



W..P.No. 23990 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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Dated : 13.11.2024

THE HONOURABLE Ms. JUSTICE P.T. ASHA

W.P.No. 23990 of 2024

Rajkumar

... Petitioner

V.s

1. The District Revenue Officer
Villupuram

2. The Sub Collector
Office of the Sub Collector,
Jagampettai
Tindivanam Taluk

3. Uma @ Govindmmal

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India seeking Writ of Certioarified Mandamus by calling for records leading to the 1st Respondent order dated 05/09/2023 in Nee.Mu.Aa 2/340466/2022 and quash the same and consequently direct the respondents 1 and 2 to restore the patta in the name of the petitioner.



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For Petitioner : Mr.M.Vaikunth
For Respondent 1 & 2 : Mr.M.R.Gokul Krishnan
Additional Government Pleader
For Respondent 3 : Not ready in notice

ORDER

The petitioner seeks to issue a writ of certiorarified mandamus to call for the records of the 1st respondent dated 05.09.2023 in Nee.Mu.Aa 2/340466/2022 and quash the same and to restore the patta in his name.

2. The short facts are as follows:

The 3rd respondent, claiming to be the daughter of one Annapoorani Ammal, had sought cancellation of patta standing in the name of the petitioner in respect of survey Nos.116/1A, 116/1C, 116/1B1, 119/1B2, Chettykuppam Village, Marakkanam Taluk, Tindivanam on the ground that the property belonged to her mother.



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The said Annapoorani died intestate on 09.04.2001 and in a suit O.S.No.47 of 2003, the 3rd respondent and her siblings got a decree declaring themselves as the legal representatives of the said Annapoorani. While so, their only brother, Murugan had executed a Power of Attorney in favour of one Bahiratha Marthandam who had sold the property in question to one RVGK Rangarao and he had executed two sale deeds dated 30.09.2004 and 04.10.2004 in favour of the petitioner's mother, Kasthuri. Subsequent to the death of the said Kasthuri, the petitioner had obtained the property vide partition deed and the patta also stood in his name. The contention of the 3rd respondent is that her brother, Murugan, had dealt with the property all by himself without including his sisters and on the basis of an alleged Will said to have executed by Annapoorani Ammal, which they would contend is a false document. Therefore, the 3rd respondent sought for cancellation of patta and the 2nd respondent, without considering the various documents, had gone into the question of title and held that there is no registered document executed by



ANNAPPOORANI AMMAL IN FAVOUR OF HER SON, MURUGAN AND ON THIS BASIS,
proceeded to declare the sale deed in favour of the petitioner as null and void. Hence, the petitioner is before this Court.

3. Heard the learned counsels on either side and perused the materials available on record.

4. Nearly two decades after the petitioner's predecessor-in-title had become the owner of the property in question, the 3rd respondent claimed a right to the property by choosing to file an application for cancellation of patta. From the facts and the documents filed before this Court, it is seen that the property belonged to one Annapoorani. This is an undisputed fact. Annapoorani had executed an unregistered Will on 23.02.2001, bequeathing the property on her only son, Murugan. The said Murugan had executed a Power of Attorney dated 06.04.2004 in favour of one Bahiratha Marthandam, registered as Document No.29 of 2004. The said Power



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Agent had sold the property in favour of R.V.G.K.Rangarao. The said RVGK Rangarao, in turn, had sold the property in favour of the petitioner's mother, Kasthuri under two sale deeds dated 30.09.2004 and 04.10.2004. After the death of the petitioner's mother, Kasthuri, the property was partitioned among their children and the property was allotted to the petitioner herein. The petitioner had applied for a patta and the same was also issued to him in Patta No.4350. Nearly 18 years after the petitioner's mother purchased the property, the 3rd respondent had sought for cancellation of patta on the ground that she and her other sisters also have a right to the property, which has been suppressed by their brother, Murugan.

5. The 2nd respondent, by order dated 12.10.2022, has proceeded to hold that the said Annapoorani had not transferred the property to her son, Murugan under any registered document, therefore, the subsequent alienation by Murugan was invalid and consequently the patta standing in the name of the petitioner was cancelled and restored



in the name of Annapoorani. Challenging the same, the petitioner had filed an appeal before the 1st respondent which was also dismissed on the very same grounds. The authorities below have failed to consider that the 3rd respondent had approached the revenue authorities after the property had changed hands several times. That apart, the remedy available to the 3rd respondent is only to institute a suit to assert her right, particularly when she is denying the execution of the Will by her mother. The observation of the authorities below that there is no registered document executed by the said Annapoorani, in respect of the property is *per se* erroneous, since the said Annapoorani had executed a Will and there is no necessity to register a Will, as it comes into effect immediately upon the death of the testator. In the instant case, Annapoorani had executed a Will in favour of his son who in turn had executed a Power of Attorney. The said Power of Attorney had executed a Sale Deed in favour of RVGK Rangarao, who thereafter had alienated the property in favour of the petitioner's mother and on her death, the petitioner and his sisters had entered into



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a partition in the year 2009 under which the property fell to the petitioner's share. Therefore, since the petitioner had derived title from the the said Murugan, by virtue of the **sale**, the alienation by him *prima facie* appears to be a valid one. Therefore, when there is a dispute with reference to title, the respondents ought to have referred the parties to the Civil Court to have their rights declared.

6. A reading of the impugned order of both the authorities, namely respondents 1 and 2 would show that they have donned the role of the Civil Court and discussed the title. Therefore, the impugned order of the 1st respondent confirming the orders of the 2nd respondent is without any legal basis and the same is set aside. Accordingly, the Writ Petition is allowed. No costs.

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Index : Yes/No

Speaking order/non-speaking order

Neutral Citation: Yes/No

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To,

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2. The Sub Collector
Office of the Sub Collector,
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P.T.ASHA, J.,

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