



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Reserved on : 27.02.2023

Pronounced on : 26.06.2023

CORAM

THE HON'BLE MR.JUSTICE G.R.SWAMINATHAN

**W.P(MD)Nos.24742, 24743, 24744 & 24745 of 2022
and
WMP(MD)Nos.18834, 18835, 18836 & 18838 of 2022**

V.Ananthanayagi	...Petitioner in WP(MD)No.24742 of 2022
R.Rajammal	...Petitioner in WP(MD)No.24743 of 2022
K.Velusamy	...Petitioner in WP(MD)No.24744 of 2022
K.Samikannu	...Petitioner in WP(MD)No.24745 of 2022

Vs.

- 1.The District Revenue Officer, Trichy.
- 2.The Revenue Divisional Officer, Trichy.
- 3.The Tahsildar, Trichy West Taluk Office, Trichy.
- 4.V.Prema @ V.Lakshmi
- 5.V.Bharath @ V.R.Chidambaram
- 6.V.Sridhar @ V.R.Meenakshisundaram



7.V.Umasankar @ V.R.Murugappan

8.M.Muthulakshmi

9.N.Meenal

10.Nalini Arulmozhi

11.L.S.Vadivel @ L.Senthilvadivel

12.L.Chidambaram @ Kittu

13.T.Sivagami

14.Muthiah

15.Umayal

16.C.N.Meenakshi

17.C.T.Senthilnathan Chettiar

... Respondents in all cases

Prayer in WP(M)No.24742 of 2022 : Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for the entire records in connection with the impugned order of the 1st respondent in Na.Ka.Aa6/26635/2021 dated 07.10.2022 and quash the same and consequently restore the patta of the petitioner in patta No.848 situate at Piratiyur village, Trichy West Taluk and thus render justice.



Prayer in WP(M)No.24743 of 2022 : Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for the entire records in connection with the impugned order of the 1st respondent in Na.Ka.Aa6/26635/2021 dated 07.10.2022 and quash the same and consequently restore the patta of the petitioner in patta No.848 situate at Piratiyur village, Trichy West Taluk and thus render justice.

Prayer in WP(M)No.24744 of 2022 : Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for the entire records in connection with the impugned order of the 1st respondent in Na.Ka.Aa6/26635/2021 dated 07.10.2022 and quash the same and consequently restore the patta of the petitioner in patta No.793 situate at Piratiyur village, Trichy West Taluk and thus render justice.

Prayer in WP(M)No.24745 of 2022 : Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for the entire records in connection with the impugned order of the 1st respondent in Na.Ka.Aa6/26635/2021 dated 07.10.2022 and quash the same and consequently restore the patta of the petitioner in patta No.249 situate at Piratiyur village, Trichy West Taluk and thus render justice.



In all cases :

For Petitioners : Mr.R.Viduthalai, Senior Counsel
for Mr.J.Anandkumar
in WP(MD)Nos.24742 & 24743 of 2022

Mr.Sricharan Rangarajan
Senior Counsel for Mr.J.Anandkumar
WP(MD)Nos.24744 & 24745 of 2022

For Respondents: Mr.R.Baskaran,
Additional Advocate General
assisted by A.K.Manikkam,
Special Government Pleader for R1 to R3

