



W.P.(MD)No.8914 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON: 11.07.2024

DELIVERED ON : 21.08.2024

CORAM

THE HON'BLE MR.JUSTICE K.MURALI SHANKAR

W.P.(MD)No.8914 of 2021

1.Nalini
2.Ashok Kumar
3.Rajakumaran
4.Maniraja
5.Murugeh

... Petitioners

Vs.

1.The Additional District Revenue Officer,
Thoothukudi,
National Highway 74, PSP Nagar,
Korrampalayam,
Thoothukudi 628 101.

2.The Revenue Divisional Officer,
Thiruchendur,
Behind Bus Stand,
Thiruchendur 628 215,
Thoothukudi District.

3.Jegajothi

... Respondents



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PRAYER : Writ Petition filed under Article 226 of the Constitution of India, for issuance of a Writ of Certiorari to call for the entire records in Na.Ka.No.D6-33815-2018, on the file of the first respondent and quash the order dated 11.01.2021 passed by the first respondent and all other subsequent mutation of the entries based on the order dated 11.01.2021.

For Petitioners : Mr.A.Parthasarathy

For Respondents : Mr.V.OM Prakash
Government Advocate
for R.1 and R.2

: Mr.M.P.Senthil

ORDER

The Writ Petition is directed against the order dated 11.01.2021, passed by the first respondent confirming the order dated 28.08.2018 passed by the second respondent.

2. The case of the petitioners is that the lands measuring an extent of 88 cents in S.F.No.160/1B of Thachamozhi Village, Sathankulam, Thoothukudi District originally belonged to Anthiramudiyar Nadar,

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father-in-law of the first petitioner and the grandfather of the petitioners 2 to 5, vide sale document No.1078/1980, that the said Anthiramudiyar Nadar had a wife by name Sornammal and five sons namely Sakthivel, Shanmugavel, Sankaravadivel, Velayudham and Sundaravadivel and a daughter namely Saraswathi, that the petitioners are the legal heirs of the said Shanmugavel who died intestate on 14.11.2006, that during the life time of Anthiramudiyar Nadar and his sons entered into a oral partition in the year 1987 with respect to the property in dispute and the other ancestral properties, that the said oral partition was later reduced into writing vide unregistered partition dated 27.12.1991, that the said Shanmugavel was allotted an extent of 44 cents out of 88 cents in S.F.No. 160/1B and the remaining 44 cents was allotted to Sundaravadivel, that the said Anthiramudiyar Nadar has confirmed the execution of the unregistered partition deed dated 27.12.1991 in the sale deed dated 02.02.1994 executed in favour of one Mariyarani and in the Will dated 26.05.2000 executed jointly by Anthiramudiyar Nadar and his wife Sornammal, that during the life time of Shanmugavel, his brother Sundaravadivel sold his share of 44 cents orally in favour of Shanmugavel, after receing the consideration and hence, the said



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Shanmugavel was in peaceful possession and enjoyment of the entire extent 88 cents since 2005, that after the death of the said Shanmugavel, the petitioners have been in peaceful possession and enjoyment of the property and that mutation in the revenue records came to be effected and new patta bearing No.31 was issued on 17.12.2013.

3. It is the further case of the petitioners that the third respondent – wife of the said Sankaravadivel has claimed right to the subject matter of the property through settlement deed dated 27.06.2013 alleged to have been executed by the said Sankaravadivel and caused a representation to the second respondent dated 11.07.2016, that the second has initiated proceedings and passed an order dated 28.08.2018 wherein by declaring that the documents produced by the petitioners are fraudulent one, that the petitioners, aggrieved by the said order of the second respondent, preferred an appeal before the first respondent, that the petitioners have also filed a suit in O.S.No.98 of 2018 before the District Munsif, Sathankulam and the same is pending and that the first respondent, without considering the pendency of the suit and without taking note of the objections raised by the petitioners, has passed the impugned order



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dated 11.01.2021, confirming the order passed by the second respondent,
dated 28.08.2018.

4. The case of the third respondent is that Anthiramudiyar Nadar, who was owning 88 cents of land in S.No.160/1 has executed a settlement deed in favour of his son Sankaravadivel, that the said Sankaravadivel who got the said property, executed a settlement deed in favour of his wife Jegajothi-third respondent, that the third respondent has filed an appeal before the second respondent challenging the transfer of patta made by the Tahsildar, Sathankulam with regard to S.Nos. 160/1B, 160/1C of Thachamozhi Village, that the second respondent, without conducting any enquiry, has passed an order dated 29.06.2018 directing the Tahsildar, Sathankulam to restore the patta to its original position, that the petitioners had preferred a revision before the Additional Collector (Revenue), Thoothukudi and the revisional authority, after hearing the parties and on perusing the records, rejected the revision and thereby confirmed the order passed by the second respondent.



