



W.P(MD)No.20838 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Reserved on : 01.07.2024

Delivered on : 08.07.2024

CORAM :

THE HONOURABLE MR.JUSTICE K.MURALI SHANKAR

W.P(MD)No.20838 of 2021

and

W.M.P(MD)No.17455 of 2021

R.Natarajan

: Petitioner

Vs.

1.M.Thangarasu

2.The District Revenue Officer,
Karur District, Karur.

3.The Revenue Divisional Officer,
Karur District, Karur.

4.The Tahsilder,
Aravakurishi, Karur District.

: Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of certiorarified Mandamus, to call for the records relating to the order passed by the second respondent in Na.ka.C1/17560/2020, dated 15.07.2021 confirming the order passed by the third respondent made in Na.ka.A4/1964/2020, dated 07.12.2020 and quash the same and consequently, directing the respondents 2 to 4 to remove the name of the first respondent in Patta Nos.592 and 393.



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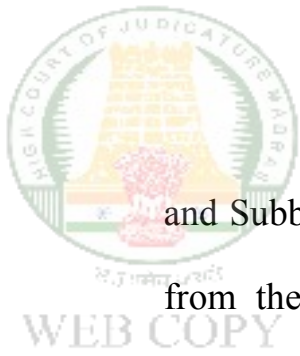
For Petitioner : Mr.N.Shanmugaselvam

For Respondents : Mr.K.Prabhakar,
Government Advocate, for R2 to R4.

ORDER

The Writ Petition is directed against the order, dated 15.07.2021 passed by the second respondent, confirming the order, dated 07.12.2020 passed by the third respondent and for a direction to the respondents 2 to 4 to remove the name of the first respondent in patta Nos.592 and 393.

2. The petitioner's case is that the property situated in S.F.No.250 bearing patta No.592 at T.Venkatapuram Village, Aravakurichi Taluk, Karur District to an extent of 2.85 ½ cents and another property situated in east Bit-I Village in S.F.No.1023/2 bearing patta No.393 to an extent of 1.37 cents originally belonged to his mother Rasammal; that since the petitioner's brothers have not taken care of their mother and father and the petitioner alone has settled the loans of his father, his mother Rasammal has executed a registered Will, dated 05.01.2007 bequeathing her properties above referred in favour of the petitioner; that the petitioner's mother died on 13.12.2008 and as such, the will came into force and the petitioner has become the absolute owner of the said property; that the petitioner's brothers Muthusamy



and Subburayan in order to grab the property, obtained legal heirs certificate from the fourth respondent and on the strength of the same, they have obtained joint patta without issuing any notice to the petitioner; that thereafter, the petitioner's brother Muthusamy executed a settlement deed in respect of his alleged 1/3 share in favour of his son Thangarasu/first respondent herein on 13.07.2017 and that the first respondent has been added as joint patta without notice to the petitioner; that the petitioner has then made an application before the third respondent to remove the name of the first respondent and the petitioner's another brother Subburayan; that the third respondent after receiving report from the fourth respondent has passed an order, dated 07.12.2020 rejecting his application on the ground that the civil suit filed by the first respondent is pending and that the petitioner, aggrieved by the said order of the third respondent, has preferred an appeal before the second respondent and the second respondent has passed the impugned order, dated 15.07.2021, dismissing the appeal and thereby confirming the order of the third respondent. Challenging the order passed by the second respondent, the present writ petition came to be filed.

3.It is not in dispute that Rasammal had three sons R.Muthusamy, R.Subburayan and R.Natarajan/petitioner herein. The main contention of the



petitioner is that his mother Rassammal had executed a registered will in his favour bequeathing the property in dispute and after the death of his mother, he has become the owner of the said properties. But on the other hand, the case of the first respondent is that the Rasammal had died intestate leaving behind his three sons; that the first respondent's father Muthusamy has executed a registered settlement deed, dated 13.07.2017 in respect of his 1/3 share in the properties of Rasammal and that therefore, he is entitled to get 1/3 of the property.

