



W.P(MD)No.11704 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 03.07.2024

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P(MD)No.11704 of 2023

and

W.M.P.(MD)No.17261 of 2023

Parameswari

... Petitioner

Vs.

1.The District Revenue Officer,
Madurai District.

2.The Revenue Divisional Officer,
Usilampatti,
Madurai District.

3.The Tahsildar,
Peraiyur Taluk,
Madurai District.

4.Kaliswaran

5.R.Muthaiya

6.K.Venkateshprasad

7.Kamammal

8.Kaiammal

9.Ramaiye Ammal

10.Kuruvammal

... Respondents



W.P(MD)No.11704 of 2023

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 of the second respondent in Na.Ka.No.3510/2021/A2, dated 20.12.2022 and quash the same as illegal and arbitrary.

For Petitioner : Mr.P.Ganapathi Subramanian

For Respondents : Mr.D.Sasiskumar
Additional Government Pleader for R1 to R3

: Mrs.N.Krishnaveni
Senior Counsel
for Mr.M.Gnanagurunathan
for R4 & R5

ORDER

Heard the learned counsel appearing for the petitioner and the learned Additional Government Pleader appearing for R1 to R3 and the learned senior counsel assisted by the learned counsel appearing for the private respondents 4 & 5.

2. The case on hand involves as many as 6 items of property. The petitioner claims that some of them were the self acquired properties of one Kamuammal and some of them were the joint properties of Kamuammal and her husband Chinnasangumaniyam and some of them were the properties of Chinnasangumaniyam. Kamuammal survived Chinnasangumaniyam. Thus, all the properties came to stand in the name of Kamuammal. After the demise



W.P(MD)No.11704 of 2023

of Chinnasangumaniam, the private respondents would claim that the properties belonged to Chinnasangumaniam and after his demise, they devolved on Kamuammal. This factual controversy need not be resolved in this writ petition. Kamuammal had executed a registered Will dated 09.06.1973 in favour of her nieces (petitioner, respondents 7, 8, 9 & 10). Based on the said Will, the revenue record was mutated in favour of the petitioner and the sailing respondents. Kamuammal passed away on 04.02.1992. After her demise, the revenue record was mutated in favour of the petitioner Parameswari and the sailing respondents R7 to R10. This mutation had taken place on 31.01.2013. Immediately thereafter, the contesting respondents (R4 & R5) herein filed an appeal before the RDO seeking cancellation of mutation. The RDO, Usilampatti allowed their appeal and directed issuance of joint patta. Review petition was filed before the DRO, Madurai. The DRO declined to interfere in the matter by citing the pendency of the civil suit. This order was passed by the DRO on 31.08.2018. Interestingly, O.S.No.603 of 2012 filed by the petitioner and the sailing respondents had already been withdrawn on 01.11.2016. But then this was not brought to the notice of the DRO. He was under the erroneous impression that the civil litigation was still pending. This factum was subsequently brought to the notice of the DRO by the contesting respondents (R4 & R5). Thereupon, the DRO remanded the matter to the file of the



W.P(MD)No.11704 of 2023

jurisdictional Tahsildar. The Tahsildar vide order dated 30.10.2019 directed

mutation of patta in favour of the contesting respondents and others.

Challenging the same, the petitioner and the sailing respondents filed an appeal before the RDO, Usilampatti. The RDO, Usilampatti dismissed the appeal vide order dated 23.12.2019. Even though the appeal filed by the petitioner and the sailing respondents before the RDO was not successful, it did not defer them from moving the jurisdictional Tahsildar once again. The Tahsildar confirmed the earlier order passed by him. Once again, the petitioner and the sailing respondents filed an appeal before the RDO, Usilampatti. The RDO, Usilampatti dismissed the appeal on 10.05.2021. A further challenge was mounted before the DRO, Madurai. Though the reasons are not quite clear, the DRO, Madurai once again remitted the matter to the file of the RDO, Usilampatti. The RDO, Usilampatti once again passed an order in favour of the contesting respondents. This order is put to challenge in this writ petition.

3. The contention of the learned counsel appearing for the petitioner is that a comprehensive civil suit has been filed by the sixth respondent herein in O.S.No.293 of 2019 on the file of the Sub Court, Thirumangalam for the relief of partition and other reliefs. In the said suit, the Will said to have been executed by Kamuammal in the year 1972 had also been impeached.



W.P(MD)No.11704 of 2023

The learned counsel for the petitioner would state that when the jurisdictional civil Court is seized of the matter, the question of effecting mutation in favour of the contesting respondents will not arise at all. The learned counsel for the petitioner would state that the impugned order can be set aside and the parties can be directed to work out their rights before the jurisdictional civil Court in the pending civil suit.

4. The learned senior counsel on the other hand appearing for the contesting respondents (R4 & R5) would contend that the impugned order has been rightly passed and that it does not warrant interference. She called upon this Court to dismiss the writ petition.

5. I carefully considered the rival contentions and went through the materials on record.

6. As observed at the very outset, the original ownership of the properties need not detain me. It is conceded that Chinnasangumaniam was born with siblings. R4 & R5 are the nephews of Chinnasangumaniam. The petitioner and the sailing respondents are the nieces of Kamuammal W/o.Chinnasangumaniam. It is again not in dispute that Chinnasangumaniam



pre-deceased Kamuammal and the property stood in the name of Kamuammal only when she died in the year 1992. Sections 15 & 16 of the Hindu Succession Act, 1956 lay down the rules of succession in the case of female Hindus. The said provisions read as under :-

“15. General rules of succession in the case of female Hindus.-(1)

The property of a female Hindu dying intestate shall devolve according to the rules set out in section 16,-

- (a) firstly, upon the sons and daughters (including the children of any pre-deceased son or daughter) and the husband;
- (b) secondly, upon the heirs of the husband;
- (c) thirdly, upon the mother and father;
- (d) fourthly, upon the heirs of the father; and
- (e) lastly, upon the heirs of the mother.

