



W.P.(MD).No.18953 of 2017

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 18.12.2024

CORAM

THE HONOURABLE MR.JUSTICE K.KUMARESH BABU

W.P.(MD).No.18953 of 2017

and

W.M.P.(MD)No.15313 of 2017

R.K.Sampath Kumar

...Petitioner

Vs

1.The District Revenue Officer,
Madurai.

2.The Revenue Divisional Officer,
Madurai.

3.The Tahsildar,
Melur Taluk,
Melur, Madurai.

4.D.Chandrasekar

5.C.S.Priya

... Respondent

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 impugned order of the first respondent in Ne.Mu.No.Ji2/14228/2015 dated 28.08.2017 and quash the same and



W.P.(MD).No.18953 of 2017

consequently direct the respondents 1 to 3 to issue patta after the competent civil court decides the right of parties in the suit in O.S.No. 213/2013 on the file of the District Munsif Court, Melur.

For Petitioner : Mr.H.Arumugam
For R-1 to R-3 : Mr.R.Suresh Kumar
Additional Government Pleader
For R-4 : Mr.V.Kalyana Sundaram
For R-5 : No Appearance

ORDER

This Writ Petition has been filed challenging the order passed by the first respondent herein, under which a revision petition filed by the respondents 4 and 5, had set aside the order passed by the second respondent and directed the entries in the revenue records to stand as it is prior to the order passed by the second respondent.

2. Heard Mr.H.Arumugam, learned counsel for the petitioner, Mr.R.Suresh Kumar, learned Additional Government Pleader for the respondents 1 to 3 and Mr.V.Kalyana Sundaram, learned counsel for the 4th respondent.



W.P.(MD).No.18953 of 2017

WEB COPY

3. Despite receiving notice, the fifth respondent chosen not to appear in person or through counsel. The name was printed in the cause list and was called, but the fifth respondent was absent today.

4. The learned counsel for the petitioner would submit that the first respondent had acted akin to a civil court and had held that the petitioner cannot claim based upon a Will, as the testator did not have any authority to execute the Will. For the said reason, he had set aside the reasoned order passed by the Revenue Divisional Officer. He would further submit that the fourth respondent had instituted a suit, O.S. No. 213 of 2013, seeking relief of injunction and a declaration that the Will, pursuant to which the property was bequeathed to the petitioner, was null and void. Since the suit was pending on the date when the order was passed, the first respondent ought not to have not rendered such a finding that only a civil court could grant. He would further submit that the said suit filed by the fourth respondent had been dismissed for default on 05.08.2024 and no steps have been taken by the fourth respondent to restore the said suit. He would also relied upon the judgment of the



W.P.(MD).No.18953 of 2017

Hon'ble Apex Court in the case of *Edelweiss Asset Construction*

Company Limited vs R.Perumalswamy and others reported in

(2021) 11 SCC 98, to contend that when such disputed question of title had been raised by the parties, then, no proceedings ought to have been continued by the revenue authorities and they ought to have directed the parties to approach the civil court for redressing their grievances. Hence, he would submit that the order impugned would have to be set aside.

5. The learned Additional Government Pleader for the respondents 1 to 3 would submit that he is only representing the adjudicating authority and therefore with regard to the rights of the parties, they would not be in a position to substantiate the order passed by the revenue authorities.

6. I have considered the submissions made on either side and perused the materials available on record.

7. A reading of the order impugned would clearly indicate that there is a private dispute over the property between the petitioner and the



W.P.(MD).No.18953 of 2017

private respondents herein. The petitioner had claimed right to his property over the Will which the fourth respondent had also challenged in a suit in O.S.No.213 of 2013 on the file of the District Munsif Court, Melur. It is also brought on record that the suit is dismissed for non prosecution on 05.08.2024 and even as of this stage, no steps have been taken to restore the suit. The same is also evident from the case status report downloaded from the e-courts website. As rightly pointed out by the learned counsel for the petitioner the revenue authorities ought not to have ventured to decide the title of the property or particularly the execution of the Will by testators by which the petitioner had inherited the property. The same has been held to be invalid by the Hon'ble Apex Court in the judgment relied upon by the learned counsel for the petitioner as stated supra.

8. Moreover, when a suit had already been filed by the fourth respondent for the very same relief, the first respondent ought not to have proceeded with the revision. Instead, they should have directed the parties to approach them, after the disposal of the suit in one way or another. Without doing so, the first respondent overstepped its



W.P.(MD).No.18953 of 2017

jurisdiction, treating the matter as if it were a civil suit, and rendered findings on the validity of the Will, which is beyond their authority.

9. In fine, the Writ Petition is allowed and the impugned order dated 28.08.2017 is set aside. There shall be no order as to costs. Consequently, connected miscellaneous petition is closed.

18.12.2024

NCC:yes/no
Index:yes/no
Internet:yes/no
Nsr

To:

- 1.The District Revenue Officer,
Madurai.
- 2.The Revenue Divisional Officer,
Madurai.
- 3.The Tahsildar,
Melur Taluk,
Melur, Madurai.

6/7



WEB COPY



W.P.(MD).No.18953 of 2017

K.KUMARESH BABU, J.

Nsr

W.P.(MD).No.18953 of 2017

18.12.2024