



W.P.(MD)Nos.12997 of 2018 and 23002 of 2024

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : **25.03.2025**

Delivered on : **02.04.2025**

CORAM:

THE HONOURABLE MR JUSTICE P.B. BALAJI

W.P.(MD)Nos.12997 of 2018 and 23002 of 2024

and

M.P.(MD)No.1&2 of 2015 and

W.M.P.(MD)Nos.11882 of 2018, 19513 &19514 of 2024

W.P.(MD)No.12997 of 2018

1. T.Aarappa,
2. C.Muthkrishnan,
3. SP.Thoppulan Kumar
4. K.Nagarajan,
5. S.Chandran, ... Petitioner

/Vs./

1. The District Revenue Officer
Sivagangai District.
2. RM.Chandra,
3. Arunachalam,
4. Amutha,
5. Subramanian,
6. Rasu,



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7. Subbaiah,
(R3 to R7 are impleaded vide Court order dated
05.02.2025 in WMP(MD)No.19448/2018) ... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a writ of Certiorari, calling for the records pertaining to the order passed by the 1st respondent in Pa.Mu.P1/5748/16 dated 09.02.2018 quash the same as illegal and arbitrary.

For Petitioner : Mr.K.Balasundaram, Senior Counsel
for Mr.R.Paranjothi

For Respondents : Mr.B.Saravanan
Additional Government Pleader for R1

: Mr.N.Mariappan for R3-7

: R2 - served

W.P.(MD)No.23002 of 2024

1. A.Selvakumar
2. R.Arunachalam
3. Rajeshkanna
4. Kamaraj

... Petitioners

/Vs./

1. The District Revenue Officer
Sivagangai District,
Sivagangai.



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2. The Revenue Divisional Officer,
Devakottai Revenue Division, Devakottai,
Sivagangai District.
3. RM.Chandra
4. M.Arunachalam,
5. Amutha,
(R4 &5 impleaded vide Court order dated
05.02.2025 in WMP(MD)No.22375/2024) ... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, calling for the records pertaining to the order passed by the 1st respondent in Pa.Mu.P1/5748/16 dated 09.02.2018 quash the same as illegal.

For Petitioners : Mr.M.Karthikeya Venkatachalapathy

For Respondents : Mr.B.Saravanan
Additional Government Pleader for R1&2

: Mr.N.Mariappan for R4&5

: R3 – served in WP(MD)No.12997/2018

COMMON ORDER

W.P.(MD)No.12997 of 2018 has been filed by the petitioners challenging the order of the first respondent, viz. District Revenue Officer, Pa.Mu.P1/5748/16 dated 09.02.2018



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2. W.P.(MD)No.23002 of 2024 has also been filed challenging the very same order that is impugned in the other writ petition.

3. I have heard Mr.K.Balasundaram, learned Senior Counsel appearing for the petitioners in W.P.(MD)No.12997 of 2018, Mr.M.Karthikeya Venkatachalapathy, learned counsel for the petitioners in W.P.(MD)No.23002 of 2024, Mr.B.Saravanan, learned Additional Government Pleader for official respondents, Mr.N.Mariappan, learned counsel for the respondents 3 to 7 in W.P.(MD)No.12997 of 2018 and respondents 4 and 5 in W.P.(MD)No.23002 of 2024. Despite service, the second respondent in W.P.(MD)No.12997 of 2018 and third respondent in W.P.(MD)No.23002 of 2024, viz., RM.Chandra, has not chosen to enter appearance either in person or through a counsel.

4. The learned Senior Counsel, Mr.Balasundaram, would submit that the lands of an extent of 3.52 Acres comprised in survey No.195/2 was set apart for common property used for public purpose. He would refer to the decree passed in O.S.No.127 of 1931, based on a compromise



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dated 09.06.1932 between the parties and contend that the parties to the said suit had mutually agreed to set apart the subject lands in survey No. 195/2 as common property. He would therefore contend that patta was issued in the name of the second respondent in W.P.(MD)No.12997 of 2018, father of the first petitioner, in W.P.(MD)No 12997 of 2018, viz., S.R.Thiyagarajan and maternal uncle of the first petitioner, one Ramasubbu. Referring to the said joint patta, the learned Senior Counsel would contend that the patta was issued only reflecting them as General Secretaries and therefore, it would clearly indicate that the lands were meant only for common purpose. However, in the 1991, the second respondent attempted to obtain patta in her individual name and on coming to know of the ulterior motive of the second respondent, the villagers objected and subsequently no patta was issued action upon the second respondent.

