

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.03.2015

Date of Reserving the Order	Date of Pronouncing the Order
18.03.2015	27.03.2015

Coram

The Hon'ble Mr. Justice T.S. SIVAGNANAM

W.P.No.32784 of 2013

1.M.Venkatesawararaj

2.M.Kalyanaraman

3.M.Suresh @ Jayaram

4.M.Venkatalakshmi

5.M.Navaneetham

6.M.Kamalaveni

7.M.Ramathilagam

... Petitioners

Vs

1.The District Collector,
Coimbatore District,
Coimbatore - 641 018.

2.The Revenue Divisional Officer,
Coimbatore,
Coimbatore District.

3.The Tahsildar,
Coimbatore (South),
Coimbatore District.

4.K.Mylathal

5.Thilaikarasi

... Respondents

Prayer :-Petition filed under Article 226 of the Constitution of

India praying to issue Writ of Certiorarified Mandamus to call for the records pertaining to the impugned order dated 28.06.2013, made in Mu.Mu.No.6953/2012/A2, passed by the second respondent, quash the same and consequently direct the respondents 4 and 5 to establish their title for the entire extent in S.F.Nos.484 and 485 of Seerapalayam Village, Coimbatore South Taluk, before the competent Civil Court in the manner known to law.

For petitioner .. Mr.N.Manokaran

For Respondents .. M/s.P.Rajalakshmi G.A., for RR1to3
Mr.B.Vijay for RR4 & R5

ORDER

The petitioner seeks for issuance of a Writ of Certiorarified Mandamus, to quash the order passed by the second respondent dated 28.06.2013 and to direct the respondents 4 and 5 to establish their title for the entire extent of the property in S.F.Nos.484 and 485 of Seerapalayam Village, Coimbatore South Taluk, before the Competent Civil Court in the manner known to law.

2. The case of the petitioner is that an extent of 2.16 acres out of 6.48 acres in S.F.No.484, and an extent of 24 2/3 cents out of 74 cents in S.F.No.485 were jointly purchased by the petitioners' mother C.R.Krishnaveni along with one D.Devadass by registered sale deed dated 14.10.1963, as document No.2685 of 1963 from V.Velusamy and V.Ganapathy. Subsequently, the said D.Devadass executed a release registered deed dated 17.10.1981, bearing document No.4981 of 1981 in favour of C.R.Krishnaveni and thereby said D.Devadass released his half share purchased by her. Thus according to the petitioners, their mother became the absolute owner of the properties measuring an extent of 2.16 acres in S.F.No.484 and 24 2/3 cents in S.F.No.485 of Seerapalayam Village. Further the petitioners would state that the petitioners' father and mother died on 15.12.1992 and 30.07.1999 respectively, leaving behind them and they inherited the property as their legal heirs. The petitioners would further state that one Kuppusamy, husband of the fourth respondent and father of the third respondent had fraudulently included larger extent in their registered sale deeds dated 21.11.1962 bearing document Nos.2858 and 2859 of 1962, by suppressing the fact that their vendor Nachammal had owned only lessor extent. It is further submitted that the fifth respondent appears to have purchased the property an extent in S.F.No.485/2, under a registered sale deed dated 26.11.1980, bearing document No.4265 of 1980 and the respondents 4 and 5 have managed to get patta Nos.140 and 263 respectively in their name.

3. The petitioners would further state that patta No.140 and 263 stood in the name of the respondents 4 and 5 and he submitted a petition on 14.05.2012, to the first respondent and also a petition

