

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.03.2016

CORAM

THE HONOURABLE MR.JUSTICE R.SUBBIAH

W.P.No.35714 of 2015

and

M.P.No.1 of 2015

1.Mr.Mohan

2.Mr.Kandasamy

.... Petitioners

Vs.

1.The District Revenue Officer,  
Kanchipuram District,  
Kanchipuram.

2.The Revenue Divisional Officer,  
Chengalpattu Taluk,  
Kancheepuram District.

3.The Tahsildar,  
Chengalpattu Taluk,  
Kancheepuram District.

4.Mrs.Anitha,  
D/o.Krishnamoorthy,  
Power Agent of C.A.Kabeer,  
No.29, Muralikrishna Nagar,  
Valasaravakkam,  
Chennai.

.... Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus, to call for the records and to quash the order passed by the 1<sup>st</sup> respondent in his proceeding Na.Ka.21395 of 2012/NA, dated 29.01.2014, and to restore the Patta Stands in the name of the petitioners in Patta No.346 in respect of the agricultural lands comprised in Survey Nos.219/1, 219/2, 219/4, 219/5, 219/6 and 217/3 totally to an extent of 1 acre 57 cents situated at No.43, Padur Village, Thiruporu Taluk, Kancheepuram District, and to direct the respondents 1 to 3 to collect the kist from the petitioners in respect of the agricultural lands comprised in Survey Nos.219/1, 219/2, 219/4, 219/5, 219/6 and 217/3 totally to an extent of 1 acre 57 cents situated at No.43, Padur Village, Thiruporur Taluk, Kancheepuram.

For Petitioner : Mr.K.Mahalingam

For respondents : Mrs.P.Rajalakshmi, GA (For R1 to R3)  
Mr.N.Anand Venkattesh (For R4)

#### ORDER

This writ petition has been filed by the petitioners praying for issuance of a Writ of Certiorarified Mandamus, to call for the records pertaining to the order passed by the 1<sup>st</sup> respondent in his proceeding Na.Ka.21395 of 2012/NA, dated 29.01.2014, and to quash the same and consequently, to direct the official respondents to restore the Patta in respect of the agricultural lands comprised in Survey Nos.219/1, 219/2, 219/4, 219/5, 219/6 and 217/3 totally to an extent of 1 acre 57 cents situated at No.43, Padur Village, Thiruporur Taluk, Kancheepuram District, in the name of the petitioners and to collect the kist from the petitioners in respect of the said agricultural lands.

2.In the affidavit filed in support of the writ petition, it has been averred by the petitioner as follows:-

2-1.The parents of the petitioners were cultivating the lands comprised in Survey Nos.219/1, 219/2, 219/4, 219/5, 219/6 and 217/3, totally to an extent of 1 acre 57 cents, under one Mr.Hayath Basha and Mrs.Mehrunnisa, by paying rent to them. After the death of Thiru.Hayath Basha, the rent was being paid to Mrs.Mehrunnisa. During the year 1986, the said Mrs.Mehrunnisa and her son Mr.Sadiq Basha offered to sell the said land to the petitioners. The petitioners purchased the said agricultural land from them for a valuable consideration, under a Sale Deed dated 25.11.1986, which has been registered as Doc.No.2609 of 1986 on the file of the Sub-Registrar, Thirupporur. From the date of purchase, the petitioners have been in continuous and uninterrupted possession and enjoyment of the said land and the patta was also issued in favour of the petitioners on 04.02.1999.

2-2.Now, after 25 years, based on an ex-parte decree dated 11.11.1989 passed by the learned VI Assistant City Civil Court, Chennai, in O.S.No.8667 of 1985 and an order dated 21.12.2009 made in W.P.No.21450 of 2008, the 4<sup>th</sup> respondent, who is said to have been claiming to be the Power of Attorney Agent of one Mr.C.A.Khabeer (now deceased) approached the 3<sup>rd</sup> respondent for cancellation of Patta stands in favour of the petitioners, as if somebody has transferred the Patta illegally without there being any registered documents.

2-3. According to the petitioners, one Mr.C.A.Malick, C.A.Khabeer and Mr.C.Hussain Basha, who are having no rights, title or interest in the subject property, have filed a suit in O.S.No.8667 of 1985 on the file of the learned VI Assistant City Civil Court, Chennai, for injunction and declaration against the vendor of the petitioners viz., Mehrunnisa and her eight children and three other government departments. Subsequently, the said persons, along with others, have filed three other separate suits also in O.S.Nos.159, 160 and 161 of 1986 in respect of the same subject property. The counsel for the petitioners' vendor informed her that the suit in O.S.No.8667 of 1985 was dismissed for default on 28.11.1988 and as such, she had no occasion to know about the exparte decree passed in the said suit. In fact, the subsequent three suits in O.S.Nos.159, 160 and 161 of 1986 were also dismissed by the Court below on 28.02.2002. But, later, on verification of the registers in the Court below, the petitioners came to know that the suit in O.S.No.8667 of 1985, which is said to have been dismissed for default on 28.02.2002, was decreed exparte on 11.11.1989. According to the petitioners, the 4<sup>th</sup> respondent herein who is the power agent of the said C.A.Khabeer, by suppressing the above facts, approached the Respondents 1 to 3 to cancel the patta which was issued in the name of the petitioners. The 3<sup>rd</sup> respondent, Tahsildar, who conducted the enquiry without considering the submissions of the petitioners and without giving sufficient opportunities to the petitioners to find out the entire facts about the lands, acted hurriedly in biased manner and arbitrarily cancelled the patta, with a finding that the petitioners have not produced the Original Sale Deed dated 25.11.1986 in the enquiry. According to the petitioner, the said Original Sale Deed dated 25.11.1986 had been pledged with a Pawn Broker for obtaining loan to meet the educational expenses of the son of the 1<sup>st</sup> petitioner. Against the order of the 3<sup>rd</sup> respondent, Tahsildar, the petitioners have preferred an appeal before the 2<sup>nd</sup> respondent-RDO, who after verifying the Original Sale Deed dated 25.11.1986 registered as Document No.2609 of 1986 produced by the petitioners, has confirmed the order passed by the Tahsildar, without giving any findings. Against the order of the RDO, the petitioners have preferred an appeal before the 1<sup>st</sup> respondent-DRO, who has also confirmed the order of the Tahsildar. Hence, the petitioners have come forward with the present writ petition.

