BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 25.02.2025

CORAM:

THE HONOURABLE MRS.JUSTICE J. NISHA BANU
and
THE HONOURABLE MRS.JUSTICE S.SRIMATHY

W.A(MD)No.266 of 2025
and
C.M.P.(MD)No.1892 of 2025

P.Thangiah (Died)

1.Subbulakshmi
2.Rajaperumal
3.Mathanraj
4.Sathanraj ... Appellants

Vs.

1.The Revenue Divisional Officer,
Periyakulam Revenue Division,
Theni District.

2.The Thasildar,
Theni Taluk,
Theni District.

3.Ramachandran
4.Nagarajan
5.R.Vijayarajan
6.R.Ramar
7.Dhanalakshmi
8.Ganeswari
9.Suriyalakshmi
10.Gokilavani

11.Subasri
12.Kathirvelpandiyan
13.Jeyalakhmi
14.Balagurusamy
15.Karthison
16.Linga Kani
17.Kasirajan
18.Gunasekaran
19.Vijayakumar
20.Pounraj
21.Veluthai ... Respondents

Prayer: Writ Appeal filed under Clause 15 of the Letter Patent against the order of this Court in W.P.(MD)No.22677 of 2019, dated 07.11.2024.

For Appellants	:Mr.T.Lajapathi Roy Senior Counsel for M/s.Roy and Roy Associates
For R1 and R2	:M/s.D.Farjana Ghoushia Special Government Pleader
For R3 and R4	:Mr.B.Saravanan Senior Counsel for Mr.K.Vignesh

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JUDGMENT

(Judgment of the Court was delivered by **S.SRIMATHY, J.**)

The present writ appeal is filed against the order, dated 07.11.2024, passed in W.P.(MD)No.22677 of 2019.

2. The writ petition was filed challenging the order, dated 21.09.2019, passed by the Revenue Divisional Officer, the 1st respondent in the writ petition.

3. Pending writ petition, the writ petitioner Thangaiah died and his legal heirs were impleaded as parties in the writ petition.

4. The brief facts of the case are that the deceased Thangaiah has purchased an extent of 1.08 acres from the private respondents 5 to 13 in writ petition on 17.08.2017, through a Registered Sale Deed in Document No.4592/ 2017. The said private respondents 5 to 13 claim themselves to be the descendants of Kandamanur Jameen had filed S.O.P.No.2 of 2013, on the file of Sub Court, Theni and the same came to be ordered on 02.04.2014. Based on the same, the 5th respondent approached the Tahsildar for issuance of joint patta in the name of the private respondents 5 to 13. The Tahsildar, vide order, dated 14.01.2015, had granted joint patta, by relying on the judgment passed in S.O.P.No.2 of 2013. Aggrieved over the same, the private respondents 3 and 4 namely, S Ramachandran and S.Nagarajan had filed an appeal before Revenue Divisional Officer and the appeal was allowed, vide the order impugned in the

writ petition, dated 21.09.2019. Hence in effect, the patta granted to the respondents 5 to 13 was cancelled. However, during the interregnum period, the private respondents 5 to 13 sold a portion of the land to the deceased writ petitioner. Hence, the writ petition was filed.

5. After considering the rival submissions, the Writ Court has held that the parties have raised several disputed questions of facts and therefore, it is appropriate to relegate the parties to approach the Civil Court. The appellants are not aggrieved by the direction to approach the Civil Court. But aggrieved by the finding of the Writ Court wherein it has been held that the Revenue Divisional Officer's order, dated 21.09.2019, does not call for any interference. According to the appellants, the Revenue Divisional Officer has no power to entertain appeal beyond the period of limitation of 30 days, hence the Revenue Divisional Officer ought to have dismissed the appeal. But the Writ Court had held declined to interfere with the order of the Revenue Divisional Officer.

6. Hence the contention of the appellants is that the Revenue Divisional Officer's order is affecting the rights and the Civil Court would be prejudiced in passing the judgment. On the other hand, the Learned Senior

Counsel appearing for respondents 3 and 4 vehemently objected and submitted that the patta was obtained from the Tahsildar fraudulently, hence the Writ Court after considering the same had refused to set aside the order passed by the Revenue Divisional Officer. Further, the respondents submitted that the Succession O.P., can be filed only for transferring money, shares, liquidity or movables. The schedule of properties stated in the succession O.P., also would clearly reveal that the SOP was filed only for movables. Further, he relied on the contents of the petition filed in SOP filed by the respondents 5 to 13, wherein it is stated as under:

> *"...Subsequent to the death of Sundaravadivel, Vijayaraghavan had become the Zamin.* ***Most of the properties were taken over by the Government as per the Zamin Abolition Act, the remaining properties were sold.*** *The petitioners (respondents 5 to 13 herein) alone are the existing legal heirs of Kandamanoor Zamin".*

Hence the Learned Senior Counsel appearing for respondents 3 and 4 submitted when the respondents 5 to 13 had admitted there is no immovable properties are available, in such circumstances, claiming patta by the respondents 5 to 13 as if some property is available is a fraudulent act. If it is fraud, then question of limitation would not arise.

7. After hearing the rival submissions, especially, the contention of fraudulent act, this Court is not inclined to entertain the writ appeal. However, the aggrieved party is at liberty to approach the Civil Court for appropriate relief and interim reliefs. The suit may be filed within a period of four weeks from the date of receipt of the copy of the order and until then the parties shall not encumber the property.

8. With the above said directions, the writ appeal is disposed of. No costs. Consequently, connected miscellaneous petition is closed.

[J.N.B., J.] **[S.S.Y., J.]**
25.02.2025

Index : Yes / No

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