to the third respondent on 22.05.2012. Thereafter, the third respondent summoned the petitioners and the respondents 4 and 5 for enquiry and after considering the documents, the third respondent by order dated 10.09.2012, included the names of the petitioners as co-pattathar in patta Nos.263 and 1333. It is further submitted that the third respondent passed an order on 10.09.2012, including the names of the petitioners as co-pattathar along with respondents 4 and 5 in respect of the property in S.F.No.484 & 485 on the ground that the petitioners are owners of the 1/3rd share. The petitioner would further state that they have filed a Suit in O.S.No.3089 of 2012, before the Principle District Munsif Court, Coimbatore, against the respondents 4 & 5 for the relief of Permanent Injunction and an order of Interim Injunction was initially granted on 20.12.2012, subsequently, the Injunction Petition was dismissed on 24.01.2013. It is further submitted that pending disposal of the Suit, the respondents 4 & 5 obtained computer patta on 08.10.2012, but they have not challenged the transfer order dated 10.09.2012, passed in favour of the petitioners. It is further submitted that the respondents 4 & 5 filed W.P.No.755 of 2013 and when during the pendency of the Writ Petition, the second respondent passed the impugned order dated 28.06.2013, which is against the interest of the petitioners. The petitioners would contend that the impugned order has been passed without giving an opportunity of hearing and against the principles of natural justice and the second respondent has usurped the jurisdiction of the Civil Court and unmindful of the pendency of the Writ Petition and the Suit, has passed the order and the same is illegal. Further, it is submitted that the second respondent has not considered the merits of the case and merely passed an order removing the names of the petitioners in the patta on the ground that the earlier order dated 18.04.2002, has not been challenged. Further, it is submitted that the second respondent has not applied his mind and taken into consideration the order of the third respondent dated 10.09.2012, which was passed after conducting enquiry and affording opportunity to both parties. On the above grounds, the petitioners seek to quash the impugned proceedings.

4. The learned counsel appearing for the petitioners after reiterating the factual position by referring to the synopsis and dates and events and the documents filed in the typed set of papers, referred to the transfer of patta effected by the third respondent on 10.09.2012 and it is submitted that in the light of the same, the second respondent was not justified in straight away deleting the names of the petitioners from the patta. Therefore, it is submitted that the impugned order is liable to be set aside and the matter may be directed to be enquired into afresh.

5. The learned Additional Government Pleader appearing for the official respondents by referring to the counter affidavit of the second respondent submitted that the petitioners filed a Suit in

O.S.No.3089 of 2012 and also prayed for an order of Interim Injunction and the Interlocutory Application was dismissed on 24.01.2013, in which the Civil Court has referred to the documents filed by the defendants in the suit. Therefore, it is submitted that the petitioners failed to prime facie prove their possession of the property before the Civil Court and the order is in favour of the respondents 4 and 5. After tracing the title to the property as mentioned in page 3 of the counter affidavit, it is submitted that the petitioner purchased the land by sale deed dated 14.10.1963, the husband of the fourth respondent and father of the fifth respondent Late Kuppusamy Gounder purchased the land during 1962. Thus, the husband of the fourth respondent had purchased the property earlier than the petitioners and patta Nos.140 and 263 were granted in their favour individually excluding the other names. Subsequently the third respondent during 2012 passed the order dated 10.09.2012 by including the names of the petitioners as joint pattathar along with the respondents 4 & 5. Aggrieved by such an order, the respondents 4 and 5 filed an appeal on 01.11.2012. Further, the respondents 4 & 5 filed W.P.No.755 of 2013. After considering the entire matter and the documents, order was passed by the second respondent and if the petitioners are aggrieved, they have to file an appeal to the District Revenue Officer, challenging the said order.

6. The learned counsel appearing for the respondents 4 and 5 submitted that the respondents 4 and 5 are the absolute owners of the land comprised in Survey Nos.483/2, 484/1A, 484/1C, 486/2, 486/3, 484/2 484 & 485, measuring an total extent of 7.37 acres. It is submitted that the husband of the fourth respondent Kuppusamy Gounder originally purchased the same by registered sale deeds bearing document Nos.2858 and 2859 of 62 and 2545 of 63 and the fifth respondent purchased the property by registered sale deed bearing document No.4265 of 1980. It is submitted Late Kuppusamy Gounder, the husband of the fourth respondent was cultivating the land without interruption and hindrance and obtained electricity connection in his name on 15.05.1956 and obtained subsidy to install Drip Irrigation System during 1986, which was sanctioned after the Agricultural Engineering Department was satisfied about the title and possession of the husband of the fourth respondent. Further, patta was granted in favour of Kuppusamy Gounder bearing patta No.140 and separate patta in the name of fifth respondent bearing patta No.263. It is submitted that the lands have been assessed by the Revenue Department and they have been paying tax and kist regularly. It is submitted that an extent of 26 cents comprised in survey No.484/1B owned by the fourth respondent's husband was acquired by the Government for formation of Coimbatore-Dindigul bye-pass and Section 4(1) Notification under the Land Acquisition Act was issued on 03.07.1985 and compensation was awarded in Award No.1 of 1988, dated 13.07.1988 granting compensation in favour of the fourth respondent's husband.