Mr.T.Palanisamy for R5 & R6

Mr.S.R.Rajagopal, Senior Counsel for
Mr.M.Sriram for R8 to R12

Mr.N.Ramiah for R13

Mr.Hemakarthiskeyn for Mr.R.Murugan
for R14

Mr.J.Bharathan for R15

Mr.Chithra Sampath, Senior Counsel
for Mr.Hemakarthiskeyan for R16

Mr.V.Karthik, Senior Counsel
for Mr.P.Prasanna Vinoth for R17



COMMON ORDER

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One Chidambaram Chettiyar purchased the subject lands vide registered sale deed dated 12.04.1935. The property comprised in Survey No.282 was sold in favour of one Andiyappan vide registered sale deed dated 26.03.1960. Chidambaram Chettiyar passed away in the year 1964 leaving behind his wife, three sons and three daughters (Sivagami (wife), Subramanian, Palaniappan, Senthilnathan (sons), Meenakshi, Umayal Achi and Valliammai Achi (daughters) as his legal heirs. Andiyappan sold the land in Old S.No.282 in favour of Meenakshisundaram and Sivagami Achi vide sale deed dated 09.06.1970. Meenakshisundaram was the son-in-law of Chidambaram Chettiyar. Umayal Achi was his wife. Sivagami Achi was the grand daughter of Chidambaram Chettiyar born through Valliyammai Achi. From Meenakshisundaram and Sivagami Achi, the petitioners herein trace their title. They had purchased vide registered sale deeds in the year 1983. The case of the petitioners is that the transactions took place with the knowledge and consent of the members of late Chidambaram Chettiyar's family. They would state that the consideration was actually received by Umayal Achi and Valliyammai Achi. The petitioners state



that they had taken possession of the purchased lands. Revenue Records were mutated in their names. Their names also find place in the “A” Register. It is not in dispute that C.S N.83 of 1965 was filed by Meenakshi Achi daughter of Chidambaram Chettiyar for partition before the Madras High Court on the Original Side. The original defendants were the other members of the family. The lands purchased by the petitioners got included in the suit schedule subsequently. The suit eventually culminated in OSA Nos.60, 61, 138 and 139 of 2017. The petitioners got themselves impleaded as R34 to R37 in the OSA. OSAs were disposed of on 21.02.2019. Paragraphs 8 to 17 of the said order are as follows :

“8.By an order dated 01.11.2018, this Court appointed two joint Advocate Commissioners to identify, measure and demarcate the boundaries of various shares in the Subject Property as set out in the previous Advocate Commissioner's Report dated 04.12.2000 and further to mark and prepare a sketch of the same showing an extent of three acres that could be allotted to the 1 st Respondent as an exclusive access-pathway to their land behind the Subject property, as identified by parties, so that the parties may consider allotting the same to the first respondent in O.S. Appeals. Pursuant to the said order, the Advocate commissioners inspected the subject



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property measuring 77.39 acres of land and filed their report dated 23.11.2018 into this Court with the sketch prepared by Government Surveyor. While allotting the said 3 acres to the first respondent along the Northern boundary of the subject property, the six bits as originally demarcated in the earlier Commissioner's Report have been realigned, however, there being no reduction in extent in the bits allotted to the sharers except in the two bits allotted to the 5 th defendant and the 6 th defendant, deducting therefrom the said 3 acres equally and further deducting 1.68 acres from the bit allotted to the share of the 6 th defendant representing land acquired by the National Highway Authorities.

9.The extents of the land allotted to the plaintiff, the defendants 1, 2 and 3 are not reduced by re-alignment and each of them, got 12.77 acres. There is a reduction in extent only in respect of Bit Nos.5 and 6 allotted to the Legal Heirs of defendants 5 and 6, for which, they have no objection. Subsequently, at the request of the 1 st respondent that the 3 acre pathway demarcated within BIT No.1 and shown along its Northern Boundary may instead be culled out along the Southern Boundary of BIT No.1, to avoid its being a zig-zag pathway, the parties readily agreed to do so.

10.When the matter is called today, the learned counsel for the parties seek to dispose of the matter based on the Memo of Compromise dated 22.07.2015, in which, all the parties except the male legal heirs of first defendant and the first respondent in these appeals have not signed. Similarly, in the Memo of Compromise dated 07.02.2002, it is stated that all the parties have signed except the two female heirs of the deceased first defendant and the first respondent herein. If both the Memos of Compromise are taken together, all the parties have signed at one point of time or the



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other except the first respondent, who is a third party. Even with respect to the first respondent, a Joint Memo of Compromise has been entered into between the appellants and the first respondent. Therefore, there cannot any hindrance for the disposal of the appeals.

