



W.P.(MD)No.18921 of 2022

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 27.02.2025

CORAM:

THE HONOURABLE MR JUSTICE P.B. BALAJI

W.P.(MD)No.18921 of 2022

and

W.M.P.(MD).Nos.13809 & 13810 of 2022

Thirunavukarasu

... Petitioner

/Vs./

The Tahsildar,
Bodinaickanur Taluk,
Bodinaickanur,
Theni District.

... Respondent

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, to call for the records pertaining to the order vide Na.Ka.No.643/2022/A2 dated 08.07.2022, impugned order, passed by this respondent, and quash the same as void and not valid in the light of the discussion stated in the judgement in O.S.No.14 of 2007 on the file of the Principal District Judge court, Theni.

For Petitioner

: Mr.X.Eugene

For Respondent

: Mr. S.Kameswaran
Government Advocate



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ORDER

The petitioner challenges the impugned order of the respondent dated 08.07.2022 in Na.Ka.No.643/2022/A2.

2. Heard, the learned Counsel for the petitioner and Mr.S.Kameswaran, the learned Government Advocate appearing for the respondent and perused the material record.

3. The case of the petitioner is that one Mr.Muruganantham, legal heir of Palanivelsamy filed a suit in O.S.No.14 of 2007 on the file Principal District Judge, Theni, seeking partition and separate possession of his alleged share. The said claim was resisted by the father of the petitioner, on the ground that there was an oral partition already effected on 08.09.1992 and in terms of the said oral partition, the parties were in separate possession and enjoyment of respective allotments and therefore, the said Muruganantham had no right in the subject property which belonged absolutely to the petitioner's father.



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4. It is seen that that the suit was contested and dismissed ultimately on 25.01.2010. Aggrieved by the dismissal of the suit, the said Muruganantham also preferred an appeal in A.S.(MD).No.121 of 2010, before this Court, which also came to be dismissed as not pressed on 28.01.2022.

5. The learned Counsel for the petitioner would take me through the finding of the District Judge in O.S.No.14 of 2007, where there is a specific reference to the oral parititon dated 08.09.1992, which has been believed by the competent civil court. In view of the decree in O.S.No. 14 of 2007 having attained finality, Muruganantham cannot claim any share in the property.

6. However, the learned Counsel for the Respondents, inviting my attention to the impugned order, would contend that a detailed order has been passed by the Tahsildar and an appeal remedy is available before the RDO and hence the petitioner may be directed to avail the statutory appeal remedy available under the Patta Pass Book Act, 1983.



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7. I have considered the contentions advanced the learned Counsel appearing for the parties. As rightly pointed out by the learned Counsel appearing for the petitioner, the major reason that has weighed with the respondent in accepting the claim of Muruganatham is based on the oral partition dated 08.09.1992, not being established or acted upon.

8. The respondent also observed that in the absence of a registered partition deed, the claim of the Muruganantham will have to be accepted. Unfortunately, the respondent has not considered the findings of the competent civil Court, that too the Principal Distirct Judge, who has gone into the matter elaborately, especially in a suit filed by Muruganatham and rendered a finding that the oral partition was indeed true and had also been acted upon. The same was unsuccessfully challenged by the very same Muruganantham before this Court and the appeal has also been dismissed. Therefore, the revenue authority, namely Tahsildar had no right to sit an appeal over the findings rendered by the competent civil Court.



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9. It is also further pointed out by the learned Counsel for the petitioner that the order of the first respondent indicates that the petitioner's father is the first respondent in the proceedings before the Tahsildar in the year 2022. He would submit that the petitioner's father Vivekananthan died way back in the year 2013 itself, and therefore the very fact that the petitioner's father has been stated as the first respondent and enquiry has been proceeded with shows a total non-application of mind on the part of respondent. I see merit in the submissions made by the learned Counsel appearing for the writ petitioner. When the civil suit filed at the instance of the very same Muruganantham came to be dismissed and also affirmed on appeal before this court, it is not open to Muruganantham to once again approach the Revenue Authorities with a claim which is seen to be not independent of the claims made by in the civil suit in O.S.No.14 of 2007.

10. Therefore, the respondents ought to have taken note of the unsuccessful challenge made by the very same person, Muruganantham before the competent Civil Court. Instead of non-suiting the said Muruganantham, the respondent has sat on appeal over the findings of



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the civil Court and accepted the claims of Murugantham. The same is clearly unsustainable and liable to be set aside.

11. In view of the above, the impugned order is liable to be set aside and the matter is required to be remitted to the respondent for fresh consideration. In fine, the impugned order is set aside and the matter is remitted to the respondent for fresh consideration of the claim of Muruganatham, after affording opportunity to both Murugantham as well as the legal heirs of late.Vivekananthan. The said exercise shall be completed and final orders be passed within a period of twelve weeks from the date of commencement of enquiry.

12. With the above said observations, this writ petition is allowed.

No costs. Consequently, connected miscellaneous petitions are closed.

Index : Yes / No
NCC : Yes / No
gvn

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P.B. BALAJI, J.

gvn

Order made in
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Dated:
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