(2) Notwithstanding anything contained in sub-section (1),-

(a) any property inherited by a female Hindu from her father or mother shall devolve, in the absence of any son or daughter of the deceased (including the children of any pre-deceased son or daughter) not upon the other heirs referred in sub-section (1) in the order specified therein, but upon the heirs of the father; and

(b) any property inherited by a female Hindu from her husband or from her father-in-law shall devolve, in the absence of any son or daughter of the deceased (including the children of any pre-deceased son or daughter) not upon the other heirs referred to in sub-section (1) in the order specified therein, but upon the heirs of the husband.

16. Order of succession and manner of distribution among heirs of a female Hindu.-

The order of succession among the heirs referred to in section 15 shall be, and the distribution of the intestate's property among those heirs shall take place according to the following rules, namely:-



W.P(MD)No.11704 of 2023

Rule 1.-Among the heirs specified in sub-section (1) of section 15, those in one entry shall be preferred to those in any succeeding entry, and those included in the same entry shall take simultaneously.

Rule 2.-If any son or daughter of the intestate had pre-deceased the intestate leaving his or her own children alive at the time of the intestate's death, the children of such son or daughter shall take between them the share which such son or daughter would have taken if living at the intestate's death.

Rule 3.-The devolution of the property of the intestate on the heirs referred to in clauses (b), (d) and (e) of sub-section (1) and in sub-section (2) of section 15 shall be in the same order and according to the same rules as would have applied if the property had been the father's or the mother's or the husband's as the case may be, and such person had died intestate in respect thereof immediately after the intestate's death."

7. The case of the petitioner is that Kamuammal did not die intestate. She had executed a registered Will. The contesting respondents R4 & R5 question the genuineness of the Will and claim that she died intestate. R4 & R5 and 3 others filed O.S.No.180 of 2011 on the file of the District Munsif Court, Thirumangalam and obtained declaration that they are the legal heirs of the deceased Chinnasangumaniam and Kamuammal. Copy of the Judgment has been produced before me. A mere look at the Judgement and decree dated 09.01.2012 shows that the petitioner and the sailing respondents were not made parties to the suit proceedings. In other words, R4 & R5 had obtained decree behind the back of the petitioner and the sailing respondents. Such a Judgment



W.P(MD)No.11704 of 2023

and decree cannot be put against the petitioner. It has no binding value. I would have expected respondents 4 & 5 to implead the rival parties as defendants in the suit. It was not an issue between the plaintiffs on the one hand and the Government on the other. The Government had no stake in the matter at all. Therefore, I am not able to attach any legal significance to the Judgment and decree dated 09.01.2012 made in O.S.No.180 of 2011 on the file of the District Munsif Court, Thirumangalam. Dehors the said Judgment and decree, it appears that R4 & R5 are staking claim only in their capacity as the legal heirs of the husband of Kamuammal. When the petitioner and the sailing respondents assert that Kamuammal did not die intestate, burden is only on them. There is no presumption in law that a person had died after executing the Will. The petitioner who is propounding the Will of Kamuammal has to necessarily prove the same in the manner known to law before the jurisdictional civil Court and only then, can claim the petition mentioned property. The authorities have mutated the patta only in favour of the legal heirs of the husband of Kamuammal. This is in consonance with Sections 15 & 16 of the Hindu Succession Act, 1956. But then, equities obtaining in this case cannot be lost sight of. I am conscious that Will does not require registration. Mere registration will not enhance its equality or value. But the fact that Will attributed to Kamuammal was executed and registered in the year 1973 and that



W.P(MD)No.11704 of 2023

she died only in the year 1992 cannot be lost sight of. I can understand if Kamuammal had passed away soon after the execution and registration of such a Will. That is not the case here. That apart, the parties have already gone before the jurisdictional Civil Court and obviously, the validity and genuineness of the Will will be one of the key issues. If the contesting respondents and others are allowed to deal with the property as if they are the absolute owner of the property, that will definitely lead to injustice.

8. Considering the overall facts and circumstances, I permit the petitioner to file I.A in O.S.No.293 of 2019 on the file of the Sub Court, Thirumangalam for restraining the incumbent pattadhar from dealing with the property. The petitioner through his counsel states that such an IA will be filed within two weeks from the date of receipt of a copy of this order. It will be numbered immediately and disposed of on merits and in accordance with law as expeditiously as possible. Till such IA is disposed of, the incumbent pattadhars are restrained from dealing with the property. Passing of this restraint order will not have any bearing on the disposal of IA by the Court below. Whatever be the outcome of IA, the rights of the parties will abide by the eventual outcome of the suit. In other words, if the petitioner succeeds in proving the Will in the suit, even if alienation takes place in the meanwhile, still the petitioner's rights cannot be taken away.



W.P(MD)No.11704 of 2023

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9. The Writ Petition is disposed of accordingly. No costs. Consequently, connected miscellaneous petition is closed.

03.07.2024

NCC : Yes/No
Index : Yes / No
Internet : Yes/ No
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W.P(MD)No.11704 of 2023

G.R.SWAMINATHAN, J.

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W.P(MD)No.11704 of 2023

03.07.2024