11.Mr.V.Ayyadurai, learned Senior Counsel appearing for the male legal heirs of the first defendant viz., Respondents 5 to 9 in these appeals and defendants 50 to 54 in the suit being male heirs of first defendant Subramanian Chettiar would contend that the shares of deceased Subramanian Chettiar is to be given only to the aforesaid persons and not to his female heirs as they have already executed release deed. In this regard, the parties have already filed Application No.5516 of 2015 to modify the preliminary decree of the year 1968 and 1977.

12.It is evident from the contentions made by Mr.V.Ayyadurai, learned Senior Counsel that it is an inter se dispute between the legal heirs of deceased Subramina Chettiar. In this case, share to an extent of 12.77 acres is allotted to the legal heirs of the first respondent. There is no reduction of extent of property or there is no dispute regarding the identity or boundary of the said share. If at all any dispute is there, it is between the female legal heirs and male legal heirs. It is always open for them to take separate proceedings before the competent Court. The dispute between the legal heirs of first respondent regarding their shares cannot be a hindrance for this Court to dispose of these appeals. The application for modification of the preliminary decree filed by the male heirs of first defendant cannot be a hindrance to dispose of these appeals.

13.C.M.P.Nos.21727 to 21729, 21731 to 21734, 21738 of 2018



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have been filed by the third parties. Impleading petitioners contended that they are third party purchasers and they purchased the properties from V.R.M.Meenakshi Sundaram H/o. Umayal Achi and Sivagami D/o. Valliammal. Mrs.Hema Sampath, learned Senior Counsel contended that their rights have to be safeguarded.

14.Mr.Rahul Balaji, learned counsel appearing for the fourth respondent submitted that the issue has already been settled by a Division Bench of this Court by order dated 09.02.2012 in O.S.A.Nos.186 to 188 of 2011. By placing reliance on paragraphs 10 to 13, the learned counsel submitted that as the issue was already decided, it is not open to the impleading petitioners to re-agitate the same.

15.A perusal of the aforesaid judgment would reveal that the exact issue was already raised before the Division Bench in the above appeals and in categorical terms, the Division Bench of this Court has already held that even if some of the vendors of the appellant, being the relatives of the sharers, receive any share, ultimately in the final decree to be passed in the partition suit, by virtue of inheritance due to the death of the sharers, the appellant can always proceed against their respective shares.

16.Paragraphs 10 to 13 of the said judgment are usefully extracted as follows:

"10.The appellant cannot claim better title than their transferrers. Their transferors (vendors), in their turn, having purchased from Andiappan (7th defendant in C.S.No.83 of 1965), cannot claim better title than Andiappan. Now that the transactions in the year 1960 between Andiappan (7th defendant in C.S.No.83 of 1965) and T.S.PL.P.Chidambaram Chettiar have been held by this Court as sham and nominal, which has become final, it is yet to be seen as to whether the



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second suit (C.S.No.686 of 2000) filed by the vendors of the appellant, in effect to annul the second preliminary decree dated 21.11.1977, is maintainable in the light of the dismissal of their own applications to implead themselves in O.S.A.No.85 of 1979.

11.As far as the implead petition filed by the appellant to implead in C.S.No.83 of 1965, which is a suit for partition in which the shares of the plaintiff and defendants 1 to 6 have been ascertained in the preliminary decree dated 22.11.1968, it is to be seen as to whether in the absence of the appellant the final decree can be passed effectively (or) as to whether the presence of the appellant will facilitate the proper adjudication of the partition suit, so as to come to a conclusion that the appellant is either a necessary or proper party.

12.On the face of it, it is clear that the presence of the appellant is neither necessary for adjudication nor it is a proper party for arriving at a proper conclusion in the partition suit. It is not as if by not impleading the appellant, the appellant is left in the lurch. The contention raised by the learned Senior Counsel for the appellant that the appellant has parted with huge amount of consideration in respect of the purchase and, therefore, it cannot be denied relief, even though appears to be attractive, in our considered opinion, is without substance. It would have been different if the appellant has paid the consideration to the sharers. Having paid consideration to the non-sharers in the joint family property, it is certainly not open to the appellant to make a hue and cry that enormous amount has been parted with. Even if some of the vendors of the appellant, being the relatives of the sharers, receive any share ultimately in the final decree to be passed in the partition suit, by virtue of inheritance due to the death of the sharers, the appellant can always proceed against their respective shares. Even in the absence of such shares having been received by the vendors of the appellant, there are other remedies available. If it is taken as a commission of cheating by a nonowner, the larger issue to be



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decided is as to whether the doctrine of caveat emptor will be applicable against the appellant.

