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W.P.(MD)NO.26859 OF 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 09.11.2023

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P.(MD)No.26859 of 2023 AND
W.M.P.(MD)No.23085 of 2023

Rajkumar

... Petitioner

Vs.

1. The Tahsildar,
Uthamapalayam Taluk Office,
Theni District.

2. The Zonal Deputy Tahsildar,
Uthamapalayam Taluk Office,
Theni District.

... Respondents

Prayer: Writ petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records relating to the impugned order vide file No.2023/0103/25/098209 dated 30.10.2023 on the file of the second respondent and quash the same and consequently direct the respondents to consider the petitioner's application seeking for transfer patta into his name from his deceased father's name P.Dharmar vide application No.2023/0103/25/098209 dated 26.09.2023.

For Petitioner : Mr.S.Venkateswaran

For Respondents: Mr.S.Ra.Ramachandran,
Additional Government Pleader.

* * *



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ORDER

Heard both sides.

2. The petition-mentioned property fell into the share of the writ petitioner's father in the year 2011. The revenue records were subsequently mutated in his favour. Dharmar passed away on 15.05.2021 leaving behind the legal heirs, namely, Sheeladevi, mother of the petitioner and Ilakkiya, sister of the writ petitioner and the petitioner himself.

3. The case of the petitioner is that his father had executed an unregistered Will on 28.08.2020 bequeathing the petition-mentioned properties in favour of the petitioner. On the strength of the said Will, the petitioner moved the second respondent for effecting name transfer. The petitioner's request was negatived vide memo dated 30.10.2023. Challenging the same, the present writ petition came to be filed.



4. The learned counsel appearing for the writ petitioner pointed out that the reason set out in the impugned memo is unsustainable in law. He pointed out that a Will does not require registration. He relied on the order dated **30.10.2019** made in ***W.P.(MD)No.22863 of 2019 (C.Sivakumar V. The District Revenue Officer, Theni and Others)***. When on an identical reason, the request for name transfer in patta was negatived, this Court invoked Section 18(e) of the Registration Act and held that since the registration of Will is optional, the order impugned therein cannot be sustained.

5. Respectfully following the said order, the impugned memo is set aside. The matter is remanded to the file of the second respondent. But then, the second respondent cannot straightaway allow the name change effecting mutation of patta as sought for by the petitioner. Notice will have to be issued to the other legal heirs, namely, mother and sister of the writ petitioner. If the other legal heirs appear before the second respondent and endorse the stand of the petitioner that the Will is genuine, then mutation can be effected. If the



other legal heirs contest the genuineness and validity of the Will, the petitioner has to necessarily go before jurisdictional civil Court. Based on the decree that may be passed by the jurisdictional civil Court, mutation can be effected. Since the matter is remitted to the file of the second respondent, the second respondent will take a call in the matter on merits and in accordance with law within a period of twelve weeks from the date of receipt of a copy of this order. This writ petition stands allowed on these terms. No costs. Consequently, connected miscellaneous petition is closed.

09.11.2023

NCS : Yes / No
Index : Yes / No
Internet : Yes/ No

PMU

To:

1. The Tahsildar,
Uthamapalayam Taluk Office,
Theni District.
2. The Zonal Deputy Tahsildar,
Uthamapalayam Taluk Office,
Theni District.



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G.R.SWAMINATHAN,J.

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