BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 15.04.2025

CORAM

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

W.A.(MD)No.1381 of 2022
and
C.M.P.(MD)No.10921 of 2022

Noorul Amin ... Appellant

Vs.

1.Seeni Mohamed Jahuber Sadiq

2.The District Revenue Officer,
Ramanathapuram District,
Ramanathapuram.

3.The Revenue Division Officer,
Ramanathapuram District,
Ramanathapuram.

4.The Tahsildar,
Ramanathapuam Taluk and District. ... Respondents

Prayer : Writ Appeal filed under Clause XV of Letters Patent, to allow the writ appeal by setting aside the order dated 21-09-2022 passed in W.P(MD)No.16030 of 2014 on the file of this Court.

For Appellant : Mr.V.Ragavachary, Senior Counsel,
For Mr.S.Ramesh.

For Respondents : Mr.G.Sridharan for R1.
Ms.P.B.Ahamed Parvin Yasmin,
Government Advocate for R2 to R4.

JUDGMENT

Heard both sides.

2.The case on hand pertains to S.No.451/1A1B1, Kanjirankudi Village, Keezhakarai Taluk, Ramanathapuram District. It was part of a larger extent of property and belonged to one K.A.M.Mohamed Mohideen Marakayar. A partition suit was filed by one K.A.M.Mohamed Abu Bucker Sahib, the second son of K.A.M.Mohamed Mohideen Marakayar in O.S.No.56 of 1951 on the file of the Sub Court, Ramanathapuram at Madurai. Preliminary decree was passed on 28.03.1953 and the plaintiff was granted 763/1152th share in Item No.1 of "A" schedule property. Item No.1 of "A" schedule property pertained to S.No.451/1A. Final decree was passed on 09.10.1961 allotting 1.59 acres to the plaintiff. Challenging the same, A.S.No.33 of 1963 was filed before the Madras High Court. The said appeal was disposed of and the shares allotted to the parties were confirmed. Since the plaintiff had passed away during the pendency of the preliminary decree, liberty was given to the parties to apply for passing supplementary decree. S.No.451/1A measured an extent of 3.07 acres. Out of this, 2.26 acres was acquired for constructing a government hospital. That left balance extent of 81 cents. It appears that on ground, only an extent of 69 cents was available. While so, on 05.02.2009, Mohamed Meera Ummal, the daughter of K.A.M.Mohamed Abu Bucker Sahib executed a gift deed dated 05.02.2009 in favour of the writ petitioner herein. She settled 23 cents of land in favour of the writ petitioner. Based on the same, patta was issued in favour of the writ petitioner by the jurisdictional Tahsildar on 29.12.2011. Challenging the same, the appellant herein filed an appeal before the Revenue Divisional Officer. The Revenue Divisional Officer vide order dated 01.10.2013 set aside the order of the Tahsildar and allowed the appellant's appeal. Questioning the same, the writ petitioner filed revision before the jurisdictional District Revenue Officer. The District Revenue Officer dismissed the revision vide order dated 11.08.2014. Challenging the same, the writ petitioner filed W.P.

(MD)No.16030 of 2014. Vide order dated 21.09.2022, the writ petition was allowed in the following terms:-

> *"10. A perusal of the order passed by the Revenue Divisional Officer will clearly indicate that the Revenue Divisional Officer has taken into consideration a mortgage deed said to have been executed by the petitioner's mother in favour of one Rajammal in Document No.787/1973. Under the said document, the petitioner's mother has mortgaged 38 cents. This 38 cents cannot be included in the list of alienations made by the petitioner's mother. If this 38 cents is excluded from 64 cents, the alienations effected by the petitioner's mother will fall down to 26 cents.*
>
> *11. The fourth respondent in Paragraph No.10 of the counter has admitted that the writ petitioner is entitled to 54 cents. Hence, out of this 54 cents, if 26 cents alienated by the petitioner's mother are deducted, the balance would be 28 cents, for which the petitioner's mother would be entitled to.*
>
> *12. When the petitioner's mother is entitled to 28 cents, she has executed a registered settlement deed in favour of the writ petitioner on 05.02.2009 only for an extent of 23 cents. Hence, the second respondent had arrived at an erroneous finding at the time of calculating the total extent covered under the sale deeds by mistakenly adding the mortgage deed also.*

13. A careful analysis of the order of the first respondent will clearly reveal that the documents considered by the Revenue Divisional Officer were not at all considered by the first respondent herein. The first respondent has simply held that during natham settlement proceedings, it was wrongly classified as a vacant site and taking advantage of the same, the petitioner has obtained patta. This order has been passed without considering the admission made by the fourth respondent that the writ petitioner is entitled to 54 cents in the said survey number.

14. When the fourth respondent himself has admitted that the petitioner is entitled to 54 cents and the petitioner's mother has alienated only an extent of 26 cents, the order passed by the respondents 2 and 3 herein rejecting the request of patta of the petitioner are not legally sustainable. This writ petition is being disposed of only based upon the contentions of the parties raised before the revenue authorities. However, the parties are at liberty to approach the Civil Court to establish their right, title or possession over the disputed extent of land. In case, if any such suit is filed, the same shall be decided without being influenced by any one of the findings rendered by the revenue authorities or by this Court in this writ petition.

15. In view of the above said discussion, this Writ Petition stands allowed. The order impugned in the writ petition is set aside and the third respondent is directed to issue patta for an

> *extent of 23 cents in Survey No. 451/1A1B1 in favour of the writ petitioner. No costs. Consequently, connected Miscellaneous Petitions are closed.”*

Questioning the said order, this writ appeal has been filed.

