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W.P.No.35009 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 31.01.2025

CORAM

THE HONOURABLE Ms. JUSTICE P.T. ASHA

W.P.No. 35009 of 2024

&

W.M.P.Nos. 37961 & 37963 of 2024

1.Pongiyammal

2.Jagan

...Petitioners

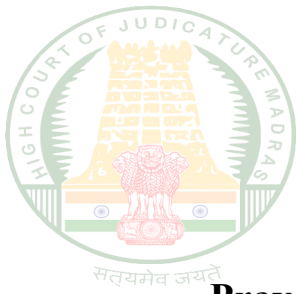
Vs.

1.The Revenue Divisional Officer
Erode District
Erode,
Tamilnadu 638 001

2.The Tahsildar
Modakurichi Taluk,
Erode District
Erode
Tamil Nadu 638 001

3.C.Sivakumar

...Respondents



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Prayer: Writ Petition is filed under Article 226 of the Constitution of India to issue a Writ of Certiorari, to call for the proceedings of the 1st respondent in Na.Ka.No 4074 / 2024 / A3 dated 25.10.2024 and quash the same.

For Petitioner : Mr. C.Vigneswaran

For Respondents : Mr. A.Selvendran
1 & 2 Special Government Pleader

For Respondent 3: Mr. J.Titus Enoch

ORDER

The Writ Petition is filed for the following relief:

*“To call for the proceedings of the 1st respondent
in Na.Ka.No 4074 / 2024 / A3 dated 25.10.2024 and
quash the same ”*

2. It is the contention of the petitioners that lands measuring an extent of 4 acres 59 cents in S.No.89/1, Erode District Modakurichi



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Taluk, Ezhumathur Village, was possessed by three persons, namely, Pongiammal w/o Chinnsamy, Vadivel Gounder s/o Velappa Gounder and Vellappa Gounder s/o Kaliappan. Out of this 4 acres 59 cents, Pongiammal owned 2.16 acres. She had acquired it by way of two documents namely, Doc.No.63 of 1974 to an extent of 1.24 acres and Doc.No.22 of 1976 to an extent of 0.92 cents.

3. The 1st petitioner's father and the 2nd petitioner's grand father Vadivel Gounder owned lands in the above survey numbers to an extent of 1.30 acres. He had acquired it by way of a partition deed between him and his brother, after their father's death. The remaining extent in the above survey number belonged to Vellappa Gounder. The three owners have marked their boundaries and had been enjoying the same for more than 8 decades. The said Pongiammal mortgaged the property with Ezhumathur Primary Agricultural Cooperative Bank Ltd., The schedule to the deed clearly described the property within specified boundaries.



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4. In this scenario in the year 2011 the said Vadivel Gounder out of his love and affection executed two registered settlement deeds on 18.02.2011 in favour of the petitioners. The petitioners thereafter applied for subdivision of the property before the 2nd respondent. The 2nd respondent after giving notice to all parties and verifying earlier documents subdivided RS.No.89/1 into RS.NO.89/1A, 89/1B and 89/1C vide proceedings dated 29.01.2012. Patta was also issued to the petitioners in respect of RS.No.89/1B and 89/1C. However, the patta in respect of RS.No.89/1A was jointly issued in the names of the aforesaid parties. The 2nd respondent issued patta No.1699 in respect of S.No.89/1B and 89/1C in favour of the petitioners.

5. While so the 3rd respondent applied for cancellation of subdivision by letter dated 04.04.2024 stating that the petitioners had obstructed his pathway and also on the ground that no partition had taken place between the land owners. The petitioners were not served with the copy of the complaint and enquiry was ordered by the 1st



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respondent. A report was called for from the 2nd respondent who had also submitted the same to the 1st respondent vide proceedings dated 02.08.2024. This report was also not made available to the petitioners. However, since the VAO had orally informed the petitioners that an enquiry was to be conducted in the RDO's Office on 03.10.2024, the petitioners approached the RDO's office. They were then directed to submit their response to the claim of the 3rd respondent without even issuing a copy of the complaint. When the same was asked for by the petitioners they were informed that it would be furnished to them and the next enquiry date would be intimated to them. However, by the proceedings dated 25.10.2024 the impugned order has been passed without notice to the petitioners and therefore without receiving the response from the petitioner.

6. Challenging the same, the petitioners are before this Court.

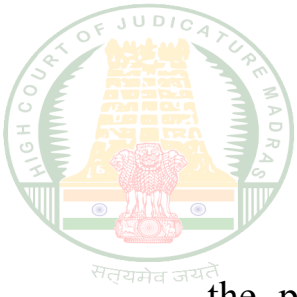
7. The 3rd respondent though served had not entered appearance through counsel.



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8. This Court by order dated 21.11.2024 directed the 2nd respondent to produce the documents relating to the subdivision, survey and grant of patta in favour of the petitioners. Accordingly, the documents have been produced by the Special Government Pleader. It is seen that the letter from the Revenue Divisional Officer to the Tahsildar asking him to submit a report on the basis of the complaint dated 04.04.2024 of the 3rd respondent has been marked only to the 3rd respondent. Thereafter, a report has been given by the Revenue Inspector on 12.07.2024, wherein the Revenue Inspector had reported that S.No.89/1 had been further subdivided as S.Nos.89/1A, 89/1B and 89/1C by orders dated 29.01.2012 and an extent of 1.37.5 hectares in 89/1A stands in the name of Velappan and seven others in patta No.1051 and 89/1B stands in the name of petitioners herein to an extent of 0.16.5 hectares in Patta No.1699. Likewise, the property measuring 0.32.0 hectares in 89/1C also stands in the name of the petitioners in Patta No.1699. The properties in 89/2 has not been subdivided.