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5. It is evident from the records that the petitioners are claiming ownership of the property in dispute through the oral partition alleged to have been taken place between Anthiramudiyar Nadar and his sons followed by the unregistered partition deed, dated 27.12.1991, wherein 44 cents of land in S.F.No.160/1 was allotted to the share of the Shanmugavel and the sale made by Sankaravadivel in respect of his 44 cents in S.No.160/1 in favour of his brother Shanmugavel and that after the death of Shanmugavel, the first petitioner being the wife and the other petitoners being the children of the deceased Shanmugavel have been in possession and enjoyment of the property as the absolute owners. But the third respondent has claimed ownership on the basis of the settlement deed, executed by her father-in-law Anthiramudiyar Nadar dated 23.04.1997 in favour of Sankaravadivel and the settlement deed executed by the said Sankaravadivel in favour of his wife – third respondent and that the third respondent has been in possession and enjoyment of the said property as its absolute owner. The second respondent as well as the first respondent, considering the stand taken by both parties, by observing that the genuiness of the documents produced by the petitioners appears to be doubtful and considering the entries in



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the revenue records and the documents produced by the third respondent, has cancelled the patta transfer order passed earlier and directed the Tahsildar to restore the patta in favour of Anthiramudiyar Nadar and his Sankaravadivel.

6. It is pertinent to note that the petitioners have filed a civil suit in O.S.No.98 of 2018, on the file of the District Munsif Court, Sathankulam claiming declaration that the settlement deed executed by Anthiramudiyar Nadar in favour of Sankaravadivel and the settlement deed executed by Sankaravadivel in favour of the third respondent dated 28.06.2013 are not binding on the petitioners and to declare that the property in dispute is belonging to the petitioners and for consequential permanent injunction restraining the third respondent and his men from in any manner interfering with the petitioners' peaceful possession and enjoyment of the suit property.

7. It is not in dispute that the third respondent and her husband have filed written statement and contested the suit and that the learned District Munsif, after full trial, has passed a judgment and decree dated



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11.08.2023 dismissing the suit and that the petitioners, aggrieved by the dismissal of the suit, preferred an appeal and the same is pending in A.S.No.10 of 2024, on the file of the Subordinate Court, Thiruchendur. The learned Counsel for the third respondent has produced the copies of the written statement filed and the judgment and decree passed in O.S.No.98 of 2018 and copy of the memorandum of appeal filed in A.S.No.10 of 2024 and as rightly pointed out by the learned Counsel for the third respondent, the learned District Munsif has given a finding that the unregistered partition deed is not legally valid and the petitioners are not entitled to get the reliefs claimed.

8. No doubt, as rightly contended by the learned Counsel for the petitioners, the revenue authorities are absolutely having no power or jurisdiction to decide the title to the property in dispute. But at the same time, as rightly contended by the learned Counsel for the third respondent, the basis on which the petitioners are claiming ownership over the property in dispute was not at all proved, as the same is very much evident from the judgment passed by the competent civil Court. No doubt, the appeal filed by the petitioners is very much pending before



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the Subordinate Court, Thiruchendur. It is further evident from the orders passed by the respondents 1 and 2 that the originally S.No.160/1B was in the name of Anthiramudiyar Nadar in Patta No.31, whereas S.No. 160/1C was in the names of Subbiah Nadar and Sundaramudaya Nadar in patta No.718, that subsequently as per the order dated 22.07.2007, Anthiramudiyar Nadar's son Sankaravel was added as joint pattadar, that as per the order passed in RTR No.1725/2013, dated 15.10.2013, wife and children of Shanmugavel, the petitioners herein were added as joint pattadars, that subsequently as per the order passed in RTR No. 2903/2013, Sankaravel's wife Jegajothi (third respondent herein) name was added as 8th joint pattadar, that the names of Anthiramudiyar Nadar and his son Sankaravel were ordered to be deleted, vide order dated 27.08.2015, that S.No.160/1C was in the name of Subbiah Nadar and Jeganothi (third respondent) and that thereafter, Anthiramudiyar Nadar has executed a settlement deed in favour of Sankaravel, who in turn has executed a settlement deed in favour of his wife third respondent.

9. As rightly contended by the learned Counsel for the third respondent, the second respondent as well as the first respondent have



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not changed the patta in favour of the third respondent, but they have only restored to the original position in the names of Anthiramudiyar Nadar and Sankaravel.

10. Considering the above, the impugned order passed by the first respondent, confirming the order of the second respondent cannot be found fault with. In view of the pendency of the appeal in A.S.No.10 of 2021, on the file of the Subordinate Court, Tiruchendur, the petitioners are at liberty to canvass their case before the appellate Court and both parties are at liberty to approach the official respondents subject to the result of the appeal.

11. With the above observations, the Writ Petition is dismissed.
There shall be no order as to costs.

21.08.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
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K.MURALI SHANKAR,J.

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PRE-DELIVERY ORDER MADE IN

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