

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated:19.02.2016

Coram

THE HONOURABLE Mr. JUSTICE SATISH K.AGNIHOTRI

AND

THE HONOURABLE Mr. JUSTICE M.VENUGOPAL

W.A.No.188 of 2016 and

C.M.P.No.2690 of 2016

K.B.Rajendran ...Appellant/Petitioner

V.

1.The State of Tamil Nadu rep. By
The Commissioner,
Survey, Settlement and Land Records,
Survey House, Chepauk, Chennai - 600 005.

2.The District Collector,
Collectorate of Chennai,
Rajaji Salai, Chennai - 600 001.

3.The Tahsildar, (Ayanavaram Taluk),
Office of the Ayanavaram Taluk,
Ayanavaram, Chennai - 600 023.

4.The Assistant Director of
Survey and Land Records,
7th Floor, Singaravelan Maligai,
Campus of the Collectorate of Chennai,
Rajaji Salai, Chennai - 600 001.

5.The Commissioner,
Corporation of Chennai,
Ripon Building, Chennai - 600 003.

6.Tmt.M.C.Thannarasi alias Thennagam

7.Muthuraman ... Respondents/Petitioners

Prayer: Writ Appeal filed under Clause 15 of the Letters Patent,
against the order of this Court dated 21.09.2015 made in
W.P.No.13169 of 2015.

Writ Petition filed under article 226 of the Constitution of India Praying to issue a Writ of Mandamus Directing the Third Respondent herein to cancel the Joint Patta by deleting the previous vendor name i.e. 7th respondent herein and to issue a Fresh Patta to the Petitioner on the sub-division extract of 2001 upon the Petitioner representation dated 27.9.2014 and consequently direct the 3rd and 4th respondents herein to update the Chitta and Adangal records in respect of Petitioner property in Old Survey No.368/1 Block No.61 T.S.No.24 Konnur Village Villivakkam Chennai-49.

For Appellant : Mr.K.B.Rajendran
Party in person

For Respondents 1 to 4 : Mr.P.S.Siva Shamugasundaram
Special Government Pleader

For 5th Respondent : Mr.A.Nagaraj

JUDGMENT

(Judgment of the Court was delivered by M.VENUGOPAL, J.)

Mr.P.S.Siva Shanmugasundaram, Learned Special Government Pleader takes notice on behalf of the Respondents 1 to 4 and Mr.A.Nagaraj, Learned Standing Counsel takes notice for the 5th Respondent. Since no adverse orders are passed against the 6th and 7th Respondents, issuance of notice to them is dispensed with.

2.Heard both sides.

3.The Appellant/Petitioner has preferred the instant Writ Appeal as against the order dated 21.09.2015 in W.P.No.13169 of 2015 passed by the Learned Single Judge.

4.The Learned Single Judge, while passing the impugned order in W.P.No.13169 of 2015 on 21.09.2015 (filed by the Appellant/Petitioner), at paragraph 5, had observed the following:

"5.The decision of the third respondent is certainly subject to the decision to be made by the Civil Court. Though the suit is for permanent injunction, it is laid based upon the title. Thus, the Civil Court has to go into the question of title incidentally while deciding the relief sought for. The law is quite settled that the decision of a Revenue Authority is subject to the decision to be made by the Civil Court. A Revenue

Authority cannot decide the inter se dispute between the parties. Thus, the writ petition stands disposed of by observing that the Civil Court including the Trial Court or the Appellate Court, which is hearing the appeal filed against the interlocutory application are expected to dispose of the same without placing any reliance upon the joint patta issued by the third respondent. It is also made clear that it is open to the parties to approach the third respondent after the disposal of the suit and placing reliance upon the same the third respondent has to act."

and consequently, disposed of the Writ Petition without costs.

5. According to the Appellant/Petitioner (Party-in-person), the order passed by the Learned Single Judge in W.P.No.13169 of 2015 dated 21.09.2015 is against Law, weight of evidence, probabilities and circumstances of the case.