13.It is not the case of the appellant that it is not a pendente lite purchaser, but the case of the appellant, as contended by Mr.P.S.Raman, learned Senior Counsel, is that the doctrine of lis pendens would apply only if the suit is not a collusive suit. The case of the appellant is that the suits are collusive in nature and, therefore, the transfer effected in favour of the appellant is not affected by lis pendens."

17.In view of the finding of the Division Bench of this Court in O.S.A.Nos.186 to 188 of 2011, it is not for the impleading petitioners to reopen the matter. Therefore, their contentions are rejected reiterating the very same finding of the Division Bench of this Court that it is always open for them to file appropriate application seeking for their relief. With the above findings, this Court finds that both the contentions made by Mr.V.Ayyadurai, learned Senior Counsel and Mrs.Hema Sampath are liable to be rejected and hence, they are rejected. Accordingly, the sketch prepared by the same Government Surveyor and approved by all the parties and filed herewith as Annexure 'A' is taken on file. The appeals are disposed in the terms of the following Final decree. A Final Decree by consent of all the parties is passed as follows:

(i)A final Decree is now passed in terms of the Memo of Compromise dated 22.07.2015 already filed by the parties except in respect of item (a) of Schedule III to the plaint which is the subject matter of the present appeals;

(ii) The allotment to the parties in the subject property, that is, item (a) in the III Schedule to the plaint, will be as shown in the sketch now annexed herewith, whereby Bit No.1 is allotted to the Plaintiff; (b) Bit No.2 to the Legal Heirs of the 1 st defendant; (c) Bit



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No.3 to the Legal Heirs of the 2 nd defendant; (d) Bit No.4 to the 3 rd defendant; (e) Bit No.5 to the Legal Heirs of the 5 th defendant; (f) Bit No.6 to the Legal Heirs of 6 th defendant; and (g) the pathway access measuring three Acres along the Southern Boundary of Bit No.1 is hereby allotted to the 1 st respondent herein, namely Good Shepherded Evangelical Mission Private Limited. Except the allotments now made in the subject property, in all other respects the provisions in the Compromise Memo dated 22.07.2015 will be binding on all the sharers and be given effect;

(iii) The first respondent is hereby impleaded as party respondent in those proceedings for the above purpose;

(iv) In respect of any other dispute among the legal heirs of any of the original defendants or in respect of any claim by any third party, the same may be agitated independently in the manner known to law;

(v) The sale deed dated 26.03.1960, by which the original estate owner T.S.P.L.P. Chidambaram Chettiar transferred the subject property to the name of the 7 th defendant, Andiappan, already having been declared as sham and nominal by the judgment and decree dated 21.11.1977 and the same having become final, all sales further to the same are hereby declared as null and void and not binding on the Estate of the sharers;

(vi) Any sale deed executed by any of the parties or their legal heirs, pendente lite, in respect of any portion of the 'subject property' shall not, in any manner, affect the title or interest of any of the allottees under the judgment and allotments made hereby will prevail;

(vii) The Joint Compromise Memos filed by the parties on 22.07.2015 and on 07.02.2002 shall form part of the final decree; and



(viii) The suit is finally disposed of by this Final Decree and the parties are directed to bear their own costs. (ix) Since the matter is pending from the year 1965, if any obstruction is made by any third party, necessary police protection shall be given to the parties to take possession of their respective shares.”