3.The learned senior counsel for the appellant contended that the writ petitioner's mother was entitled to 45.75 cents out of 69 cents and the appellant was entitled to 23.25 cents. It is his submission that while the appellant did not alienate even a single cent of land, the writ petitioner's mother had alienated close to 41 cents of land and that therefore, if at all, the writ petitioner can get patta only for 4.50 cents and that therefore, the learned Single Judge erred in directing the authority to issue patta for an extent of 23 cents. In support of this contention, a typed set of papers had been filed enclosing as many as 14 sale deeds executed by the writ petitioner's mother right from the year 1971 onwards.

4.These contentions are strongly controverted by the learned counsel for the writ petitioner / contesting respondent herein. According to him, the writ petitioner's mother had sold only 18 cents in

S.No.451/1A and that therefore, the learned Single Judge was right in directing issuance of patta for the remaining 23 cents.

5.We carefully considered the rival contentions and went through the materials on record. Even though a number of sale deeds executed by the writ petitioner's mother have been placed before us, we are not in a position to arrive at any definite finding that all the sale deeds pertained to only S.No.451/1A. In many of the sale deeds, no survey number has been mentioned. Exercising our Letters Patent jurisdiction, we may not be in a position to undertake the task of co-relating the property covered under the sale deeds with the survey number.

6.We notice that the appellant herein along with others had filed a partition suit in O.S.No.51 of 1996 on the file of the Sub Court, Ramanathapuram. Preliminary decree was passed on 28.02.1999. Challenging the same, the writ petitioner's mother and others filed A.S.No.182 of 1990 before the Madras High Court. During the pendency of the appeal, the writ petitioner's mother passed away and the writ petitioner came on record as the sixth appellant. The appeal was allowed on 09.04.2010 in the following terms:-

"16. As regards item No.2 of Schedule-A therein, which is equal to item No.2 in Schedule-Al herein the plaintiffs 2 to 5 therein who are the daughters of Showkathali (defendants 1 to 4 herein) were allotted 2286 share out of 3456 share and the other two branches were allotted 763 share out of 3456 share.

17. As regards Schedule-B property therein except item No.5 the shares were declared and the said item No.5 is the house which is shown as Schedule-B in the present suit. In the common judgment (Ex.B2) it was declared that it was already alienated to the husband of the first respondent therein who is the first defendant herein. The Court specifically held that parties have no right in the house item. The compensation amount was also apportioned.

18. In pursuant to the supplemental preliminary decree, the parties ought to have worked out their remedy for allotment of their share by filing a fresh final decree application. Obviously, it was not done. The possession of the remaining extent, after acquisition remained with the first defendant in Survey No.451/1A and there was no clubbing of two survey numbers. The final decree under Ex.A3 vas set aside by the High Court. As stated earlier, it was held under EX.B2 that Schedule-B is not available for partition and the finding has become final as early as 1974. The present suit is filed in the year 1986.

19.The present suit is filed for a fresh partition and the plaintiffs are claiming rights through their grandfather Mohammed Shahid. In the earlier suit, the first branch was represented by the present plaintiff's grandmother Syed Bathu Nachi and the present plaintiff's father Mohammed Moideen was a party to the suit. The supplemental preliminary passed under Ex.B2, is binding on the parties, which has declared the rights of the parties. After the death of their father Mohamed Mohideen the plaintiffs could have instituted a supplemental preliminary decree to declare their altered shares. But they cannot file a fresh suit for partition, which will upset the earlier partition whereby the rights of the parties have already been declared. The course which was, available for the plaintiffs was filing a final decree application which they have got chosen to do and therefore, fresh suit for partition is not maintainable.

20. The learned Subordinate Judge had not considered Ex.32 wherein the shares were re-allotted and the right in Schedule-B property was declared to the deceased Showkathali and the trail court had proceeded as if there was no partition. In the earlier suit the validity of the gift deed was upheld but in the present suit the learned judge would observe that the gift deed is not valid. Hence, the finding of the lower court is not supported by sound reasoning and therefore, it is liable to be set aside. The point is answered accordingly."

7.It appears that the appellant herein did not choose the course of action suggested by this Court in A.S.No.182 of 1990. At the same time, we are of the view that patta could not have been issued by the jurisdictional Tahsildar in favour of the writ petitioner merely on the strength of the settlement deed executed by his mother. If the writ petitioner's mother had patta in her name, certainly writ petitioner could have stepped into her shoes and got it mutated. Admittedly, when the settlement deed dated 05.02.2009 was executed, the revenue record reflected the character of the property as only natham. Since the parties are at loggerheads and there are serious factual disputes, the revenue authority could not have adjudicated the rival title issues.

8.In this view of the matter, the order passed by the Revenue Divisional Officer as well as the District Revenue Officer appear to be correct to this extent.

9.At the same time, the revenue authorities could not have rendered any finding in favour of the appellant also. As rightly indicated by the learned Single Judge in the order dated 21.09.2022, the parties will have to necessarily approach the civil Court to establish their respective rights and claims. The order of the learned Single Judge directing issuance of patta for the writ petitioner for an extent of 23 cents in S.No.451/1A1B1 is also set aside.

10.The writ appeal is disposed of accordingly. We make it clear that we have not gone into the merits of the matter. The contentions of both the parties are left open. No costs. Consequently, connected miscellaneous is closed.

(G.R.S. J.,) & (M.J.R. J.,)
15.04.2025

NCC : Yes/No
Index : Yes / No
Internet : Yes/ No
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To:

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Ramanathapuram District,
Ramanathapuram.

2.The Revenue Division Officer,
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G.R.SWAMINATHAN, J.
and
M.JOTHIRAMAN, J.

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