

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date:- 02-02-2015

CORAM

THE HONOURABLE MR. JUSTICE SATISH K. AGNIHOTRI
AND
THE HONOURABLE MR. JUSTICE M. VENUGOPAL

W.A. No.442 of 2014

and

M.P.No.1 of 2014

T.S. Prakashchand Gong

...Appellant

Vs.

1. I. Hansraj

2. The Tahsildar
Mambalam-Guindy Taluk
Ashok Nagar, Chennai - 83

...Respondents

Writ Appeal under Clause XV of the Letters Patent to set aside the order dated 24-01-2014 passed in W.P.No.14694 of 2010.

This Writ Petition filed under Article 226 of the Constitution of India praying to issue a writ of Mandamus to direct the 1st respondent to cancel the Patta issued in the name of the 2nd respondent against the HUF property in Mambalam - Guindy Taluk T.S.No.23 Block No.30, in Saidapet Village and T.S.No.25 Block No.41 and in Mambalam Village T.S.No.64 of Block No.42 and as per the representation dated 06.04.2010.

For Appellant

: M/s. T.Viswanatha Rao

For Respondents

: Mr. D. Vijayakumar for R1
Mr. P.S. Shivashanmuga Sundaram, Spl.G.P.
for R2

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JUDGMENT

(Judgment was delivered by SATISH K. AGNIHOTRI, J.)

The instant intra-court appeal arises from the order dated 24-01-2014 passed in W.P.No.14694 of 2010.

2. The brief facts as projected by the writ petitioner, the first respondent herein are that the land in question situated in Mambalam-Guindy Taluk, T.S.No.23, Block No.30, in Saidapet Village and T.S.No.25, Block No.41 in Mambalam Village and T.S.No.64, of Block No.42, was in the ownership of joint family property; the name of the father of the appellant, being karta was entered in revenue records and patta was granted in his favour. After his death the application was made by the appellant to the second respondent herein for transferring patta in his name, on 10-08-1990. The same was rejected on 16-10-1009 on the ground that the properties were not sub-divided in the family. Thereafter, according to the petitioner the patta was granted in favour of the appellant without noticing to other members of the Hindu Undivided Family(HUF). The writ petitioner sought the information under provisions of Right to Information Act, 2005, and it was informed that the patta of the said land has been transferred in the name of the appellant. Being aggrieved, the writ petitioner made the representation to the second respondent herein requesting to cancel the patta granted in favour of the appellant for the land in T.S.No.64, Block No.42 to an extent of 0.832 sq.ft., on the ground that the patta of the undivided share of the ancestral property has been granted without notice to other parties. There being no action on his representation, the writ petitioner, who is the first respondent herein came up with the writ petition seeking the relief to cancel the patta, which was granted illegally in favour of the appellant herein stating that despite representation made by the writ petitioner no action was taken by the Tahsildar, the second respondent herein. The learned Writ Court after hearing the parties allowed the writ petition directing the Tahsildar to restore the patta in the joint name of the writ petitioner as well as the appellant, reserving liberty to them to agitate their rights over the property in question in the pending civil suit in C.S.No.781 of 2005 filed by the appellant, by the impugned order dated 24-01-2014.

3. The learned counsel appearing for the appellant would submit that the direction to restore patta jointly in the name of the appellant as well as the writ petitioner is illegal as restoration can be granted in favour of the original patta holder, i.e., deceased father of the appellant. The concerned patta was never granted in favour of the writ petitioner jointly or otherwise. Thus, such an order is unsustainable in law.

4. On the other hand, the learned counsel appearing for the writ petitioner/the first respondent herein would submit that since the property belongs to joint HUF, the patta cannot be granted in the name of one person without affording an opportunity of hearing to all

the eligible members of HUF. The writ petitioner do not dispute the fact that his name was never entered in patta before filing of this petition.

