BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : **17.04.2025**

Delivered on : **30.04.2025**

CORAM:

THE HONOURABLE MR JUSTICE P.B. BALAJI

W.P.(MD)No.3521 of 2025
and
W.M.P.(MD)Nos.2502 to 2504 of 2025

A.Asirvatham ... Petitioner

/Vs./

1. The District Collector
   Office of the District Collector, Madurai,
   Madurai District.
2. The District Revenue Officer
   Office of the District Revenue Officer,
   Collectorate Complex, Madurai,
   Madurai District.
3. The Revenue Divisional Officer,
   Office of the Revenue Divisional Officer,
   Usilampatti, Madurai District.
4. The Tahsildar
   Office of the Tahsildar, Usilampatti Taluk,
   Madurai.

5. The Sub Registrar
 Office of the Sub Registrar,
 Registration Department, Usilampatti,
 Usilampatti Taluk.

6. K.Raman ... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records pertaining to the impugned orders of the 3rd respondent in Pa.Mu.No. 4402/2010/A3 dated 27.11.2023 and 2nd respondent in Ne.Mu.No.Ji2/1612490/2023 dated 07.01.2025 and quash the same and subsequently mutating the revenue records in favour of the petitioner in survey No. 146/10A, 146/10B of Kavandanpatti Village of Usilampatti Taluk of Madurai District.

For Petitioner	: Mr.Sricharan Rangarajan, Senior Counsel for Mr.S.Ram Sundar Vijayaraj
For Respondents	: Mr.S.Kameswaran Government Advocate for R1-5
	: Mr.K.Surenderan for R6

ORDER

The petitioner challenges the order passed by the 3rd respondent in Pa.Mu.No.4402/2010/A3 dated 27.11.2023 and 2nd respondent in Ne.Mu.No.Ji2/ 1612490/2023 dated 07.01.2025 and consequently seeks mutation of the revenue records in favour of the petitioner in survey No. 146/10A, 146/10B of Kavandanpatti Village, Usilampatti Taluk, Madurai District.

2. I have heard Mr.Sricharan Rangarajan, learned Senior Counsel for the petitioner, Mr.S.Kameswaran, learned Government Advocate for the respondents 1 to 5 and Mr.K.Surenderan, learned counsel for the sixth respondent.

3. Mr.Sricharan Rangarajan, learned Senior Counsel for the petitioner would invite my attention to the various documents filed in support of the writ petition by way of typed set of papers, drawing specific reference to the suit filed in O.S.No.220 of 1978 on the file of the District Munsif Court, Thirumangalam, being a suit for bare permanent injunction filed by one, Junior Veerana Thevar against Veerakkal and

Raman (the sixth respondent herein). He would contend that the suit properties according to the plaintiff, viz., Junior Veerana Thevar were joint family properties and one of the brothers, by name, Andi Thevar, who is the father of the petitioner, converted to Christianity and subsequently, he died in the year 1972, leaving behind Junior Veerana Thevar, as the sole surviving member of the joint family entitled to the subject properties. Mayakkal, who is the mother of the petitioner, was permitted by Junior Veerana Thevar to reside in a portion of the suit property purely out of sympathy and compassion. The said suit was resisted by the defendants including the sixth respondent herein, contending that the legal heirs of Andi Thevar were also entitled the share in the suit property and the suit was liable to be dismissed, on the ground of non-joinder of necessary parties. Ultimately, the District Munsif Court, Thirumangalam, after framing an issue regarding non-joinder, though finding that Junior Veerana Thevar was not in possession of 55 cents of land and that Mayakkal and her children, viz., Asirvatham (the petitioner), Vijayarani (wife of sixth respondent), were alone in possession, proceeded to dismiss the suit on the ground of non-joinder of proper and necessary party. The learned Senior Counsel would further contend that though Junior Veerana Thevar preferred First Appeal in A.S.No.154 of 1979, before the Principal Sub Court, Madurai, by the judgment and decree dated 24.11.1980, the appeal was dismissed, thereby confirming the decree of the trial Court.