5. The learned Senior Counsel would submit that once again in the year 2015, a similar attempt was made by the second respondent and the petitioners therefore lodged a complaint before the District Collector, Sivagangai, on 03.08.2015 and the same was forwarded to the Revenue

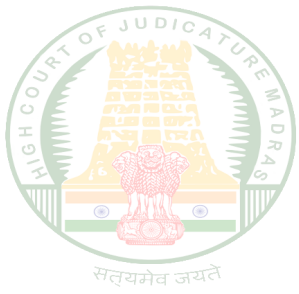


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Divisional Officer for necessary enquiry. The Revenue Divisional Officer, on enquiry, passed an order cancelling the patta that stood in the names of persons, after 1991, by proceedings dated 02.02.2015. However, according to the learned Senior Counsel, the second respondent challenged the said order of the Revenue Divisional Officer and preferred an appeal before the second respondent, who set aside the order of the Revenue Divisional Officer and confirmed the patta issued to third parties after 1991, by proceedings dated 09.02.2018, which is under challenge in these two writ petitions. The learned Senior Counsel would submit that the compromise decree in O.S.No.127 of 1931 has not been respected and he would further contend that the subsequent suit filed in the year 1971, where the second respondent obtained a judgment and decree in her favour was in suppression of the decree in O.S.No.127 of 1931.

6. The learned Senior Counsel would further state that there are four Samadhis which are situated inside the subject lands and therefore, the first respondent has miserably failed to appreciate all these factors and proceeded to set aside the well considered order of the Revenue

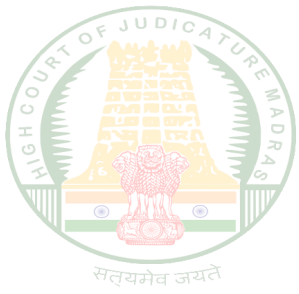


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Divisional Officer. He would therefore pray for writ petition being allowed.

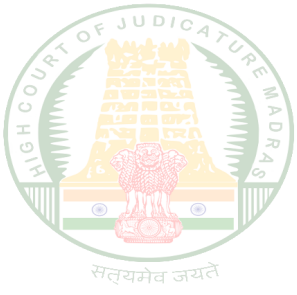
7. Mr.M.Karthikeya Venkatachalapathy, learned counsel appearing for the petitioners in W.P.(MD)No.23002 of 2024, besides adopting the arguments of the learned Senior Counsel, would submit that the grand father of the second respondent being a party to the suit in O.S.No.127 of 1931 and compromise decree, it would bind the second respondent and the first respondent ought to have seen that the suit in O.S.No.7 of 1971 is only a collusive suit and will not in any manner affect the judgment and decree passed in the year 1932, which has also been given effect to thereafter. The learned counsel for the petitioner would further submit that since the petitioners in the earlier writ petition in W.P.(MD)No. 12997 of 2018 either lost interest or attempting to conclude with the private respondents, necessity arose for different set of persons to challenge the very same impugned order, though belatedly.

8. Per contra, Mr.N.Mariappan, learned counsel for the private respondents would submit that there is no infirmity in the order of the



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first respondent. According to the learned counsel, Chandra's, (second respondent in W.P.(MD)No.12997 of 2018 and third respondent in W.P. (MD)No.23002 of 2024) grand father was the owner of entire lands in survey No.195/2 measuring an extent of 3.54 Acres and the said lands were sold in favour of the fourth respondent vide registered dated 07.01.2015. He would further contend that the fourth respondent has gifted the property by registered settlement deed vide document No. 31/2015 in favour of the wife, the fifth respondent. He would further submit that under the compromise decree in O.S.No.127 of 1931, which is admitted, only the portion marked as “B” in the sketch filed along with plaint was set apart for common property for public use / purpose and insofar as the portion marked “A” in the sketch, the defendants in the said suit in O.S.No.127 of 1931 relinquished the rights in favour of the grand father of RM.Chandra. It is only thereafter the grand father filed a suit as against the villagers of Thekkur in representative capacity. The District Munsif Court, Sivagangai, in and by order dated 13.03.1972 decreed the suit and subsequently, Chandran's grand father mutated patta in his name. Therefore, according to the learned counsel for the private respondents, Mr.N.Mariappan, the writ petitioners have no right in the



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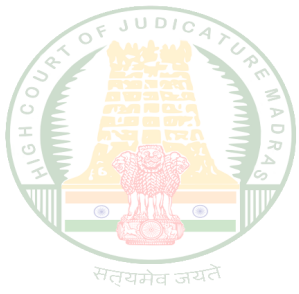
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subject lands, specially when, after the decree dated 13.03.1972 in O.S. No.7 of 1971 and the gift deed executed by Karumuthu Sivalingam Chettiyar in favour of grand daughter of Chandra, patta was also mutated in the name Chandra even in the year 1991. Therefore, when the said Chandra's grand father and subsequently Chandra had shown right and entitlement for the past 19 years, the claim of the petitioners was wholly unsustainable and sought for dismissal of the writ petitions.

