



C.R.P(MD).No.1014 of 2014

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Dated : 23.02.2024

CORAM:

THE HON'BLE Mr. JUSTICE K.K.RAMAKRISHNAN

C.R.P.(MD).No.1014 of 2014

and

M.P.(MD).No.1 of 2014

Marudhambal @ Banumathi

... Petitioner/Petitioner/Petitioner

Vs.

1.The Special Tahsildar,
Land Acquisition,
Madurai North, Madurai-20.

... 1st Respondent/1st Respondent/Respondent

2. V.Ramalingam

3. Ambigai Nathan

4. Baskaran

5. Subramani

6. Muthulakshmi

7. Kasthuri

8. Angala Eswari @ Eswari ... Respondents 2 to 8/Respondents2 to 8/Petitioners

Prayer : Civil Revision Petition is filed under Article 227 of the Constitution of India, praying to call for the records relating to the order 30.04.2013 made in I.A.No.135 of 2008 in LAOP.No.40 of 1985 on the file



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of the Principal Subordinate Judge, Dindigul and set aside the same and allow this civil revision petition.

For Petitioner : Mr.D.Rajkumar
For Respondents : Mr.A.K.Manikkam,
Special Government Pleader for R1

: Mr.G.Gomathi Shankar for R3 & R5

: No appearance for R2 & R4

ORDER

The revision petitioner filed this petition to set aside the order dated 30.04.2013 made in I.A.No.135 of 2008 in LAOP.No.40 of 1985 on the file of the Principal Subordinate Judge, Dindigul.

2.The revision petitioner is the daughter of the Veeranathan Pillai. The said Veeranathan Pillai had four sons and four daughters including the petitioner. The said Veeranathan Pillai is the owner of the property in S.No. 544/4C and 5 situated at Chettinaickenpatti, Dindigul District. The same was acquired by the Government as per the Land Acquisition Act, 1894. The said Veeranathan Pillai participated in the award enquiry and received the amount under the protest. Thereafter, he challenged the award dated 2/8



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16.05.1883 in L.A.O.P.No.40 of 1985 and the same was partly allowed.

Thereafter, the said Veeranathan Pillai filed an appeal in A.S.No.115 of 1990 seeking enhancement. Pending the same, the said Veeranathan Pillai died in 1992. The petitioner and the remaining sisters and brothers of the petitioner were impleaded as parties to the proceedings. Thereafter, this Court allowed the appeal by enhancing compensation as Rs.2 per sq.ft. Thereafter, the first respondent deposited a sum of Rs.6,05,524/- in L.A.O.P.No.40 of 1985 before the learned Subordinate Court, Dindigul. Subsequently, the respondents 2 to 8 herein namely brothers and sisters of the petitioner filed I.A.No.123 of 2005 to disburse the compensation deposited in L.A.O.P.No.40 of 1985. As per the order of this Court in A.S.No.115 of 1990, in the said I.A.No.123 of 2005, they took a plea that the said Veeranathan Pillai executed Will. As per the Will, the petitioner and others are entitled only Rs.5,000/-. They claimed on the basis of the Will. The Court below adjudicated the issue and disbelieved the Will and hence, the Court below kept 1/8 share of the petitioner in the account of L.A.O.P.No.40 of 1985 and permitted to withdraw the remaining amount. In the said circumstances, the petitioner filed an application in I.A.No.135 of 2008 to permit to withdraw his share of Rs.81,942/-. The said application



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was dismissed by passing the impugned order on the ground that the property acquired by the Government from Veeranathan Pillai is the ancestral property of the Veeranathan Pillai and hence, the petitioner is not entitled to get any share. She is entitled to $\frac{1}{4}$ share. Challenging the same , the petitioner filed this revision.

3.The learned counsel appearing for the petitioner submitted that the petitioner is the daughter of the said Veeranathan Pillai and hence, she is entitled to get $\frac{1}{8}$ th share of the property. The same was not correctly considered by the learned trial Judge. Hence, she seeks to allow this petition.

4.The learned Special Government Pleader appearing for the first respondent submitted that the learned trial judge correctly appreciated the oral and documentary evidence and dismissed the petition. Hence, he seeks to dismiss the petition.

5.This Court considered the rival submission made by the learned counsel appearing for the learned counsel appearing for the petitioner and



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the learned Special Government Pleader and also perused the materials available on record and also the impugned judgment.

6.In view of the above, it is clear that the defence taken by the respondents herein in I.A.No.135 of 2008 that the said Veeranathan Pillai and three brothers entered into partition in the year 1934 is correct. In the partition of the year 1934, number of properties were allotted to him. From the income of the said property, the acquired property was purchased by said Veeranathan Pillai and hence, it is to be treated as ancestral property. To prove the same, this Court finds no material evidence produced by the respondents 2 to 8. It is well settled principle that mere pleading of the purchase of the property from the income of ancestral property is not enough and the execution of the property is to be proved. It is to be proved, from the said property, coparceners received the surplus income and the same was used for purchasing of the property and without satisfying the above ingredients, this Court has no jurisdiction to hold the ancestral property or coparcenary property. In the said circumstances, the first finding of the learned trial judge that the property is the ancestral property is not accepted and the other finding of the learned trial judge that the petitioner's



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daughter is entitled only to $\frac{1}{4}$ share is not in accordance with law. The said Veeranathan Pillai died after 1992. As per the provision of Hindu Succession Act, 1956, the petitioner is entitled to equal share in the said ancestral property and the same is settled law as laid down by the Hon'ble Supreme Court in the case of *Vineeta Sharma vs. Rakesh Sharma* reported in **2020 9 SCC 1**.

7.In view of the development law, the finding of the learned trial judge that the petitioner is entitled $\frac{1}{4}$ share is not accepted. Further, the said Veeranathan Pillai executed Will and as per the Will she was allotted only Rs.5,000/- is also not accepted. The court below in earlier proceedings in I.A.No.123 of 2007 specifically rendered a finding that the Will is not proved and the same was not challenged by the respondents 2 to 8. In the said circumstances, the plea of share on the basis of the Will also is not accepted. Hence, the order of the learned trial judge is not in accordance with law.

8.In view of the above, this civil revision petition is allowed and the impugned order passed in I.A.No.135 of 2008 in LAOP.No.40 of 1985 by



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the learned Principal Subordinate Judge, Dindigul, dated 30.04.2013, is set aside. This Court holds that the petitioner is entitled to an amount of Rs. 81,942/- with accrued interest and the learned learned judge is directed to disburse of the same within a period of four weeks from the date of receipt of a copy of this order. No costs. Consequently, the connected miscellaneous petition is closed.

23.02.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
vsg

To

1. The Learned Principal Subordinate Judge,
Dindigul.
2. The Special Tahsildar,
Land Acquisition,
Madurai North, Madurai-20.
3. The Special Government Pleader,
Madurai Bench of Madras High Court,
Madurai.
4. The Section Officer,
VR Section,
Madurai Bench of Madras High Court, Madurai.

7/8



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K.K.RAMAKRISHNAN, J.,

vs

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