The fourth respondent's husband sought for enhanced compensation and the case was numbered as LAOP No.340 of 1990, before the Sub-Court, Coimbatore and the Court by judgment dated 20.12.1996, granted enhanced compensation. Thus, the possession and title of the fourth respondent's husband and herself has been duly recognised by the State Government.

7. It is submitted that the fourth respondent's husband died on 18.08.1998 and the fourth respondent and fifth respondent along with her sons inherited the property as legal heirs of Late Kuppusamy Gounder. The Tahsildar, Coimbatore South has incorporated the name of the fourth respondent in Patta No.140. While so, the petitioners obtained joint patta in their favour without the knowledge of the respondents 4 and 5 and the same is in gross violation of Section 10 of the Tamil Nadu Patta Passbook Act. On coming to know of the same, the fourth respondent requested the third respondent to cancel the patta by submitting representation on 12.09.2012. However, no action was taken and therefore, appeal was preferred to the second respondent on 01.11.2012, to cancel the joint patta, in which notice was issued to the respondents 4 & 5 to attend the enquiry. Meanwhile, the fourth respondent received a lawyer's notice on 23.12.2012, from the petitioners' counsel stating that they have filed O.S.No.3089 of 2012 and obtained an order of Interim Injunction in I.A.No.2848 of 2012, dated 20.12.2012, restraining the fourth respondent from interfering with the peaceful possession of their lands. Armed with the exparte injunction order, the petitioners attempted to interfere with the fourth respondent's property and trespassed into the property and damaged the standing crops and fruits bearing trees. The fourth respondent preferred criminal complaint to the Inspector of Police Madhukarai, Police Station and the same was acknowledged as CSR.No.389 of 2012. The respondents 4 & 5 would state that the petitioners suppressed the material facts and obtained exparte injunction from the Civil Court.

8. Thereafter, the respondents 4 and 5 filed W.P.No.755 of 2013, to quash the order passed by the third respondent granting joint patta and restore the patta exclusively in the name of the respondents 4 and 5 and the Writ Petition was admitted and notice was ordered. When the Writ Petition was pending, the appeal filed before the second respondent by the respondents 4 and 5 was taken up and after enquiry, an order was passed on 28.06.2013, whereby the order passed by the third respondent granting joint patta was cancelled. The order was passed taking into consideration of all the Revenue records and continuous and interception possession of the respondents 4 & 5.

9. The learned counsel appearing for the respondents 4 & 5 after reiterating the above facts submitted that the petitioners' have absolutely no right, title or interest over the property and the

averments made in the affidavit and the documents mentioned therein are concocted and the documents do not relate to the said property. Further, it is submitted that the order passed by the third respondent transferring the patta in favour of the petitioners without providing reasonable opportunity to the respondents 4 & 5, is contrary to law and violation of the provisions of the Tamil Nadu Patta Passbook Act. It is further submitted that the conduct of the Writ Petitioners in immediately filing the Suit in O.S.No.3089 of 2012 after obtaining the patta will clearly demonstrate that they have no right over the property and some how managed to obtain joint patta. Therefore, the Trial Court considered the entire facts and the documents and vacated the interim order granted, by order dated 24.01.2013. Further, it is submitted that even in the Civil Suit, the petitioners claimed title only in respect of the lands comprised lands in Survey No.484 and 485, measuring 2.40 2/3 acres only, but joint patta has been granted by the third respondent for the lands in Survey No.484/1A, 484/1C, 484/2 and 485 measuring 6.95 acres. Therefore, it is submitted that the petitioners cannot challenge the order passed by the second respondent in this Writ Petition, as the petitioners have already approached the Civil Court and their application for Interim Injunction was dismissed by a speaking order and if at all they are aggrieved, they have to pursue their remedy before the Civil Court. Further, it is submitted that the Writ Petition filed by the respondents 4 & 5 in W.P.No.755 of 2013 was closed by order dated 27.01.2015, since the respondents 4 & 5 succeeded before the second respondent, the Appellate Authority.

