



W.P.(MD)No.17514 of 2022

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : **10.03.2025**

Delivered on : **17.03.2025**

CORAM:

THE HONOURABLE MR JUSTICE P.B. BALAJI

W.P.(MD)No.17514 of 2022

and

W.M.P.(MD)No.12739 of 2022

Ajith Selvins.S.B

... Petitioner

/Vs./

1. The District Revenue Officer,
O/o the District Revenue Officer,
Kanyakumari District, Nagercoil.
2. The Sub - Collector
O/o. the Sub - Collector, Padmanabhapuram at
Thackkalay, Thackkalay,
Kanyakumari District.
3. The Tahsildar
Vilavancode Taluk Office, Vilavancode,
Kanyakumari District.
4. The District Registrar
O/o the District Registrar, Marthandam,
Kanyakumari District.



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5. Amudhini Jayaprakash

NHC Building, Ganesh Nagar,

Janapancatram, Chennai 600 007.

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, to call for the records in pursuant to the impugned order passed by the 2nd respondent in his proceedings Moo.Mu. Aa3/5234/2021 dated 09.04.2022 and quash the same.

For Petitioner : Mr.M.Saravana Kumar

For Respondents : Mrs.S.Jeyapriya
Government Advocate for R1-4

: Mrs.V.Janaki Devi for R5

ORDER

The writ petitioner challenges the order of the second respondent in Moo.Mu.Aa3/5234/2021 dated 09.04.2022.

2. The case of the petitioner is that the property comprised in re-survey No.430/3A1A of Pacode Village, Vilavancode Taluk, Kanyakumari District, measuring 29.500 cents belongs to the petitioner's family and the said lands comprised in re-survey No.430/3A1A correlated to old survey No.2705, being portion of a larger extent of



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38.950 cents, was subject matter of final decree made in O.S.No.416 of 1974 dated 22.08.1978. The said O.S.No.416 of 1974 was filed for partition and 38.950 cents stood allotted to Neelu @ Annammal and the said Neelu @ Annammal took possession and also mutated revenue records in her name. Subsequently, on 04.03.2004, the said Neelu @ Annammal executed two settlement deeds in favour of her son, viz., Selvadhas and her daughter, viz., Mary Pushpa Bai. The writ petitioner is the son of said Selvadhas. Under the said settlement deed, the son was given 28.95 cents and daughter Mary Pushpa Bai was given 10 cents. The son Selvadhas pursuant to the settlement deed dated 04.03.2004, effected mutation of the revenue records in his name and has been in continuous possession and enjoyment of the property of 28.95 cents that was settled on him. However, subsequent to the death of the said Selvadhas, his legal heirs have entered into a registered partition deed on 05.08.2020, dividing the 28.95 cents and in terms of said partition deed, mutation of the revenue records was also effected pertaining to the respective portions allotted to the legal heirs and the legal heirs also took possession. While being so, one Rajayyan Robin @ Thangappan, who is the father of the fifth respondent, filed an execution petition in E.P.No.10



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of 2016, against the petitioners, on the basis of the judgment and decree in O.S.No.484 of 1961 and claimed delivery of possession of 22.514 cents from and out of the said 38.95 cents. In fact, even according to the petitioner, the said 22.514 cents was ear marked as the 38th plot in the final decree proceedings in O.S.No.484 of 1961. The petitioner filed a claim petition in the said execution petition with respect to 11.690 cents and 10.824 cents, in E.A.No.132 of 2018 in E.P.No.10 of 2016 on the ground that in O.S.No.416 of 1974, there was a specific finding that the decree in the said suit in O.S.No.484 of 1961 would not bind the plaintiffs. The said claim petition was allowed and the execution petition was dismissed. Despite the said Rajayyan Robin @ Thangappan, being unsuccessful in the litigation, after a lapse of 18 years, the fifth respondent approached the Registration Department and sought for cancellation of the document No.382/2004 in favour of the petitioner. The petitioner filed a writ petition in W.P.(MD)No.13128 of 2022 and this Court has admitted the writ petition and granted interim order in favour of the petitioner on 24.06.2022. The grievance of the petitioner is that the second respondent has cancelled the subdivision in favour of the petitioner citing pendency of civil cases.



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3. The contention of the petitioner is that the Tahsildar had proceeded to subdivide the property and to issue patta only based on the order passed in E.A.No.132 of 2018 in E.P.No.10 of 2016. The Execution Petition was filed by none else than the father of the fifth respondent and therefore, the fifth respondent cannot have any better right than his father. The impugned order is therefore called in question in the writ petition.

4. I have heard Mr. M.Saravana Kumar, learned counsel for the petitioner, Mrs.S.Jeyapriya, learned Government Advocate, for the respondents 1 to 4 and Mrs.V.Janaki Devi, learned counsel for the fifth respondent.