6. The Appellant (in person) submits that the Learned Single Judge had failed to note that the dispute between the 3rd Respondent/ Tahsildar, Ayanavaram, Chennai and the Appellant and his 4 sisters (belonging to Hindu undivided joint family) relates to patta adjudication.

7. The core contention advanced by the Appellant is that he and his sisters are entitled for separate patta and in fact, the Learned Single Judge had failed to appreciate that the Sale Deed dated 29.01.1992 [bearing Document No.730/1992] executed by Thennagam @ Thennarasi to and in favour of one Ashraf Unnissa. As a matter of fact, in this document, the said Thennarasi admits that her entire share with passage was given to Ashraf Unnissa. However, this aspect of the matter was not properly considered by the Learned Single Judge at the time of disposing of the Writ Petition.

8. The Appellant takes a plea that the Learned Single Judge had failed to consider the point that the Parent Document No.1558 of 1926 stands in the name of one Muniammal and in fact, there is no common passage and it is a whole property.

9. The Appellant projects an argument that the Learned Single Judge had failed to appreciate the fact that the measurements of Sale Deed (bearing No.4484/2000) are clearly visible in the subdivision extract of 2001 and these measurements are erased in 2014 Joint Patta and in fact, the Learned Single Judge had passed a wrong order that the trial Court is to adjudicate the title in O.S.No.6407 of 2014 on the file of the Learned XVIII Assistant Judge, City Civil Court, Chennai.

10.The other contention raised by the Appellant is that he and his 4 sisters are entitled to the easmentary right through the passage length of 57 feet and further that, the passage width at eastern side is 3 feet to 9 inches and western side is 5 feet 6 inches only. In effect, the stand of the Appellant is that without this passage they have no other passage to proceed to the rear portion of his house, which was not appreciated by the trial Court as well as the Appellate Court.

11.The Appellant, in his affidavit in W.P.No.13169 of 2015, had sought a relief of mandamus in directing the 3rd Respondent/Tahsildar (Ayanavaram Taluk), Ayanavaram, Chennai - 23 to cancel the joint patta by deleting the previous vendors name viz., the 7th Respondent and to issue a fresh Patta to him based on the sub division extract of 2001, upon his representation dated 27.09.2014. Further, he has sought for passing of an order by this Court in directing the 3rd and 4th Respondents to update the Chitta and Adangal records in respect of his property in Old Survey No.368/1, Block No.61, T.S.No.24, Konnur Village, Villivakkam, Chennai - 600 049.

12.It comes to be known that the Appellant/Petitioner had filed the present Writ Petition on the ground of non-updation of Revenue Records in Adangal and in R-O-R records etc.

13.The clear cut stand taken by the Appellant is that the property belongs to him exclusively and that the Joint Patta was issued by including the name of the 7th Respondent without following the due process of Law.

14.At this stage, this Court very relevantly points out that Section 3 of the Tamil Nadu Patta Pass Book Act, 1983 speaks of 'Issue of Patta Pass Book' by the Tahsildar. As a matter of fact, Section 4 of the Act refers to 'Presumption of correctness of entries in the patta pass book'. Section 5 enjoins 'Making of entries of registration of alienation or transfer in the patta pass book'. Section 6 of the Act says that 'Entries in the patta pass book to be prima faice evidence of title'. Section 10 deals with 'Modification of entries in the patta pass book'. Section 12 refers to 'Filing of an Appeal' by any person aggrieved by an order made by the Tahsildar under the Act etc. Section 13 speaks of 'preferring of Revision' before any Officer of the Revenue Department not below the rank of District Revenue Officer authorised by the Government.

15.It is to be borne in mind that in terms of ingredients of Section 9 of the Civil Procedure Code, if a Suit is expressly or impliedly barred under a provision of Law, the Court cannot take cognizance of it. However, Section 14 of the Tamil Nadu Patta

Pass Book Act, 1983 deals with 'Bar of Suits' by stating that 'No Suit shall lie against the Government or any officer of the Government in respect of a claim to have an entry made in any patta pass book that is maintained under this Act or to have any such entry omitted or amended:

Provided that if any person is aggrieved as to any right of which he is in possession, by an entry made in the patta pass book under this Act, he may institute a suit against any person denying or interested to deny his title to such right, for a declaration of his rights under Chapter VI of the Specific Relief Act, 1963 (Central Act 47 of 1963); and the entry in the patta pass book shall be amended in accordance with any such declaration.'

