the third respondent would claim that her husband purchased the property way back in the year 1994, steps were not taken for effecting mutation. For 20 years, the third respondent had kept quiet. He also would question the very genuineness of the sale deed standing the name of Vellaichamy Thevar husband of the third respondent. He called upon this Court to set aside the impugned order and allow the writ petition as prayed for.

5. I am not persuaded by the submission of the learned counsel appearing for the petitioner. I am satisfied that the property purchased by the petitioner as well as the third respondent are one and the same. It is also beyond dispute that both the parties trace their title to a set of common vendors. The property appears to belong to one Subba Naidu. The said Subba Naidu had two sons namely Periya Subba Naidu and Subba Naidu. Periya Subba Naidu had a son by name Bagawathy Samy. Subba Naidu had two sons namely Krishnasamy and Sakthivel. All these four persons had executed a power of attorney in favour of Mariappan through a registered document in the year 1983. The said document has not been cancelled. It was effectuated by the execution of the sale deed dated 21.09.1994 in favour of Vellaisamy Thevar husband of the third respondent. It is obvious from the sequence of events that the purchase by the third respondent's husband was earlier in point of time. If the complicated questions of facts are involved or if the matters involve investigation into personal law of the parties, then, obviously, the revenue authority will not have jurisdiction to go into

the matter. The petitioner's name could not have been entered in the revenue record when the third respondent's husband's purchase is prior in point of time. If the sale deed dated 21.09.1994 standing in the name of Vellaisamy Thevar turns out to be not genuine, then, the petitioner's case will have to be accepted. But the revenue authority cannot go into the issue of genuineness. In any event, there is no material as of now to doubt the genuineness of the sale deed dated 2.109.1994.

6. In these circumstances, it is the petitioner who has to go before the jurisdictional civil court and not the third respondent. I however make it clear that this order will not come in the way of the petitioner from establishing his rights before the jurisdictional civil court. All the observation that have been made in this order are only for the purpose of giving disposal to the writ petition and that will not cast any cloud or aspersion on the petitioner's claim. The order impugned in the writ petition is sustained. If the petitioner files any civil suit within eight weeks from the date of receipt of a copy of this order, limitation will not be put against the writ petitioner.

7. The Writ Petition is dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

09.08.2023

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

1.The Revenue Divisional Officer,
Palani,
Dindigul District.

2.The Tahsildar,
Palani Taluk,
Dindigul District.

G.R.SWAMINATHAN, J.

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