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9. The Revenue Inspector would state that in S.No.89/1B and 1C the petitioners were carrying on agricultural activities. The same statement has been made by the VAO. It is further seen that during an enquiry on 16.08.2024 and 03.10.2024 the 2nd petitioner has been present for enquiry.

10. It appears that on 09.11.2024, the 2nd petitioner had requested for copy of the complaint and without furnishing the same, the impugned order has been passed. The impugned order has been passed on the ground that there has been no partition in respect of the property in question.

11. A perusal of the impugned order would indicate that the entire subdivision has been cancelled on the ground that there has been no partition. However, the 1st respondent has failed to appreciate the fact that an extent of 2.16 acres had been acquired by the 1st petitioner by virtue of two documents. The properties have fallen to the share of the 1st petitioner by virtue of a registered Will executed by her grand



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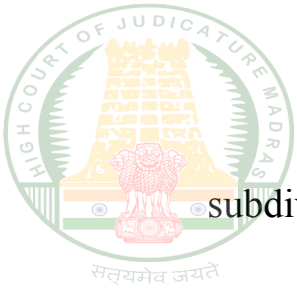
father Nallappa Gounder on 13.09.1976.

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12. In the impugned order the 1st respondent has himself traced an exclusive title of the 1st petitioner to the extent of 2.16 acres, which has been subdivided as 89/1B and 89/1C. The 1st respondent has also contended that the petitioners have produced the registered settlement deeds dated 18.02.2011 bearing document No.1248 and 1249. It is, however overlooked on the ground that the earlier documents have not been produced.

13. However, the fact remains that on 09.11.2024, the petitioners sought for copy of the complaint which request has also been received by the respondents on the same date, which only goes to show that the complaint and documents had not been served on the petitioners.

14. That apart, the 1st respondent has failed to appreciate the fact that the subdivision had taken place in the year 2012 and patta had been granted to the petitioners. The 3rd respondent has sought to cancel the



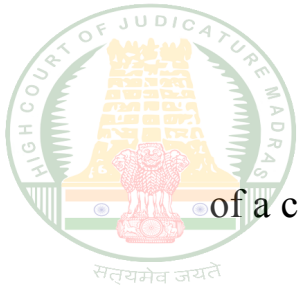
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subdivision and grant of patta 12 years later.

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15. The main ground on which the writ petition is filed is on the ground that the complaint has been lodged 12 years after the subdivision and grant of patta and that the copy of the complaint had not been given to the petitioners and they have been given fair hearing. The records were called for and the perusal of the same would confirm the above fact. The files contain a request letter from the 2nd petitioner dated 09.11.2024 requesting the 1st respondent to furnish a copy of the complaint lodged by the 3rd respondent.

16. Therefore, it appears that the orders have been pronounced without even giving opportunity to the petitioners to submit their objection and principles of natural justice have been flouted. Therefore, the impugned order is set aside. The matter is remitted back to the 1st respondent for a fresh consideration, after affording opportunity to the petitioners as well as the 3rd respondent. The matter shall be disposed of within a period of 1 month from the date of receipt



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of a copy of this order.

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17. The Writ Petition is allowed. Consequently, the connected miscellaneous petition is closed. No costs.

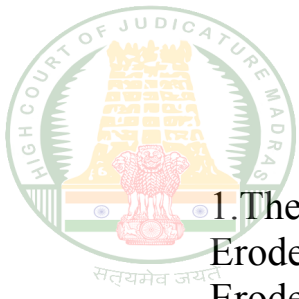
31.01.2025

Index : Yes/No
Internet : Yes/No

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To

10/14



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P.T. ASHA, J,

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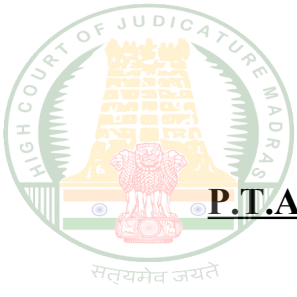


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This case is listed today under the caption 'for being mentioned' at the instance of the learned Counsel for the 3rd Respondent.

2. Learned Counsel for the 3rd Respondent would submit that in the Order copy dated 31.01.2025 in Page 5, Paragraph 7, it has been wrongly mentioned as **"The 3rd respondent though served had not entered appearance through counsel"**.

3. Based on the submission of the learned Counsel for the 3rd Respondent, the below changes are to be effected in Page 5, Paragraph 7 of the Order.

"Heard the learned Counsel for the Petitioners, Mr.C.Vigneswaran, the learned Counsel for the Respondents 1 and 2, Mr.A.Selvendran, Special Government Pleader and the learned Counsel for the 3rd Respondent, Mr.J.Titus Enoch".

P.T.ASHA J.

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order.

4. Registry is directed to record the same and issue fresh copy of the

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19.08.2025

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