3. The official respondents have filed a counter, inter alia, contending that the suit in O.S.No.8667 of 1985 filed by the said C.A.Kabeer and others was decreed on 11.11.1989. In the subsequent suits in O.S.Nos.159, 160 & 61 of 1986, while dismissing the suits, the trial Court has held that the said C.A.Kabeer has already obtained a decree for permanent injunction and the said judgment was also very much known to the vendor of the petitioner viz., Mrs.Mehrunnisa. In fact, the

petitioners herein also filed a suit in O.S.No.195 of 2011 on the file District Munsif Court, Chengalpattu, in respect of the said property. Therefore, for the same relief, the petitioners cannot file the present writ petition. Thus, the official respondents sought for dismissal of the writ petition.

4.Heard the learned counsel for the petitioner, the learned counsel for the 4<sup>th</sup> respondent as well as the learned Government Advocate appearing for the official respondents and perused the materials available on record.

5.From a perusal of the materials available on record, I find that the petitioner has already filed a suit in O.S.No.195 of 2011 on the file District Munsif Court, Chengalpattu, in respect of the said property, raising the same issue and the said suit is pending before the Court below. Now, the writ petition has been filed by the petitioners, on the same set of allegations. It is well settled legal principal, while exercising power under Article 226, this Court cannot conduct any roving enquiry on the disputed questions of fact. Since there is disputed questions of fact involved in this case, the petitioner has to work out his remedy only in the pending civil suit. More over, there can not be two separate proceedings for the same issue. On this ground alone, the present writ petition is liable to be dismissed.

Accordingly, the writ petition is dismissed. Consequently, connected Miscellaneous Petition is closed. No costs.

Sd/-  
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

To

1.The District Revenue Officer,  
Kanchipuram District,  
Kanchipuram.

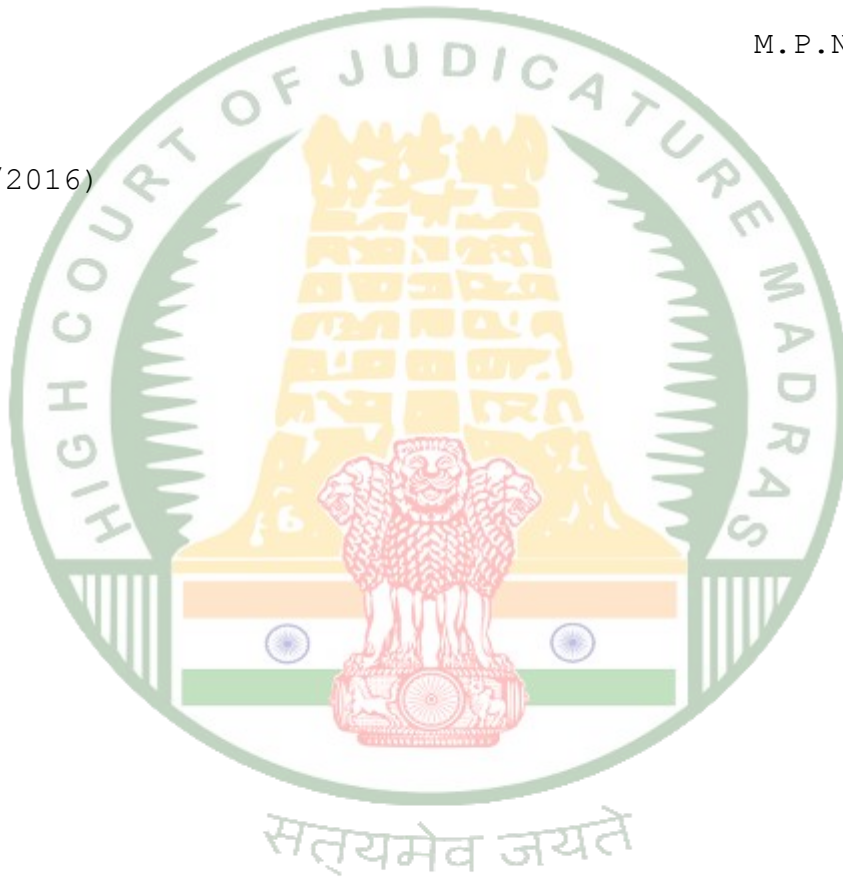
2.The Revenue Divisional Officer,  
Chengalpattu Taluk,  
Kancheepuram District.

3.The Tahsildar,  
Chengalpattu Taluk,  
Kancheepuram District.

+1 cc to Mr.K.Mahalingam, Advocate, S.R.No.15801  
+10 ccs to Mr.N.Anand Venkatesh, Advocate, S.R.No.15934

W.P.No.35714 of 2015  
and  
M.P.No.1 of 2015

kgk(CO)  
srg(01/04/2016)



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