Availing the liberty set out in Clause (iv) of the said judgment, the petitioners in WP(MD)Nos.25492, 25493, 25494 and 25495 of 2022 filed O.S No.963 of 2022, O.S No.504 of 2021, O.S No.964 of 2022 and O.S No. 536 of 2021, respectively, on the file of the Sub Court, Trichirappalli. In the meanwhile, application was submitted before the jurisdictional RDO for mutation of patta. It was negatived vide order dated 27.07.2021. Questioning the same, some of the legal heirs of Chidambaram Chettiar belonging to other branches filed revision before the jurisdictional DRO. The petitioners' vendors' branch did not move the RDO or DRO. On 07.10.2022, the District Revenue Officer cancelled the patta. The petitioners have challenged the cancellation order by filing these writ petitions. In the meanwhile, documents are sought to be presented before the registering authority.



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2. The prime argument of the learned Senior Counsel appearing for the petitioners is that when the jurisdictional civil court is seized of the matter, the revenue authority could not have undertaken a parallel enquiry into the question of title. He relied on the judgments of the Hon'ble Supreme Court reported in 2011 (5) CTC 241 (C.Sabesan Chettiar v. The District Revenue Officer, Coimbatore District), 2012 (3) CTC 823 (T.R.Dinakaran v. The Revenue Divisional Officer and ((2021) 11 SCC 98 (Edeleweiss Asset Construction Company Limited v. R.Perumalswamy and ors). He further took me through the Tamil Nadu Patta Passbook Act, 1983 and submitted that the jurisdictional District Revenue Officer had acted without jurisdiction. In normal circumstances, the contentions of the Senior Counsel appearing for the petitioners would have merited acceptance. But in the case on hand, we are witnessing not the first one but the second round of litigation. The first round of litigation had ended in favour of the contesting private respondents. Of course, while disposing all the OSAs, the Hon'ble Division Bench had granted liberty to the petitioners to work out their rights in the manner known to law. That is why, the petitioners have instituted civil suits. That apart, the Hon'ble Division



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Bench had already nullified the subsequent transactions which are based on Chidambaram Chettiar's sale deed dated 26.03.1960 executed in favour of Andiyappan. It is beyond dispute that the petitioners trace their title eventually to Andiyappan. The revenue records were changed in favour of the petitioners only on the strength of the registered sale deeds executed by Meenakshisundaram and Sivagami Achi in the year 1983. Meenakshisundaram and Sivagami Achi had purchased the petition-mentioned lands by way of sale deed from Andiyappan. Andiyappan had purchased the same from Chidambaram Chettiyar vide sale deed dated 26.03.1960. All these transactions have been set at naught. Therefore, the revenue records made in favour of the petitioners will have to be consequently cancelled and the position that originally obtained will have to be restored. The jurisdictional DRO had merely acted in consonance with the judgment passed by the Hon'ble Division Bench in OSA Nos.60, 61, 138 and 139 of 2017.

3.The challenge to the impugned order dated 07.10.2022 passed by the District Revenue Officer, Trichirappalli at the instance of the petitioners has to necessarily fail. At the same time, I need to make one



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important clarification. As already noted, the purchases by the respective petitioners were by registered sale deeds. The transactions date back to 1983. It is not in dispute that the revenue records were changed in their favor. The petitioners claim that they had fenced the properties and had been enjoying cultivation. Merely because I have sustained the orders impugned in these writ petitions, that does not mean that I had upheld the claim of possession of the contesting respondents. In normal circumstances, a person possessing patta would be deemed to be a person in possession. In this case, the pattas issued in favour of the petitioners have been cancelled more as a technical consequence. If the petitioners did not have even an iota of right of title, the Hon'ble Division Bench would not have granted them liberty vide clause (iv) of the decree. The petitioners have filed civil suits for declaration and permanent injunction. Therefore, the issue of possession will have to be decided only by the jurisdictional civil court. I make it clear that dismissal of these writ petitions and upholding the order of the DRO by this Court would not mean that this Court decided the issue of possession. Of course, the decree holders/private respondents can enforce their right by filing execution petition.



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4. With this observation in favour of the petitioners, the writ petitions are dismissed. No costs. Connected miscellaneous petitions are closed.

26.06.2023

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

1. The District Revenue Officer, Trichy.
2. The Revenue Divisional Officer, Trichy.
3. The Tahsildar, Trichy West Taluk Office, Trichy.



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G.R.SWAMINATHAN, J.

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