5. The learned counsel for the petitioner would submit that when the fifth respondent's father had attempted to seek delivery of possession of an extent of 22.514 cents which formed part of 38.950 cents, the petitioner filed a claim petition and the Executing Court, ultimately accepted the case of the petitioner and dismissed the execution petition filed by the father of the fifth respondent in E.P.No.10 of 2016, on merits as against the fifth respondent's father.



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6. The learned counsel for the petitioner referring to Board Standing Order 31, would contend that the Rule contemplates only three classes of transfer:

- (i) voluntary action of the owner of the property
- (ii) transfer by virtue of decree of Court or revenue sale
- (iii) by succession, either testamentary or intestate succession.

7. Therefore, the contention of the learned counsel for the petitioner is that when the transfer in the present case was in pursuance of the Court decree, the same was binding on the second respondent and the impugned order was therefore patently illegal and wholly unsustainable.

8. The learned counsel for the petitioner would further rely on the decision of the Hon'ble Division Bench of this Court in ***Vishwas Footwear Company Ltd V. The District Collector*** reported in **2011-2-CWC-242** in support of his contention.



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9. Per contra, the learned counsel for the fifth respondent would submit that the fifth respondent's father has been fighting a long legal battle right from 1961 onwards and the fifth respondent also succeeded in the suit for partition. However, the claim petition was erroneously allowed in favour of the writ petitioner. She would further contend that the impugned order is appealable even under the statute and therefore, without availing of the alternative remedy, the writ petition was not maintainable. She would further contend that revision petitions are also pending before this Court in CRP(MD)Nos.1749 and 1750 of 2021 and it is only the petitioner, who is dragging the matter and delaying justice to the fifth respondent's family. According to the learned counsel for the fifth respondent, the subdivision took place without notice to the fifth respondent and was in gross violation of principles of natural justice and it was rightly set-right by the authority in and by the impugned order. She would contend that the Tahsildar was not competent to decide title under the Patta Passbook Act and none of the legal heirs of Rajayyan Robin @ Thangappan, have also been impleaded in the writ petition, excepting the fifth respondent. The learned counsel would further state that the petitioner's father himself had filed a suit for declaration in O.S.No.161



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of 2013, which is pending on the file of the Principal District Court, Kulithalai and therefore, in such circumstances, the application for subdivision was not maintainable and rightly the same was dismissed by the second respondent in and by the impugned order.

10. I have carefully considered the submissions advanced by the learned counsel for the parties.

11. Admittedly, the suit for partition was filed in O.S.No.484 of 1961. The petitioner's father as well as the fifth respondent's father were allotted shares in the subject property. The fifth respondent's father was the first plaintiff in the suit and he sought for the decree for partition to be executed as well. No doubt the claim petition of the writ petitioner was entertained by the executing Court and consequently the execution petition filed by the fifth respondent's father also came to be dismissed. However, admittedly, the fifth respondent has challenged the said orders passed by the Executing Court in CRP(MD)Nos.1749 and 1750 of 2021 alongwith the other legal heirs of late Rajayyan Robin @ Thangappan. Therefore, no finality is reached in respect of the said dispute between



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the parties. Further, I find from the plaint in O.S.No.161 of 2013 before the District Munsif, Kulithalai, that the petitioner along with other legal heirs, he being the fourth plaintiff has himself filed a suit for declaration of title and for permanent injunction to restrain the defendants, numbering as many as 176, from executing the decree in O.S.No.484 of 1961, the base suit for partition and also seeking further relief of permanent injunction to restrain the defendants from interfering with the plaintiff's peaceful possession and enjoyment of the subject property. When a civil suit of this nature is pending, at the instance of the petitioner himself and also in view of the fact that the fifth respondent along with the other legal heirs have already challenged the order of the Executing Court by way of civil revision petitions and the same is also pending, I do not find any illegality or infirmity in the order passed by the second respondent.

12. In fact, though strong reliance is placed on the order of subdivision passed by the Tahsildar, I find that the fifth respondent or the other legal heirs of Rajayyan Robin @ Thangappan were not put on notice about the proposed subdivision sought for by the writ petitioner.



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Therefore, I do not find any justifiable ground to interfere with the order passed by the second respondent, cancelling the subdivision that had been given effect to, pending not only revisions before this Court, but also a substantial suit for declaration of title and injunction in O.S.No. 161 of 2013 that too and at the instance of the writ petitioner and other legal heirs, I do not find the ratio laid down in Viswas, case, coming to the rescue of the writ petitioner for the simple reason that the Tahsildar ought to have directed the petitioner to approach the competent civil Court, instead of proceeding to order subdivision at the bequest of the petitioner, that too without notice to the fifth respondent and other legal heirs of Rajayyan Robin @ Thangappan. Therefore, I do not find any illegality or perversity in the impugned order passed by the second respondent.

13. In fine, this Writ Petition is dismissed. There shall be no order as to costs. Consequently, connected Miscellaneous Petition is closed.

Index : Yes / No
NCC : Yes / No
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TO:-

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P.B. BALAJI, J.

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Pre-delivery Order made in
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Dated:
17.03.2025