BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 30.09.2024

CORAM:

THE HONOURABLE MS.JUSTICE P.T.ASHA

W.P.(MD) No.17281 of 2024

P.Thoulath Meera .. Petitioner

Vs.

The Tahsildar,
Kadayanallur Taluk,
Tenkasi District. .. Respondent

Prayer:Petition filed under Article 226 of the Constitution of India, praying for issuance of Writ of Certiorarified Mandamus, calling for the records of the impugned order passed by the respondent herein in his proceedings in Na.Ka.No.AA2/228/2022 dated 02.02.2024 and quash the same as illegal and further direct the respondent to mutate the revenue patta pertaining to Old S.No.309/2A1AP in New S.No.3 in respect of Door No.96, Gangai Amman Kovil Street, Ward No.E, Block 16 and New S.Nos.2,3,4,5,6,7 and 8 in respect of Door Nos.27C, 27B, 27A, 27, 26, 26 and 25 in Ward No.E, Block 20, in Puliyankudi Village, Kadayanallur Taluk, Tenkasi District from the name of Mohamed Masood Sha and Shahul Hameed in the petitioner's favour forthwith.

For Petitioner : Mr.D.Nallathambi
For Respondent : Mr.B.Saravanan,
Addl. Government Pleader

ORDER

This writ petition is filed challenging the impugned order passed by the respondent in his proceedings in Na.Ka.No.AA2/228/2022 dated 02.02.2024 and quash the same as illegal and further direct the respondent to mutate the revenue patta pertaining to Old S.No. 309/2A1AP in New S.No.3, in respect of Door No.96, Gangai Amman Kovil Street, Ward No.E, Block 16 and New S.Nos.2,3,4,5,6,7 and 8 in respect of Door Nos.27C, 27B, 27A, 27, 26, 26 and 25 in Ward No.E, Block 20, in Puliyankudi Village, Kadayanallur Taluk, Tenkasi District from the name of Mohamed Masood Sha and Shahul Hameed in the petitioner's favour forthwith.

2.The case of the petitioner is that originally the aforesaid property belonged to his great grandfather viz., Shahib Pannaiyar, who has purchased the aforesaid property along with some other property in Natham S.No.309/2A1A, by a sale deed dated 06.03.1954 and he is in possession and enjoyment of the same. The said Shahib Pannaiyar died intestate leaving behind his daughter Hameedar Beevi and son Mohamed Masood. After the demise of the said Sahib Pannaiyar, the above property was devolved upon his son viz., Mohamed Masood, who has constructed a house in the said property. The property tax and all the revenue records were mutated in his name.

3.In such circumstances, the said Mohamed Masood had executed a Hiba(Gift) dated 04.06.1993 in favour of his sister's children viz., Noorjahan Beevi, who is the mother of the petitioner and one Shahul Hameed, in respect of his 2/3 share in the subject property. Pursuant to which, they are in possession and enjoyment of the property. The said Mohamed Masood executed a sale deed dated 22.04.1998 in favour of Sahul Hameed in respect of the property in Natham S.No.309/2A1A and he is in possession and enjoyment of the same. Though the said Mohamed Masood executed a Hiba dated 04.06.1993, the property tax stands in his name and the petitioner's mother and his brother paid the property tax in the name of the said Mohamed Masood, even after the his death. The said Sahul Hameed executed a Hiba dated 28.07.2014 in favour of the petitioner's mother. Thereafter, the petitioner's mother executed a Hiba deed dated 05.11.2024 in favour of the petitioner. Thereafter, the petitioner's mother died on 15.07.2016.

4.In such circumstances, the petitioner submitted an application dated 09.12.2019 to the Commissioner, Puliyankudi Municipality, to transfer the assessment order in his favour. But the Commissioner has not taken any steps. Without any enquiry, the Commissioner has passed the impugned order dated 19.07.2022. Challenging the same, he filed a writ petition in W.P(MD)No.24378 of 2022 before this Court. Pending the said writ petition, he filed another writ petition in W.P(MD)No.24377 of 202 challenging the same order. This Court after hearing both sides, by order dated 17.11.2022 disposed the writ petition. Pursuant to the above said order, the petitioner submitted all the relevant documents by way of representation dated 07.12.2022 before the Commissioner. Since the Commissioner has not implemented the order of this Court dated 17.11.2022, he sent a contempt notice dated 10.02.2023 and the same was received on 13.02.2023. As the said order was not implemented, he filed a contempt petition in Cont.P(MD)Nos.574 and 575 of 2023. When the contempt petitions were listed on 05.06.2023, the Commissioner, Puliyankudi Municipality informed that the order of this Court has been complied with and thereby mutated the property tax in favour of the petitioner in respect of all the subject matter properties.

5.While so, the petitioner submitted a representation dated 16.11.2023 before the respondent to change the revenue patta and town survey register in his favour. After the receipt of the said application, without any enquiry, the respondent passed the impugned proceedings dated 02.02.2024 and passed an order to produce the registered document along with application to mutate the revenue patta in his favour.

6.Heard the learned counsel appearing on either side.

7.A Hiba has to satisfy 3 essential characteristics. There must be (i)a declaration of gift by the donor (ii) acceptance of the gift by the donee 3) delivery of possession of the property. More than that the law, does not make it compulsory to reduce a gift into writing and oral gifts fulfilling the aforesaid three essential was sufficient. Further, the Hon'ble Supreme Court in the judgment reported in ***AIR 2011 SC 1695 (Hafeeza Bibi and others-vs-Shaik Farid(Dead) by Lrs and others)*** had held as follows:

> *"29. In our opinion, merely because the gift is reduced to writing by a Mohammadan instead of it having been made orally, such writing does not become a formal document or instrument of gift. When a gift could be made by Mohammadan orally, its nature and character is not changed because of it having been made by a written document. What is important for a valid gift under Mohammadan Law is that three essential requisites must be fulfilled. The form is immaterial. If all the three essential requisites are satisfied constituting valid gift, the transaction of gift would not be rendered invalid because it has been written on a plain piece of paper. The distinction that if a written deed of gift recites the factum of prior gift then such deed is not required to be registered but when the writing is contemporaneous with the making of the gift, it must be registered, is inappropriate and does not seem to us to be in conformity with the rule of gifts in Mohammadan Law.*

8.In the light of the aforesaid judgment, the impugned order dated 02.02.2024 passed by the respondent is hereby set aside. The respondent is directed to mutate the revenue patta in favour of the petitioner, after serving notice to the other legal heirs and hearing their objections.

9.With the above said observations, this Writ Petition stands allowed. No costs.

30.09.2024

NCC : Yes/No
Index : Yes/No
Internet : Yes
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To
The Tahsildar,
Kadayanallur Taluk,
Tenkasi District.

P.T.ASHA, J.

Ns

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