10. The learned counsel appearing for the respondents 4 and 5 made elaborate reference to the documents filed in the typed set of papers enclosing copies of the Natham patta, loan repayment receipt, property tax receipt, patta passbook, judgment in LAOP No.340 of 1990, copies of patta Nos.140, 263 & 1333, copy of the objections filed by the respondents 4 and 5 before the third respondent, copy of the enquiry notice issued by the second respondent dated 02.11.2012 and the copy of the final order in I.A.No.2848 of 2012 in O.S.No.3089 of 2012, dated 24.01.2013.

11. Heard the learned counsels appearing on either side and perused the materials placed on record.

12. The petitioners have challenged the impugned order primarily on the ground that the same is in violation of principles of natural justice inasmuch as the second respondent has passed the impugned order without affording an opportunity to the petitioners and without conducting an enquiry and straight away deleted their names from the joint patta No.263.

13. In order to appreciate the controversy involved in this Writ Petition, this Court in the preceding paragraphs has extensively

referred to the factual matrix as projected by the petitioners, the official respondents and the respondents 4 & 5. The order passed by the second respondent clearly records a finding that the respondents 4 & 5 have been in uninterpreted possession of the property ever since the date of purchase since 1962. It cannot be denied that from 1962, the patta for the properties in question stood in favour of the husband of the fourth respondent Late Kuppusamy Gounder. After fifth respondent purchased the property in 1980, exclusive patta was granted in her favour. Though the petitioners claimed to have purchased the property in 1963, there is absolutely no claim made for inclusion of their names in the patta or for issuance of separate patta. For the first time in 2012, the petitioners have made an attempt to include their names as joint pattathar along with the respondents 4 & 5. The third respondent passed an order including their names as Joint Pattathars. The respondents 4 & 5 or husband of the fourth respondent were not afforded an opportunity and no enquiry was conducted and it appears that there is no speaking order to support the order passed by the third respondent granting joint patta on 10.09.2012. Therefore, the said order granting joint patta in favour of the petitioners was passed without following the procedure under the Patta Passbook Act. The conduct of the petitioners in approaching the Civil Court immediately after securing the joint patta throws a serious doubt on their plea that they are in possession of the property. Though the Civil Court granted an ex parte interim order, the same was vacated on 24.01.2013 and the Civil Court has recorded a finding that considering the documents produced by the respondents 4 & 5 reveals that there is prima facie case that the respondents 4 & 5 are in possession of the suit property and the petitioners have failed to prove and establish prima facie case and accordingly, the petition for temporary injunction was dismissed. Thus as on date, the findings rendered by the Civil Court though on Interlocutory Application shows that the petitioners have miserably failed to establish possession over the property before the Civil Court in a Suit filed by them.

14. As noticed above, the third respondent when he granted joint patta, did not conduct any enquiry, infact when the Court directed the petitioner to show from the typed set of papers, a speaking order passed by the third respondent granting joint patta on 10.09.2012, it is seen that there is no such order except for a computerised format. Therefore, it is evident that the order dated 10.09.2012, granting joint patta was an illegal order and can never confer any right on the petitioners. However, the respondents 4 & 5 preferred an appeal to the second respondent against the said order and also preferred a Writ Petition, since there was a threat of dis-possession based on the joint patta. The grievance of the petitioners is that the second respondent without enquiry and without any notice has passed the impugned order by deleting their names from the patta.

15. During the course of hearing, this Court directed the learned Government Advocate to file a counter affidavit to state whether the impugned order was passed by the second respondent without giving opportunity to the petitioners and without conducting any enquiry. Since counter was not filed in spite of three adjournments, the Court directed the Revenue Divisional Officer, Coimbatore and the Tahsildar Coimbatore to appear in person on 18.03.2015. Accordingly, both the officers appeared and they produced the original files.