9. I have carefully considered the submissions advanced by the learned counsel on either side.

10. The order which is under challenge in the present writ petitions has admittedly been passed, based on a decree in O.S.No.7 of 1971. Therefore, if the effect of said decree is tested in the light of the earlier compromise decree, then consequently the respective parties rights can be easily ascertained.

11. Both the rival claimants to the subject lands do not dispute that there was a compromise decree passed in O.S.No.127 of 1931. The suit



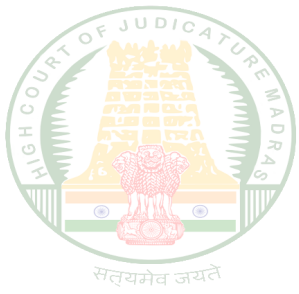
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was filed by Karumuthu Sivalingam Chettiyar praying for a declaration that the Kudivaram right in the suit property belongs to him and for permanent injunction to restrain the defendants therein, namely, Ramalingam Servai and five others, from trespassing into the suit property and from interfering with the plaintiffs enjoyment thereof. In the said suit a compromise was entered into between the parties and three different sets of compromise, one pertaining to defendants 1, 2, 5 and 6, one pertaining to fourth defendant and one pertaining to third defendant were filed and the Court also passed a decree in terms of said compromise memos.

12. It is seen from the compromise decree that the plaintiff and the defendants 1, 2, 5 and 6 that portions marked A, B, C was handed over to the defendants for using the said property as common property for public use, as per the wishes of the defendants. It is seen that three items of schedule have been set part for defendants in the said suit.

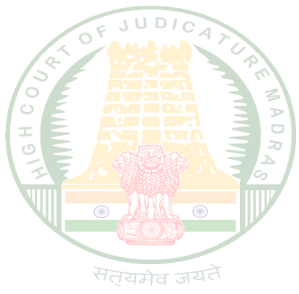
13. However, from the terms of the compromise, it is seen that from and out of plaint schedule 1 and 2, the portions marked as A, B, C



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in the plaint were set apart for the defendants for Samadhi and public purposes and that remaining lands could be enjoyed by the plaintiff in any manner he deemed fit and proper. Insofar as the compromise with the third defendant and the plaintiffs, the compromise recorded between the other defendants is recognized and accepted by the third defendant as well. Additionally as shown in the sketch, lands in survey No.191/1 of an extent of 46 cents were also set apart for the defendants communal and public purposes by way of a pathway. Thereafter, it is seen that the grand father of the said Chandra has filed the suit in O.S.No.7 of 1971 against Alagu Pillai and three others, who were not parties to the earlier suit in O.S.No.127 of 1931 and obtained a declaration that the suit property comprised in survey No.195/2 belonged to him and the defendants were restrained from obstructing the plaintiff from putting up fence, leaving out Samadhi plot alone. In the said suit, the entire extent of 3.52 Acres comprised in survey No.195/2 has been shown in the schedule and Karumuthu Sivalingam Chettiyar has obtained a decree on 13.03.1972. I find that the said Karumuthu Sivalingam Chettiyar was himself the plaintiff in O.S.No.127 of 1931. While so, when he himself entered into a compromise with the defendants in the said suit and conceded for

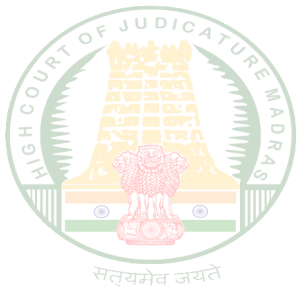


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substantiate portions of the property to be used for community / public purposes, the said Karumuthu Sivalingam Chettiyar could not have filed yet another suit that too, without citing the defendants, who had become entitled to various substantial portions of the property in survey No. 195/2. The decree in O.S.No.7 of 1971 will not certainly bind the defendants in O.S.No.127 of 1931. In fact, having been a party to the compromise in the earlier suit, the said Karumuthu Sivalingam Chettiyar, under whom R.M.Chandra, now claims was clearly estopped from filing a suit for declaration of Kudivaram rights to the entire extent of 3.52 Acres comprised in survey No.192/2.

