



W.P.(MD)No.24833 of 2023

WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : **13.02.2025**

Delivered on : **26.02.2025**

CORAM:

THE HONOURABLE MR JUSTICE P.B. BALAJI

W.P.(MD)No.24833 of 2023

and

W.M.P.(MD)No.2144 of 2024

Pandara Krishnan

... Petitioner

/Vs./

1. The Tahsildar,
Thovalai Taluk,
Kanyakumari District.

2. The Head Surveyor,
Tahsildar Office,
Thovalai Taluk,
Kanyakumari District.

3. Narayananadar

4. Selvan

... 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 order passed by the first respondent in Na.Ka.



W.P.(MD)No.24833 of 2023

No.A4/701/2023 dated 08.09.2023 and set aside the same, consequently direct the respondents 1 and 2 to conduct survey and fix the boundary stones in the petitioner's land in Survey No.689/2A, within the extent of 28.5 Ares, situated at Kumarapuram Village, Thovalai Taluk, Kanyakumari District in patta No.308 within a time frame stipulated by this Court.

For Petitioner : Mr.M.Ramu

For Respondents : Mrs.K.Malathi
Additional Government Pleader for R1&2

: Mrs.P.Jessi Jeeva Priya for R3 & 4

ORDER

The petitioner challenges the impugned order passed by the first respondent in in Na.Ka. No.A4/701/2023 dated 08.09.2023 and consequently seeks a direction to the respondents 1 and 2 to conduct survey and fix the boundary stones in the petitioner's land in Survey No. 689/2A, measuring to an extent of 28.5 Ares, situated at Kumarapuram Village, Thovalai Taluk, Kanyakumari District in patta No.308.



W.P.(MD)No.24833 of 2023

WEB COPY

2. I have heard Mr.M.Ramu, learned counsel for the petitioner, Mrs.K.Malathi, learned Additional Government Pleader, for the respondents 1 and 2 and Mrs.P.Jessi Jeeva Priya, learned counsel for the respondents 3 and 4. I have also gone through the records, including the impugned order.

3. The case of the petitioner is that petitioner's grand father, viz.,Pandara Nadar died on 12.06.1985, leaving behind his wife, viz., Palammal and four sons, viz., Narayana Nadar, Thiraviya Nadra, Raaiyah, Selvaganesan and two daughters, viz., Umayammal and Parvathi. The further case of the petitioner is that his grandmother executed a registered Will on 14.08.1997, allotting the property to four sons by describing the four portions as schedules A to D. According to the petitioner, four beneficiaries, namely, sons have been in possession and enjoyment of the respective portions allotted and bequeathed to them. However, the said Palammal, subsequently executed another Will dated 28.11.2005 in respect of same schedule property mentioned in the earlier Will dated 14.08.1997. The specific contention of the petitioner is



W.P.(MD)No.24833 of 2023

WEB COPY

that there was no change in the allotment of the Schedule A to D to the four sons. There upon, the father of the petitioner settled the property bequeathed to him under the Will to the petitioner. It is the further case of the petitioner that a portion of the land bequeathed under the Will was also acquired for the Highways and the petitioner's father received compensation in Award No.03 of 2014.

4. Disputes arose between the third respondent, who is one of the sons of Pandara Nadar and a third party in respect of which a civil suit in O.S.No.262 of 2000 came to be filed on the file of the Principal District Munsif Court, Nagercoil. According to the petitioner, in the said suit, the petitioner's property was attached in I.A.No.409 of 2000, without the petitioner's knowledge and subsequently, a settlement was reached in S.A.(MD)No.222 of 2019 between the third respondent and the third party. The Second Appeal was disposed of in terms of the settlement on 19.10.2022. The grievance of the petitioner is that despite the Second Appeal being disposed and the attachment order erroneously included the petitioner's property, the third respondent did not come forward to raise the order of attachment. The petitioner, in order to fence his land, sought



W.P.(MD)No.24833 of 2023

for survey. However the survey was denied on the ground that the attachment was in force. The petitioner therefore filed in a writ petition in W.P.(MD)No.13202 of 2023 and pursuant to the orders of this Court, the attachment order was raised and despite the same, the survey was not conducted and hence, the petitioner filed W.P.(MD)No.13243 of 2023 and this Court disposed of the said writ petition, on 15.06.2023, with a direction to survey the petitioner's land, after considering any objections of interested persons. On 08.09.2023, the request of survey made by the petitioner was rejected by the first respondent citing the lawyer's notice issued by the fourth respondent. It is this order that is challenged in the present Writ Petition.

5. The learned counsel for the petitioner would submit that the fourth respondent has no right in the subject property, which has been bequeathed to the petitioner's father and the only impediment for survey being the attachment order was also raised pursuant to the orders of this Court in the writ petition and therefore, the objections raised by the fourth respondent cannot be sustained. The learned counsel for the petitioner would therefore pray for the impugned order to be set aside



W.P.(MD)No.24833 of 2023

WEB COPY

and consequently direct the respondents 1 and 2, to survey and fix boundary stones.