16.Be that as it may, this Court, on a careful consideration of the contentions advanced by the Appellant (Party-in-person) and also this Court, on going through the impugned order dated 21.09.2015 in W.P.No.13169 of 2015 passed by the Learned Single Judge, inter alia to that effect '..... Thus, the writ petition stands disposed of by observing that the Civil Court including the Trial Court or the Appellate Court, which is hearing the appeal filed against the interlocutory application are expected to dispose of the same without placing any reliance upon the joint patta issued by the third respondent. It is also made clear that it is open to the parties to approach the third respondent after the disposal of the suit and placing reliance upon the same the third respondent has to act.', is of the considered view that the said order is Just, Fair and Valid one, in the eye of Law and requires no interference. Consequently, the Writ Appeal fails.

17.In fine, the Writ Appeal is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

To

- 1.The Commissioner,
The State of Tamil Nadu
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Survey House, Chepauk, Chennai - 600 005.

2.The District Collector,
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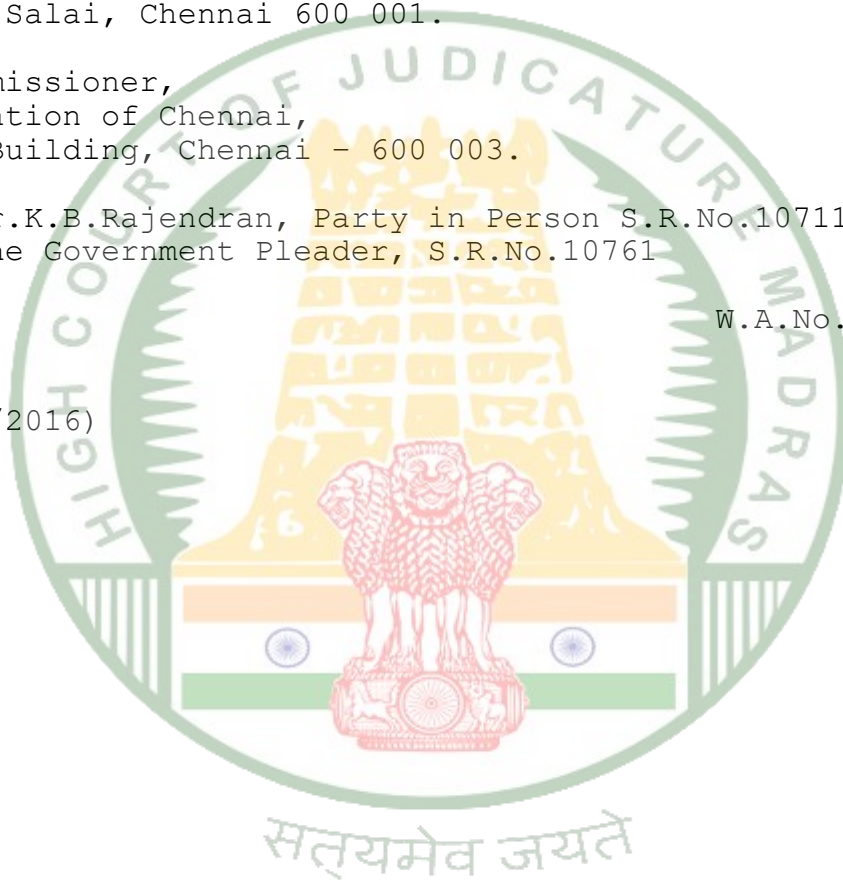
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Ripon Building, Chennai - 600 003.

+1cc to Mr.K.B.Rajendran, Party in Person S.R.No.10711
+1cc to the Government Pleader, S.R.No.10761

W.A.No.188 of 2016

ak(CO)
srg(27/02/2016)



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