16. On a perusal of the original files in running page No.595, it is seen that notice of enquiry was issued to the respondents 4 & 5, the husband of the fifth respondent and son of the fifth respondent, for hearing on 15.02.2013. Subsequently, another notice was issued for the hearing on 03.05.2013. Thereafter, the matter was heard by the second respondent who held that the third respondent has granted joint patta without even conducting an enquiry and without examining any of the documents. Further, it was observed that the initial request made for transfer of patta was refused by the third respondent on 18.04.2002 and the said order having become final and after about 10 years the very same third respondent cannot grant of joint patta to the petitioners in respect of the said property, when an identical relief was refused in 2002. Further, the second respondent pointed out that the Civil Court has also rejected the plea raised by the petitioners and accordingly, the appeal was allowed and the joint patta was cancelled and patta was restored in the individual names of the respondents 4 and 5.

17. Thus, from the original files, it is evident that the second respondent had issued notice only to the respondents 4 and 5 conducted an enquiry in their presence and passed the impugned order. Under normal circumstances, this Court will have no hesitation to hold that the impugned order being in violation of principles of natural justice deserves to be immediately set aside. However, the factual scenario narrated in the preceding paragraphs persuades the Court to take a different approach to the matter.

18. Though the second respondent did not issue a notice to the petitioners before passing the order, nevertheless the order was passed primarily on three grounds firstly the order granting the joint patta on 10.09.2012 was without enquiry and without notice to the fourth and fifth respondents in whose (husband) exclusive names, the patta stood from 1962/1980 onwards. Therefore, that order stands vitiated on that ground. That apart, the second issue pointed out by the respondent is that a similar request was made in 2002 by Mr.M.Jayaram son of C.V.Jayaraj, before the third respondent, wherein an identical plea was raised, was negatived and the Tahsildar by order dated 18.04.2002, rejected the request. Therefore, once again

the very same authority cannot grant joint patta to the petitioners. The third issue pointed out by the first respondent is regarding the finding recorded by the Civil Court in I.A.No.2848 of 2012, in O.S.No.3089 of 2012, dated 24.01.2013 on the file of the Principle District Court, Coimbatore. It is to be noted that the Suit was filed by the petitioners in which the fourth respondent herein was the fifth defendant and the fifth respondent herein was the first defendant in the Suit. The petitioners/plaintiffs marked 58 documents as Ex.P1 to Ex.P58, the respondents 4 and 5 marked 25 documents as Ex.R1 to Ex.R25. The Trial Court considered all the documents produced on both sides and recorded a finding that the petitioners have miserably failed to prove possession based on the documents produced by them and therefore, not entitled for Interim Injunction. Admittedly, the patta is not a document of title and it is only a document to prove possession. The petitioners having been unsuccessful to prima facie establish possession before the Civil Court in their own Suit can hardly make a complaint that the order passed by the second respondent is not sustainable.

19. Therefore, even assuming that the petitioners are entitled to an opportunity before the second respondent, that opportunity is of no consequence, since the petitioners have failed before the Civil Court and therefore, even assuming an opportunity is granted, it would be amount to a useless formality as the petitioners can have no material more than what they have placed before the Civil Court in their own Suit.

20. In the light of the peculiar facts and circumstances of the case and the above discussion, the petitioners have not made out any case for interference with the order passed by the second respondent. Accordingly, the Writ Petition fails and it is dismissed. However, this will not prevent the petitioner from pursuing their remedy before the Civil Court or appropriate forum. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

pbn
To

1.The District Collector,
Coimbatore District,
Coimbatore - 641 018.

2.The Revenue Divisional Officer,
Coimbatore,
Coimbatore District.

3.The Tahsildar,
Coimbatore (South),
Coimbatore District.

1 cc to Mr. B.Vijay,Advocate, SR.No.17801
1 cc to Mr.N.Manokaran ,Advocate, SR.No.17567
1 cc to Government Pleader,Sr.No17607

W.P.No.32784 of 2013

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