4. Mr.Sricharan Rangarajan, learned Senior Counsel for the petitioner, would further contend that without respecting the findings of the civil Court and going back on their own admitted case that the property is a joint property, the private respondent / sixth respondent colluded with Junior Veerana Thevar and entered into a partition deed between themselves, excluding the petitioner's mother Mayakkal and depriving the petitioner of his lawful entitlement of the property. Subsequently, the legal heirs of Junior Andi Thevar filed a suit in O.S.No. 63 of 1997 before the District Munsif-cum-Judicial Magistrate, Usilampatti, to declare the lease agreements concerning 55 cents in survey No.146/10 as null and void and for consequential relief of possession. The petitioner herein was one of the plaintiffs in the said suit. Ultimately, the suit came to be decreed on 19.12.1997. Subsequently, the decree was also complied with by release of property measuring 55 cents

in survey No.146/10, which is evidenced by a receipt executed between the petitioner and the leasees on 27.11.2000. Thereafter, the petitioner has approached the Tahsildar, viz., the fourth respondent herein, staking a claim for patta in the name of the legal heirs of Late.Junior Andi Thevar, emphasising the fact that the patta was also standing in the name of Junior Veerana Thevar, the father of Junior Andi Thevar. The fourth respondent, considering the petitioner's application and taking into account the decree passed in O.S.No.220 of 1978 as well as O.S.No.63 of 1997 and relying on the report of the Deputy Tahsildar, dated 25.02.2000, issued separate patta in the name of Mayakkal, the petitioner's mother.

5. It is also the case of the petitioner that in and by the registered settlement deed dated 08.07.2005, the mother of the petitioner, viz., Mayakkal, settled the property measuring 55 cents in survey No.146/10 in favour of the petitioner. In the said settlement deed, the sixth respondent's wife, who is none else than the sister of the petitioner, has also signed as one of the witnesses.

6. While matters stood there, the sixth respondent preferred an appeal before the Revenue Divisional Officer, Usilampatti challenging the issuance of patta passed by the Tahsildar in favour of the petitioner, the Revenue Divisional Officer set aside the order of the Tahsildar and proceeded to add the sixth respondent's name as pattadhar, by proceedings dated 02.04.2008, thereby allowing the appeal of the sixth respondent.

7. Aggrieved by the said order of the Revenue Divisional Officer, the petitioner filed an appeal before the District Revenue Officer and the District Revenue Officer set aside the order of the Revenue Divisional Officer on 09.06.2010 and remitted the matter to the Revenue Divisional Officer for fresh consideration.

8. Admittedly, it is seen from the records and also from the arguments of the learned counsel on either side that after the order of remand, passed on 09.06.2010, no proceedings have been taken until November 2023. On 27.11.2023, the third respondent, viz., District Revenue Officer, after a lapse of more than 13 years from the order of remand effected subdivision of survey No.146/10 as survey Nos.146/10A

and 146/10B and declared 27 ½ cents in survey No.146/10B to be the entitlement of the sixth respondent. The said order of the third respondent was challenged by the petitioner before the second respondent. The contention of the learned Senior Counsel, Mr.Sricharan Rangarajan, is that the second respondent has merely endorsed the erroneous findings of the third respondent mechanically and therefore, the petitioner has been constrained to file the present writ petition, challenging the order of the third respondent and the second respondent respectively.

9. Mr.Sricharan Rangarajan, learned Senior Counsel for the petitioner would submit that the revenue authorities have overstepped their jurisdiction and assumed the role of a civil Court and rendered findings beyond their authority. The learned Senior Counsel would further contend that when the sixth respondent had only requested the revenue authorities to add his name as a joint pattadhar, the Revenue Divisional Officer, has gone beyond what was sought for by the sixth respondent, by not only adding the sixth respondent as joint pattadhar, but also arbitrarily and unilaterally subdividing the property and granting separate patta to the sixth respondent to an extent of 27 ½ cents .

10. The learned Senior Counsel would also contend that relying on the sale deed executed by the sixth respondent in 1995 and repurchase in 2008, it has been erroneously concluded that the petitioner's mother was never in possession of the suit land, ignoring the fact that all these documents were behind the back of the petitioner's mother. He would also invite my attention to the conclusion of the Revenue Divisional Officer that the settlement deed executed by Mayakkal in favour of the petitioner was invalid and contend that it was not open for the revenue authorities to render such findings. He would therefore, contend that the revenue authorities have usurped the powers of the civil Court and even on this ground, he seeks for the impugned order being set aside.

11. Lastly, the learned Senior Counsel would rely on the partition deed executed in the year 1987, without noticing that the mother of the petitioner, viz., Mayakkal, was kept away deliberately and therefore, the said partition deed was having no valid or binding effect on the petitioner.

12. The learned Senior Counsel would place reliance on the decision of the Hon'ble Division Bench of this Court in in ***Vishwas Footwear Company Ltd., V. The District Collector,*** reported in ***2011-5-CTC-94*** to fortify his contention that the revenue authorities cannot assume the role of civil Court and decides contentions issues of title. He would therefore pray for the impugned order being set aside.