4. It is also not in dispute that the first respondent has already filed a suit in O.S.No.528 of 2020 on the file of the Sub Court, Karur against his father and his paternal uncles R.Subbarayan and R.Natarajan, claiming partition and allotment of 1/3 share to him and that the same is pending.

5. It is evident from the records that originally the patta in respect of the properties in dispute was in the name of Rasammal W/o.Ramasamy Gounder, but after the settlement deed executed in favour of the first respondent pattas were issued in patta Nos. 393 and 593 in favour of the petitioner, his brother Subbrayan and brother's son Thangarau/first respondent herein.



6. As already pointed out, after coming to know about the changes in patta, the petitioner has made an application to the third respondent that he is the owner of the properties in dispute as per the will executed by her mother Rasammal and that his two other brothers are not having any right over the said properties and that the names of his brother Subburayan and brother's son Thangarasu came to be added in the pattas without issuing notice to him and without giving any opportunity of being heard. But the third respondent taking note of the pendency of the civil suit for partition has rejected the application and directed the petitioner to approach the competent civil Court for redressing their grievance. In the appeal, the second respondent has also confirmed the order passed by the second respondent, directing the petitioner to approach the competent Civil Court.

7. As rightly contended by the learned counsel for the petitioner, the first respondent has filed the suit for partition, during the pendency of the petitioner's application before the third respondent; though the petitioner has made an application as early as on 12.11.2019, the third respondent has chosen to pass orders only on 07.12.2020, after the lapse of more than one year.



8. As rightly contended by the learned Government Advocate and the learned counsel for the private respondents, the respondents 2 and 3 have come to a decision that since the partition suit is pending before the competent civil Court, they cannot decide the rights of the parties and on that ground rejected the claim of the petitioner.

9. It is pertinent to note that the petitioner is claiming ownership over the properties by testamentary succession whereas the petitioner's brothers are claiming ownership by intestate succession.

10. As rightly contended by the learned counsel for the private respondents, the respondents 2 and 3 cannot decide the validity and legality of the will alleged to have been executed in favour of the petitioner. Since the suit for partition is pending, it is for the concerned Court to decide about the genuineness of the will. But the fact remains that the above partition suit came to be filed only during the pendency of the petition filed by the petitioner before the third respondent.

11. According to the petitioner, the first respondent taking advantage of the joint patta granted in his favour, has already mortgaged the property in



favour of one Natchimuthu S/o.Palanisamy only to dictate the terms and to harass petitioner.

12. Considering the above facts and circumstances and taking note of the fact that the petitioner as well as the private respondents are claiming ownership and also the fact that the first respondent after getting settlement, has mortgaged the property, this Court is of the view that the patta has to be restored back in the name of Rasammal and the parties are to be directed to approach the revenue authorities for patta subject to the result of the suit pending before the sub Court, Karur.

13. It is also pertinent to note that though the petitioner has taken a specific stand that patta was changed without issuing any notice and without hearing him, the same was not specifically disputed by the official respondents. They have not produced any iota of evidence to show that the notice was given to the petitioner and the petitioner was heard before ever changes were made in the patta. Consequently, this Court concludes that the official respondents are to be directed to restore the patta in the name of Rasammal and to effect changes in accordance with the findings of the civil Court.



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14. The respondents 2 to 4 are directed to restore the pattas in the name of Rasammal. The petitioner and the private respondents are at liberty to approach the revenue authorities subject to the result of the partition suit pending before the Sub Court, Karur. The learned Subordinate Judge, Karur is directed to complete the trial and dispose of the suit within a period of five months from the date of receipt of copy of this order.

15. With the above observation and direction this Writ Petition is disposed of. Consequently, connected Miscellaneous petition is closed.
No costs.

08.07.2024

NCC :Yes/No
Index :Yes/No
Internet : Yes/ No
das

To

- 1.The District Revenue Officer,
Karur District, Karur.
- 2.The Revenue Divisional Officer,
Karur District, Karur.
- 3.The Tahsildar,
Aravakurishi, Karur District.



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K.MURALI SHANKAR, J

DAS

Pre-delivery order made in
W.P(MD)No.20838 of 2021
and
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Dated : 08.07.2024