14. Having consented for the property being set apart as common property and decree also been passed, based on the said consent, suppressing the earlier decree, which was binding on the said Karumuthu Sivalingam Chettiyar, he could not have filed yet another suit in O.S.No. 7 of 1971 and proceeded to obtain relief in his favour. I find force in the submissions of the learned counsel for the petitioner that when joint patta was issued in the names of three persons, as discussed herein above, without even impleading them or the legal heirs as parties, the

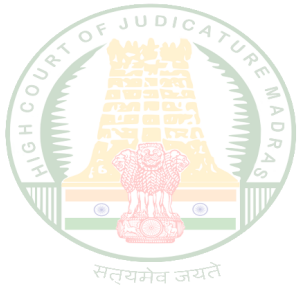


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proceedings initiated by the private respondent were defective. Even under RSO 31 the authority is required to issue notice to the parties in whose name the revenue records were already registered.

15. The mandate of RSO 31 has also been clearly breached by the first respondent's order that is impugned in the present writ petition. The Revenue Divisional Officer has rightly factored various relevant circumstances while passing his order, cancelling the patta issued to the said Chandra, and directing restoration of patta in the earlier three names. However, the first respondent, without proper application of mind to the effect of the decree in O.S.No.127 of 1931, merely placing reliance on the subsequent decree in O.S.No.7 of 1971, has proceeded to reverse the findings of the third respondent. However, at the same time, it is to be seen that even in the compromise decree in O.S.No.127 of 1931, after setting apart the lands for defendants for common / public use, the balance lands were retained to Karumuthu Sivalingam Chettiyar. Both the parties have not filed the sketches which form part of the compromise decree in O.S.No.127 of 1931 for this Court to understand what was the portion that was set apart for communal purpose and what lands were

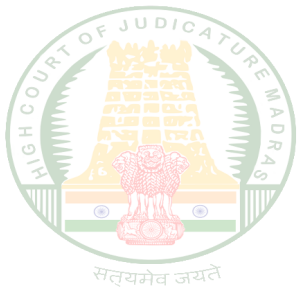


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retained by the said Karumuthu Sivalingam Chettiyar. In any event, the second suit in O.S.No.7 of 1971, seeking declaration in respect of entire extent of 3.52 Acres was certainly not sustainable, in view of the compromise decree in the earlier suit, to which Karumuthu Sivalingam Chettiyar was himself a party, in fact the plaintiff therein. Unless the Court is able to ascertain the actual extent that has been set apart for the use and enjoyment of Karumuthu Sivalingam Chettiyar, a proper decision cannot be arrived at. The first respondent has also referred to the fact that Chandra's name was wrongly reflected as Chandran and the said mistake was also corrected in the year 1991.

16. It is clear that the compromise decree in O.S.No.127 of 1931 would bind the said Chandra, the second respondent in W.P.(MD)No. 12997 of 2018 and third respondent in W.P.(MD)No.23002 of 2024. The first respondent failed to look into the said compromise and the effect of compromise and without proper and necessary parties being impleaded in the second suit in O.S.No.7 of 1971, the said decree would clearly not bind the the defendants in O.S.No.127 of 1931 in whose favour, the lands have already been set apart for common use and enjoyment.



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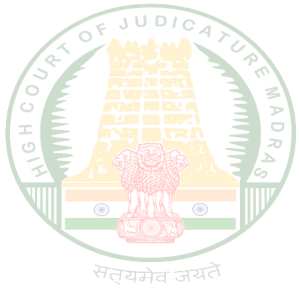
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Therefore, for all the above reasons, I am necessitated to interfere with the order that is impugned in both these writ petitions.

17. In fine, these Writ Petitions are allowed. The order of the first respondent in both the writ petition is set aside. However, liberty is given to the second respondent in W.P.(MD)No.12997 of 2018 and the third respondent in W.P.(MD)No.23002 of 2024, viz., RM.Chandra and respondents 4 and 5 to move the competent civil Court to establish their rights in respect of any portion of survey No.195/2, that was retained by Karumuthu Sivalingam Chettiyar under compromise decree dated 09.06.1932, in O.S.No.127 of 1931 and establish their rights in accordance with law and thereafter seek for inclusion of their names in the joint patta. There shall be no order as to costs. Consequently, connected Miscellaneous Petitions are closed.

Index : Yes / No
NCC : Yes / No
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02.04.2025

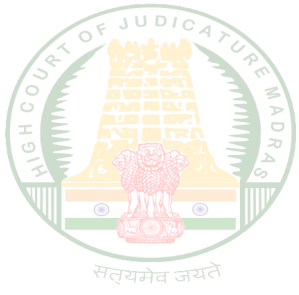


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1. The District Revenue Officer
Sivagangai District.

2. The Revenue Divisional Officer,
Devakottai Revenue Division,
Devakottai,
Sivagangai District.



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P.B. BALAJI, J.

LS

Pre- delivery Orders made in
W.P.(MD)Nos.12997 of 2018 and
23002 of 2024

Dated:
02.04.2025