13. Per contra, Mr.K.Surenderan, learned counsel for the sixth respondent, would submit that there is no illegality or perversity in the orders passed by the respondents 2 and 3, warranting interference, under Article 226 of the Constitution of India. He would rebut the contention of the learned Senior Counsel, Mr.M.Sricharan Rangarajan, stating that the partition deed dated 24.06.1987 executed between Veerana Thevar, Veerakkal, Vijayarani and Ramar was only subsequent to the decree passed in O.S.No.220 of 1978 and confirmation of the dismissal of the said suit by the Appellate Court in A.S.No.159 of 1979. He would contend that it was only under the partition deed, 27 ½ cents out of 55 cents in survey No.146/10 on the eastern side came to be allotted to the wife of the sixth respondent and the sixth respondent himself. Insofar as

the decree obtained by the petitioner, the learned counsel for the sixth respondent would submit that the sixth respondent was not a party to O.S.No.63 of 1997 and therefore, the exparte decree obtained in O.S.No. 63 of 1997 would not bind the sixth respondent. He would further submit that the suit itself was filed only in order to create documents. He would further submit that the petitioner and his mother, viz., Mayakkal made an application in the "Zama Bandhi" on 19.04.2002, based on which, patta has been mutated in their names by the Tahsildar on 25.06.2003, ignoring the registered partition deed dated 24.06.1987. He would further submit that Mayakkal could not have claimed right over the entire property measuring 55 cents and rightly the appeal and revision preferred before the third respondent and the second respondent respectively, came to be ordered in favour of the sixth respondent. The learned counsel would further submit that the petitioner was given a fair opportunity before the revenue authorities and all the contentions of the petitioner have been considered, before the impugned orders came to be passed. The learned counsel would invite my attention to the averment in the affidavit in support of the writ petition, more specifically, paragraph No.1, where the petitioner claims to be an agricultural labourer, doing agricultural activities in the ancestor property and state that the petitioner has made false averments and the subject lands are not even agricultural lands. He would therefore seek for dismissal of the writ petition.

14. The learned counsel for the sixth respondent would also rely on the decision of the Hon'ble Supreme Court in the ***Auroville Foundation V. Natasha Storey in Civil Appeal No.13651 of 2024, dated 17.03.2025***, where the Hon'ble Supreme Court held that doctrine of "Clean hands and non-suppression of material facts" is applicable with full force to every proceedings before any judicial forum. It is also held that when a party invokes the extraordinary jurisdiction of the High Court under Article 226 of the Constitution of India and it is brought to the notice of the Court that the petitioner has been guilty of suppression of material and relevant facts or has not come with clean hands, such conduct must be seriously viewed by the courts, as abuse of process of law and the petition must be dismissed on that ground alone, without entering into the merits of the matter.

15. Concurring with the arguments of the learned counsel for the sixth respondent, Mr.S.Kameswaran, learned Government Advocate for the respondents 1 to 5, would also contend that the respondents 2 and 3 have passed well considered orders, after giving full opportunity to the parties and therefore, this Court exercising discretionary jurisdiction under Article 226 of the Constitution of India, ought not to interfere. He would also seek for dismissal of the writ petition.

16. I have carefully considered the submissions advanced by the learned counsel on either side. I have also gone through the impugned orders.

17. Brief facts, which are necessary to adjudicate the writ petition, are as follows:

The subject property belonged to Senior Andi Thevar, who was blessed with two sons, viz., Senior Veerana Thevar and Chinna Veerana Thevar @ Ithumo. The said Senior Veerana Thevar was married twice, firstly to one Sivanammal. Through her, he had a daughter by name, Mokkathai. Through the second wife, viz., Kamatchi Ammal, he was blessed with two sons, viz., Junior Veerana Thevar and Junior Andi Thevar. Junior Veerana Thevar was blessed with two children, viz., Agni and Thavamani. The said Junior Andi Thevar married one Mayakkal and they were blessed with the petitioner, viz., Asirvatham and one Vijayarani, who is the wife of the sixth respondent.

