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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
Civil Appellate Jurisdiction

Thursday, the Twenty Seventh day of June Two Thousand and Twenty Four
PRESENT

The Hon`ble Mr.Justice G.R.SWAMINATHAN

WMP(MD). No.10856 of 2024

in

WP(MD) No.10977 of 2024

N.Muthuraj

... Petitioner/3rd Party

Vs

1 Keerthika Lakshmi

2 The Tahsildar

O/o. the Tahsildar

Tenkasi Taluk and District.

3 The Head Surveyor,

Tenkasi Tahsildar Office

Tenkasi Taluk and District.

... Respondents/Respondents

Prayer in WMP(MD). No.10856 of 2024

Writ Miscellaneous Petition filed under section 226 of the Constitution of India to recall the orders passed in WP(MD).No. 10977 of 2024 dated 30.04.2024 on the file of this Honble High Court and pass such further or other orders as this Honble Court may deem fit and proper in the circumstances of the case and thus render justice.

Prayer in WP(MD). 10977/ 2024 :

Writ Petition, filed under Article 226 of the Constitution of India, praying this



demarcate the Petitioners property in survey numbers 333/2A1, 334/2, 344/1A, 344/1B, 345/7, 345/8, 346/10, 346/14, 346/2A1A, 361B situated at Kulakeskarapatti village, Tenkasi District within a time frame that may be stipulated by this Honourable Court and to pass such further or other order as this Honourable Court may deem fit and proper in the circumstances of the case and thus render justice.

ORDER:- This Petition coming on for orders on this day and upon perusing the petition and the affidavit filed in support thereof and upon hearing the arguments of Ananth C.Rajesh, Advocate for the Petitioner and of Mr.D.Sasikumar Additional pleader for the 2nd and 3rd Respondents and of Mr.D.S.Haroon Rasheed, Advocate for the 1st Respondent, this Court made the following order:

Heard both sides.

2.The petitioner wants me to recall the order dated 30.04.2024 made in W.P. (MD)No.10977 of 2024. The writ petition was filed by the first respondent herein namely, Keerthika Lakshmi, W/o.Karthigeyan. The writ petition was filed for conducting survey. The writ petition was disposed of by issuing the usual directions.

3.The learned counsel for the petitioner reiterated all the contentions set out in the affidavit filed in support of the recall petition and called upon this Court to recall the order and dismiss the writ petition.



4.I find considerable force in the contentions advanced by the learned counsel for the petitioner. But then, I am not in a position to recall the order for those reasons.

5.It is beyond dispute that the writ petitioner is having patta in her patta. When a person is having patta in his / her favour, survey has to be necessarily conducted subject to the restrictions set out in the directions laid down by me in the aforesaid order. At the same time, I cannot ignore the arguments advanced by the learned counsel for the petitioner. The learned counsel for the petitioner points out that the property originally belonged to Lakshmithai. Lakshmithai was blessed with four children namely, Arunachalam, Muthuraj, Sanjeevi Rajan and Anjaa Devi (three sons and one daughter). Lakshmithai is said to have executed a Will dated 03.11.2012. She had not bequeathed her property in favour of grandchildren. The sons of Muthuraj namely, Arunsiva and Srinivasa Boss have been allotted properties (2nd schedule). Likewise, Karthigeyan, S/o.Sanjivi Raja was also given properties (3rd schedule). Karthigeyan filed W.P.(MD)No.2123 of 2024 for registering the said unregistered Will. An unregistered Will can be registered after the demise of the testator under Rule 41 of the Registration Rules. The writ petition was allowed vide order dated 13.02.2024. Based on the same, the Sub Registrar, Pavursathiram registered the Will. Based on the registered Will, Karthigeyan transferred the property in favour of Keerthika Lakshmi (his wife). Keerthika



Lakshmi thereafter moved the Tahsildar, Tenkasi Taluk and got the patta mutated in her favour.

6.The learned counsel for the petitioner asserts that N.Muthuraj has not accepted the genuineness of the Will. All these issues could have probably been avoided, if Karthigeyan had impleaded all the other legal heirs of Lakshmithai in W.P.(MD)No.2123 of 2024. If Muthuraj had voiced his objections probably, Karthigeyan would have been relegated to go before the jurisdictional Civil Court for proving the Will as per Section 68 of the Indian Evidence Act (I consciously refrain from referring to the corresponding provision in Bharatiya Sakshya Adhiniyam because the cause of action arose before 01.07.2024). Therefore, the petitioner should seek recall not of the order dated 30.04.2024 made in W.P.(MD) No.10977 of 2024 but to seek review of the order dated 13.04.2024 in W.P.(MD) No.2123 of 2024. It is this order that conferred right on Karthigeyan and Keerthika Lakshmi derives her right under Karthigeyan. In these circumstances, the question of recalling my order does not arise.

7.In any event, Muthuraj had demonstrated his interest in the matter. Muthuraj is permitted to offer his objections before the second respondent setting out his entire case. The second respondent is obliged to pass a speaking order. In all probability, Muthuraj's objections will be overruled. But then, Muthuraj will be given full six weeks breathing time to obtain relief elsewhere. Muthuraj has two courses of action before him (a) he can seek review of the order dated 13.02.2024 in



W.P.(MD)No.2123 of 2024 (b) he can very file a civil suit. If any suit is filed, it shall be numbered immediately. If any interlocutory application is filed, it shall be disposed of on merits and in accordance with law within a period of four weeks.

8. With the aforesaid liberty to the petitioner and direction to the second respondent, the recall petition is disposed of.

Sd/-

Assistant Registrar(CS III)

// True Copy //

/07/2024

Sub Assistant Registrar
(CS- I/ II / III / IV)

TO

1. The Tahsildar
O/o. the Tahsildar
Tenkasi Taluk and District.
2. The Head Surveyor,
Tenkasi Tahsildar Office
Tenkasi Taluk and District.

Copy to :

The Section Officer,
Writ Section,
Madurai Bench of Madras High Court, Madurai.

+1 cc to Mr. Ananth C. Rajesh, Advocate, CA Sr.No.30764/2024
+ 1 cc to the Government Pleader CA Sr.No.30813/2024



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ORDER DATED : 27/06/2024

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ORDER

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WMP(MD). No.10856 of 2024

in

WP(MD) No.10977 of 2024

Giving direction and etc.

as stated within.

MGJ(18.07.2024) 6P 6C

Madurai Bench of Madras High Court is issuing certified copies in this format from 17.07.2023