BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 03.02.2025

CORAM

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN
and
THE HONOURABLE MR.JUSTICE M.JOTHIRAMAN

W.A.(MD)No.1595 of 2018
and
C.M.P.(MD)No.11478 of 2018

Lurdhu Mary (Died)

1.Jesu Mariya Susai

2.James Jeyapal

3.Rani

4.Annamary ... Appellants

(Appellants 1 to 4 / LRs of the deceased sole appellant are substituted in the place of the deceased sole appellant vide order dated 20.08.2024 made in C.M.P.(MD)No.7818 of 2024 in W.A.(MD)No.1595 of 2018 by PVJ & KKRKJ)

Vs.

1.The District Revenue Officer,
O/o.District Revenue Office,
Sivagangai District.

2.The Revenue Divisional Officer,
O/o.Revenue Divisional Office,
Revenue Department, Devakottai,
Sivagangai District.

3.The Thasildar,,
O/o.Thasildar,
Devakottai Taluk,
Sivagangai District.

4.Susi Rathinam (Died)

5.Amirtha Arul Mary

6.Alex Arockiasamy

7.Amalarani

8.Annai

9.Augustine Arockiasamy

10.Anbuselvam ... Respondents

(Respondents 5 to 10 / LRs of the deceased 4th respondent are substituted vide order dated 29.11.2024 made in C.M.P.(MD)No.12862 of 2024 in W.A.(MD)No.1595 of 2018 by TKRJ & NSJ)

Prayer : Writ Appeal filed under Clause XV of Letters Patent, to set aside the order dated 05.09.2018 passed in W.P.(MD)No.19249 of 2018 on the file of this Court.

For Appellants : Mr.P.Balamurugan

For Respondents : Mr.K.Balasubramanian,
Spl. Government Pleader for R1 to R3.
Mr.R.Sundar Srinivasan for R5 to R10

JUDGMENT

(Judgment of the court was delivered by G.R.Swaminathan, J.)

Heard both sides.

2.This writ appeal was filed by one Lurdhu Mary questioning the dismissal of W.P.(MD)No.19249 of 2018 vide order dated 05.09.2018. Lurdhu Mary passed away during the pendency of this writ appeal. Her legal heirs have come on record. Lurdhu Mary and the fourth respondent namely, Susi Rathinam were siblings. Their father namely, Susi Yakkappan had died. The claim of Lurdhu Mary was that Susi Yakkappan had executed settlement deed settling 4 ½ cents in S.No.124/10 in Orumaniyendhal Village. It is not in dispute that the revenue record in respect of the said survey number stood in the name of Susi Yakkappan. Lurdhu Mary sought mutation of revenue record on the strength of the settlement deed dated 30.08.1976 executed by her father. Her request was accepted and mutation was also effected. Thereafter, her brother / Susi Rathinam sent representation dated 04.07.2008 seeking cancellation. The Revenue Divisional Officer, Devakottai vide order dated 15.12.2009 cancelled the patta issued in favour of Lurdhu Mary.

Aggrieved by the same, Lurdhu Mary filed revision before the District Revenue Officer, Sivagangai. The District Revenue Officer, Sivagangai vide order dated 28.07.2018 affirmed the order passed by the Revenue Divisional Officer, Devakottai and dismissed Lurdhu Mary's revision. Questioning the same, Lurdhu Mary filed W.P.(MD)No.19249 of 2018. It was dismissed by the learned Single Judge on 05.09.2018 in the following terms:-

> *"4.From the materials and pleadings disclosed in the affidavit filed in support of the writ petition, it appears that there is a civil dispute in regard to the ownership of the property in question between the petitioner and the fourth respondent and in regard to the same, a second appeal is also pending before this Court. Moreover, from the orders passed by the second and first respondents, it could be seen that the authorities have examined various documents filed in support of the rival claims made by the petitioner and the fourth respondent and had come to the conclusion on certain factual basis.*
>
> *5.Since the writ petition is filed against the orders passed by the second and first respondents and which would involve adjudication of factual disputes in regard to the ownership of the survey number in question, the same cannot*

be done in a writ jurisdiction of this Court. In case the petitioner is aggrieved by the orders passed by the second and first respondents, it is always open to him to obtain some orders in the pending second appeal or he can approach the competent civil Court in regard to the enforcement of his claim as against the fourth respondent.

6.In view of the above position, this Court is of the considered view that the writ petition as it is not maintainable and therefore, the same is dismissed. No costs. Consequently, the connected Miscellaneous Petitions are also dismissed."

Challenging the same, this writ appeal came to be filed.

3.The question that calls for consideration is whether the learned Single Judge was right in non-suiting Lurdhu Mary.

4.The specific stand of the department is that S.No.124/9 is admittedly a water body (Konathan Oorani). It is further claimed by the department that there is no physical boundary between S.No.124/9 and S.No.124/10. According to them, Konathan Oorani encompasses S.No.124/9 as well as S.No.124/10. It is also pointed out that Lurdhu Mary filed O.S.No.119 of 1995 on the file of the District Munsif Court, Tiruvadanai claiming partition. S.No.124/10 was also included in the suit schedule. The suit was dismissed and A.S.No.18 of 1997 was dismissed by the Sub Court, Ramanathapuram. Questioning the same, Lurdhu Mary filed S.A.No.2044 of 1999 before this Court. The second appeal suffered dismissal for non-prosecution on 05.07.2023. In this factual background, the learned Single Judge was of the view that since disputed questions of fact are involved, it is only just and proper that the aggrieved litigant must go before the jurisdictional Civil Court. We are of the view that the approach adopted by the learned Single Judge is justified. Interference is not warranted and the writ appeal is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

(G.R.S. J.,) & (M.J.R. J.,)
03.02.2025

NCC : Yes/No
Index : Yes / No
Internet : Yes/ No
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G.R.SWAMINATHAN, J.
and
M.JOTHIRAMAN, J.

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W.A.(MD)No.1595 of 2018

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