18. Insofar as the genealogy of the second son, viz., said Chinna Veerana Thevar @ Ithumo, also married twice, firstly to one Sivanammal and secondly to one Ramayee. Through the said Ramayee, she was blessed with one daughter, viz., Veerakal and the said Veerakal was blessed with a son, viz., Raman, who is the sixth respondent herein. Keeping in mind the above genealogy tree, it is evident that the family had a total extent of 1.67 Acres in survey Nos.146/5 and 146/10 and 50% of the said lands measuring 83 ½ cents belong to Chinna Veerana Thevar @ Ithumo in survey No.146/5 and the remaining 28 ½ cents in survey No. 146/5 and an extent of 55 cents in survey No.146/10 belong to Veerana Thevar.

19. It is the case of the petitioner that insofar as the lands which were belonging to Veerana Thevar @ Ithumo and Veerana Thevar, his successors-in-interest have already sold 88 cents by various sale deeds and lands in survey No.146/5 to an extent of 23 ½ cent sold by Andi Thevar and Veerana Thevar along with their legal heirs to third parties. After exhausting the entire extend of land, to which the sixth respondent was entitled, he is making a false claim in respect of survey No.146/10, which belong to the petitioner, absolutely. To evidence assertion of possession in respect of lands in survey No.146/10 to an extent of 55 cents, the petitioner relies on the lease executed in respect of the said property as early as in the year 1972. The petitioner's mother Mayakkal also filed a suit in O.S.No.63 of 1997, which came to be decreed on 19.12.1997 and possession was restored to the petitioner's mother. Subsequently, in respect of said 55 cents, the petitioner's mother Mayakkal executed a settlement deed in favour of the petitioner on 08.07.2005, which settlement deed has been witnessed by the petitioner's elder sister, who is none else than the wife of the sixth respondent. It is contended by the learned counsel for the sixth respondent that his wife was under the impression that the petitioner was availing loan and she

was witnessing the said loan transaction and under the guise of the loan transaction, the petitioner managed to obtain a settlement deed from his mother Mayakkal and got his sister Viayarani, wife of the sixth respondent, to attest the said document, only in order to lend strength to the false claim of the petitioner. Though such arguments are advanced by the learned counsel for the sixth respondent, I do not find any material supporting such contentions. Even in the counter affidavit such a stand has not been taken by the sixth respondent, who is the husband of the own sister of the petitioner. Therefore, the argument of the learned counsel for the sixth respondent in this regard cannot be countenanced and it has to be taken that the sixth respondent and his wife were well aware of the settlement deed executed by Mayakkal in favour of the petitioner.

20. It is seen that prior to the settlement deed executed by the petitioner's mother, she had applied to the fourth respondent for patta, vide application dated 19.04.2002. The said application was favourbly considered and patta was also issued in the name of the petitioner's mother Mayakkal in respect of survey Nos.146/10A and 146/10B by proceedings in Na.Ka.No.5694/2002 on the file of the fourth respondent dated 25.06.2003.

21. Aggrieved by the said order of the fourth respondent, the sixth respondent filed an appeal claiming that he has also had a share in survey No.146/10 and his name also to be included as joint pattadhar. The third respondent by order dated 02.04.2008 entertained the said request of the sixth respondent. However, the petitioner preferred a further appeal to the second respondent, who vide order dated 09.06.2010, set aside the order of the third respondent and remitted the matter to the third respondent for fresh consideration.

22. Strangely, despite the second respondent remitted the matter to the third respondent by proceedings dated 09.06.2010, it is not known why no fresh proceedings were initiated or even any enquiry conducted for more than 13 years. All of a sudden, on 27.11.2023, the third respondent subdividing the survey No.146/10 into 146/10A and 146/10B, granted separate patta to the sixth respondent for 27 ½ cents. Admittedly, it is seen that the entitlement of the sixth respondent to 27 ½ cents in survey No.146/10B is based on the partition deed dated 24.06.1987. The said partition deed has been executed amongst the legal heirs of Junior