6. Per Contra, Mrs.P.Jessi Jeeva Priya, learned counsel for the respondents 3 and 4 would submit that the two parcels of properties are available. The third respondent's father, viz., Pandara Nadar, had purchased lands under sale deed dated 04.07.1967, which has been the separate property of his father, viz., Pandara Nadar and the mother, viz., Palammal, had no exclusive right to the said property, excepting for her legitimate share on account of being wife of the said Pandara Nadar. She would therefore, submit that the Will executed by the mother, including the properties of the father was clearly invalid. However, insofar as the properties, which the mother independently acquired, she may have a legitimate right to bequeath the same, in any manner that she may deem just and proper.

7. Meeting the arguments of the learned counsel for the petitioner that the fourth respondent had expressed no objection for the petitioner receiving the compensation in land acquisition proceedings. Mrs.P.Jessi



W.P.(MD)No.24833 of 2023

WEB COPY

Jeeva Priya, would submit that father of the petitioner was only authorised to receive the compensation, for the sake of convenience, on behalf of all the legal heirs and therefore, no right would accrue to the petitioner's father, in that regard. Insofar as the attachment order also, the learned counsel would submit that the order of attachment passed in I.A.No.409 of 2000, pertained to only $\frac{1}{4}^{\text{th}}$ share of the fourth respondent and therefore the arguments of the learned counsel for the petitioner were misleading. She would further refer to Sections 78 and 79 of the Indian Succession Act and contend that bequests made by the mother in respect of properties owned by the father were *non est* in the eye of law. Further, concluding her submissions, she would submit the impugned order has been rightly passed, since the Revenue Authorities cannot decide title and the petitioner can only approach the competent civil Court to have his right declared in the presence of all interested parties. She would therefore, pray for dismissal of the writ petition.

8. I have carefully considered the submissions advanced by the learned counsel on either side. I have also gone through the documents filed in support of the respective contentions.



W.P.(MD)No.24833 of 2023

WEB COPY

9. Admittedly, the mother, Palammal, has executed two Wills, under which the properties have been bequeathed to all her four sons. Patta was also issued to the writ petitioner based on the Wills, in patta No.308. Admittedly, the fourth respondent has not challenged the patta till date and the fourth respondent has not even filed any partition suit claiming that the Will executed by Palammal is invalid, as it is also included separate property of Palammal's husband and therefore, the fourth respondent is entitled to a decree for partition.

10. On the contrary, the fourth respondent has acted upon the said Wills by giving no objection / consent for the petitioner's father, that is the own brother of the fourth respondent, to receive compensation in Land Acquisition Proceedings in respect of the lands acquired from the petitioner's father. Though an argument is put forth before me that the petitioner's father was only authorised to receive the compensation on behalf of the estate, including all the legal heirs, I do not find any acceptable reason or any material to substantiate the said contention, now put forth arguments. In any event, if at all the petitioner's father had



W.P.(MD)No.24833 of 2023

WEB COPY

received the compensation including the fourth respondent's share. The fact remains that the fourth respondent has not taken a single step to claim his alleged share from the said compensation amount by either claiming the same or by filing a suit for partition and separate possession, disowning the Will of the mother insofar as it included the personal properties of the father. The conduct of the fourth respondent clearly estops the fourth respondent from now objecting to the survey sought to be conducted. Further, as already discussed, separate patta has also been issued in the name of the petitioner based on the Wills and registered documents in favour of the petitioner. Not a single attempt has been made to object to the said patta. The petitioner is certainly entitled to seek a survey of his land and the impugned order directing the petitioner to approach the competent civil court is clearly unsustainable, especially, citing the objections of the fourth respondent, who has already, by express and implied conduct has clearly acquiesced himself of the petitioner's right, title interest in the subject property. At this stage, the fourth respondent is estopped from claiming any rights in the property belonging to the petitioner. Therefore, the impugned order of the first respondent is liable to be set aside.



W.P.(MD)No.24833 of 2023

WEB COPY

11. For all the above reasons, this Writ Petition is allowed and the impugned order passed by the first respondent is set aside. The respondents 1 and 2, shall conduct a survey and fix the boundary stones in the petitioner's land in Survey No.689/2A, measuring to an extent of 28.5 Ares, situated at Kumarapuram Village, Thovalai Taluk, Kanyakumari District in patta No.308. The said exercise shall be carried within a period of four weeks from the date of receipt of copy of this order. There shall be no order as to costs. Consequently, connected Miscellaneous Petition is closed.

Index : Yes / No
NCC : Yes / No
LS

26.02.2025



W.P.(MD)No.24833 of 2023

WEB COPY

TO:-

1. The Tahsildar,
Thovalai Taluk,
Kanyakumari District.

2. The Head Surveyor,
Tahsildar Office,
Thovalai Taluk,
Kanyakumari District.



WEB COPY



W.P.(MD)No.24833 of 2023

P.B. BALAJI, J.

LS

Order made in
W.P.(MD)No.24833 of 2023

Dated:
26.02.2025