5. Heard the learned counsel appearing for the parties, perused the pleadings and documents appended thereto.

6. There is no dispute that patta was never in the name of the writ petitioner. The writ petitioner has also prayed for cancellation of the patta granted in favour of the appellant without hearing other members of the HUF. Thus, directing the Tahsildar to enter patta in the joint name of the writ petitioners as well as the appellant is beyond the scope of the writ petition. We are of the considered opinion that when a request has been made by the writ petitioner to cancel the patta granted in favour of the appellant, without hearing other concerned parties, the proper course would be to remit back the matter to the Tahsildar to reconsider his decision in the light of the representation made by the writ petitioner and also pass an appropriate order in accordance with law. It will be proper if the notice is given to the concerned eligible members of the family, as the property was not divided or allotted in favour of any of the eligible members of the HUF.

7. Resultantly, we modify the order passed by the learned Single Judge and direct the Tahsildar, the second respondent herein to consider the representation of the writ petitioner and reconsider allotment of patta in favour of the appellant, after affording an opportunity to all the concerned parties and an appropriate order under provisions of law. We further make it clear that any order passed by the Tahsildar, in respect of transfer of patta shall be subject to the final outcome in the pending civil suit in C.S.No.781 of 2005. Such an exercise shall be done within a period of eight weeks from the date of receipt of a copy of this order.

8. The writ appeal is allowed partly. However, there will be no order as to costs. The connected miscellaneous petition is closed.

Sd/-

Deputy Registrar(J)

//True Copy//

Sub Assistant Registrar

glp

To

The Tahsildar
Mambalam-Guindy Taluk
Ashok Nagar, Chennai - 83

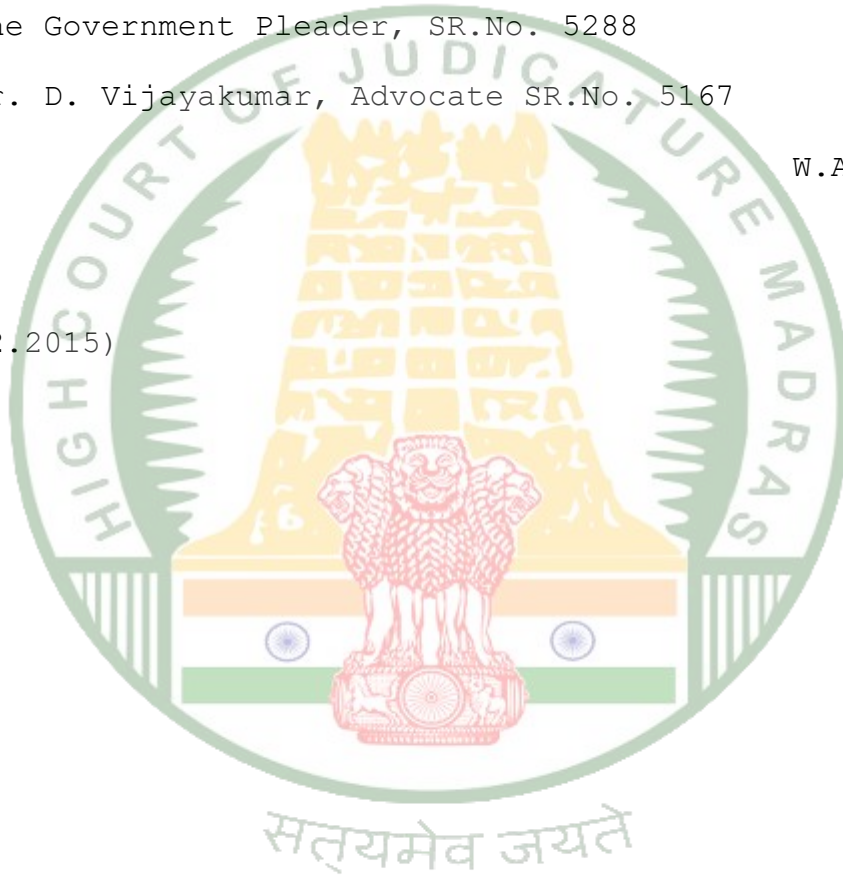
1 CC to M/s. T.Viswanatha Rao, Advocate SR.No. 5384

1 CC to the Government Pleader, SR.No. 5288

1 CC to Mr. D. Vijayakumar, Advocate SR.No. 5167

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CA (CO)
PSI (13.02.2015)



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