Veerana Thevar, viz., Agni, Thavamani and Vijayarani and Raman (the sixth respondent). Though the suit for injunction filed by Junior Veerana Thevar himself against Veerakal, mother of the sixth respondent and the sixth respondent admitted the case of Junior Veerana Thevar was that the properties were joint family properties and as defendants, the sixth respondent and his wife had taken a specific contention that the father of the writ petitioner, viz., Junior Andi Thevar and his wife Mayakkal were also co-owners and that the suit itself for bad for non-joinder of necessary parties. In fact, the trial Court framed an issue in this regard and found favour with the said arguments of the sixth respondent that for non-joinder of the petitioner's mother Mayakkal and the petitioner's sister and proceeded to dismiss the suit on the ground of non-joinder of necessary party. In fact in the said suit, finding was also rendered that the Junior Veerana Thevar's legal heirs were not in possession of 55 cents and it was only Mayakkal and her children, who were in possession. Admittedly, the said decree was unsuccessfully challenged in A.S.No.154 of 1979. Therefore, in the light of the binding judgment and decree on the sixth respondent and his wife Vijayarani, the sister of the writ petitioner, the partition deed executed on 24.06.1987 behind the back of Mayakkal and her children is clearly unsustainable and clearly not binding on Mayakkal and her son, the petitioner. Without considering all these factors, the Revenue Divisional Officer/ third respondent has proceeded to overstep even the application made by the sixth respondent for merely including his name as joint pattadhar, by not only subdividing the property, but also granting separate patta to the sixth respondent for an extent of 27 ½ cents. In such process, the third respondent has also given a finding that the settlement deed executed by Mayakkal in favour of the petitioner was invalid. Findings regarding possession of the property not being with Mayakkal are also contrary to the finding rendered by the civil Court in O.S.No.220 of 1978.

23. In fact, the third respondent has proceeded on the footing that the partition deed dated 24.06.1987 was executed between the petitioner's fore-fathers and the sixth respondent's fore-fathers. The third respondent has misread the partition deed and ought to have seen that the partition deed was entered into only between the sixth respondent and his mother Veerakal and his wife excluding the petitioner's mother Mayakkal and the petitioner. Therefore, the third respondent even got the basic facts, wrong

before proceeding to pass the orders and the third respondent has clearly rendered a perverse finding.

24. As rightly contended by the learned Senior Counsel for the petitioner, the revenue authority, viz., the third respondent, has decided contention factual issues, which he was not bound to while exercising the limited power available under the Patta Passbook Act. When it was brought to the notice of the third respondent issues that of title involving complex set of facts were pretext, the third respondent ought to have relegated the parties to the competent civil Court.

25. Unfortunately, the second respondent has merely endorsed the findings of the third respondent, without independently applying his mind, while confirming the order of the third respondent, vide order dated 07.01.2025. Following the decision of the Hon'ble Division Bench of this Court in ***Vishwas***'s case, I have no hesitation in holding that the respondents ought not to have rendered findings with regard to the validity of the registered settlement deed, factum of physical possession which was already tested by the competent civil Court. Further, the

authorities have clearly over stepped even the application made by the sixth respondent for inclusion of his name in joint patta by subdividing the property on its own accord and issuing patta to an extent of 27 ½ cents in favour of the sixth respondent, endorsing and validating the partition deed executed behind back of the petitioner. Therefore, I have no hesitation to hold that the orders impugned in the writ petition are liable to be set aside as they have been passed clearly in excise of jurisdiction and power available under the provisions of the Patta Passbook Act. Though it is contended by the learned counsel for the sixth respondent that the sixth respondent was not a party in O.S.No.63 of 1997 and the allotment of 27 ½ cents under the partition to the sixth respondent was never challenged by the petitioner, I am unable to countenance the said submission for the simple reason that even dehors the decree in O.S.No. 63 of 1997, even in the earlier round of litigation in O.S.No.220 of 1978 and A.S.No.154 of 1979, the entitlement of the petitioner's mother's right has been clearly found and confirmed. Therefore, ignoring the said decree, the subsequent partition deed executed behind the back of the petitioner's mother Mayakkal on 24.06.1987, cannot be binding on the petitioner or his mother Mayakkal. Therefore, the argument of the learned counsel for the sixth respondent cannot be countenanced in this regard.

25. In fine, the writ petitioner is entitled to relief and the writ petition is allowed and the impugned orders of the 3rd respondent in Pa.Mu.No.4402/2010/A3 dated 27.11.2023 and 2nd respondent in Ne.Mu.No.Ji2/ 1612490/2023 dated 07.01.2025, are hereby quashed and set aside. The revenue authorities shall mutate patta in respect of survey Nos.146/10A and 146/10B in the name of the petitioner. It is open to the sixth respondent to approach the competent civil Court to establish his right, if any and subject to succeeding in the said proceedings, it shall be open to the sixth respondent to seek mutation of revenue records accordingly. There shall be no order as to costs. Consequently, connected Miscellaneous Petitions are closed.

Index : Yes / No
NCC : Yes / No
LS

30.04.2025

TO:-

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   Office of the Sub Registrar,
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P.B. BALAJI, J.

LS

Pre-delivery Order made in
W.P.(MD)No.3521 of 2025

Dated:
30.04.2025