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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

ORDERS RESERVED ON : 14.06.2016

ORDERS DELIVERED ON : 24.06.2016

CORAM

THE HON'BLE MR.JUSTICE M.VENUGOPAL

W.P. (MD) No.12492 of 2015

and

M.P. (MD) No.1 of 2015

and

WMP (MD) No.6053 of 2016

K.Ravichandran

.. Petitioner

vs.

1.The District Revenue Officer,
Ramanathapuram.

2.The Revenue Divisional Officer,
Paramakudi,
Ramanathapuram.

3.The Tahsildar,
Mudukulathoor,
Ramanathapuram District.

4.S.Prabhakaran

5.S.Kannan

6.S.Sathya Moorthy

7.S.Sivabalan

.. Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorari to call for the records relating to the order, dated 09.07.2015 of the First Respondent made in his proceedings Pa.Mu.P5/33768/2014, confirming the order of the 2nd Respondent, dated 18.06.2014 made in his proceedings Pa.Mu.(P1)85452/2012 and quash the same.

For Petitioner : Mr.V.Sitharanjandas

For R1 to R3 : Mr.S.Kumar,
Additional Government Pleader

For R4 to R7 : Mr.Ajmal Khan,
Senior Counsel
for
M/s.Ajmal Associates

O R D E R

Heard the Learned Counsel for the Petitioner; the Learned Additional Government Pleader appearing for the Respondent Nos.1 to 3 and the Learned Senior Counsel appearing for the Respondent Nos.4 to 7.

2.By consent, the main writ petition itself is taken up for final disposal.

3.The Petitioner has filed the present writ petition prayed for calling for the records pertaining to the order, dated 09.07.2015 passed by the First Respondent/District Revenue Officer, in confirming the order of the Second Respondent/Revenue Divisional Officer, Paramakudi, Ramanathapuram District, dated 18.06.2014.

4.The Writ Facts:-

4.1.According to the Petitioner, one Sundaramoorthia Pillai and his brother Veluchamy owned the properties in Mela Mudukulathoor Group, Mudukulathoor Taluk, Ramanathapuram District to an extent of (a) 0.55.0 Hectares in S.No.282/4; (b) 0.40.5 Hectares in S.No.282/6; (c) 0.69.5 Hectares in S.No.283/3 and (d) 0.49.0 Hectares in S.No.270/1. They mortgaged the said properties in favour of Kadar Mohideen on 06.06.1968 for Rs.4,600/- by executing a registered Othi Deed. Later, they created Mel Othi in favour of Kadar Mohideen on 05.06.1974 for Rs.5,000/- and registered the same.

4.2.It comes to be known that the said Kadar Mohideen made over the said mortgage in favour of Karuppana Thevar (father of the Petitioner) for Rs.9,600/- by executing a registered deed on 19.05.1986 and handed over the possession in his favour. The Petitioner's father was in possession of the said properties from the said date onwards. The original owners had to redeem the mortgage, within a period of three years as per the deed. But they failed to do so and the limitation for redeeming the mortgage is 30 years. In spite of expiry of more than 30 years, they failed to redeem the mortgage and hence, they lost their right in redeeming the mortgage and the mortgagees became the absolute owners.

4.3.After the demise of Karuppana Thevar, his sons viz., the Petitioner, Moorthy, Mohan and Bhuvanendran inherited the said properties as legal heirs and they were in joint enjoyment of the same and were issued with patta bearing No.2108. Later, on 15.12.2011, the Petitioner and his brothers Moorthy and Bhuvanendran executed a 'Inam settlement' in his favour by releasing 3/5 of their shares. Further, on 16.06.2012, his another brother executed 'Inam settlement' by releasing 1/3 of his share in favour of the Petitioner and by means of the said Inam settlement, the Petitioner became the absolute owner of the aforesaid properties and only he is in possession of the properties by paying kists and other taxes. Moreover, the Petitioner is issued with patta bearing No.2648 by the Third Respondent on 21.10.2012 and the Village Administrative Officer of Mela Mudukulathoor Group had issued a certificate to that effect.



4.4. When that be the position, the Respondent Nos. 4 to 6, approached the Second Respondent by preferring an Appeal against the issuance of patta in favour of the Petitioner by mentioning that they are the sons of Sundaramoorthy, who was one of the owners and they made arrangements to redeem the mortgage from the legal heirs of original deceased mortgagee Karuppana Thevar. But they were delaying the issue by stating one or other reasons.

4.5. The Second Respondent on an erroneous view allowed the Appeal on 18.06.2014 on the sole ground that the Petitioner's father became owner of the properties only by way of mortgage deed and cancelled joint patta No. 2108, which was issued to him along with his brothers and also the patta No. 2648 standing in his name. Being dissatisfied with the order, dated 18.06.2014, passed in the appeal by the Second Respondent, the Petitioner filed a Revision Petition before the First Respondent/District Revenue Officer, Ramanathapuram, and that the Respondent Nos. 4 to 7 made their appearance through the Learned Counsel and on 09.07.2015, the First Respondent/District Revenue Officer, Ramanathapuram, passed an order confirming the order of the Second Respondent/Revenue Divisional Officer, without taking note of numerous aspects mentioned in Revision. Aggrieved over the order passed in Revision, by the First Respondent, dated 09.07.2015, the Petitioner has filed the present writ petition.

5. The Contents of Counter of Respondent No. 4 (Filed for himself and on behalf of the Respondent Nos. 5 to 7):-

5.1. The properties measuring an extent of 0.40.5 Hectares in Survey No. 282/6, 0.69.5 Hectares in Survey No. 283/3 and 0.49.0 Hectares in Survey No. 270/1, Mela Mudukulathoor Group, Mudukulathoor Taluk, Ramanathapuram District, originally belonged to their grand father Subbaramaniya Pillai. On his death, the properties devolved on the fourth Respondent's father Sundaramoorthy Pillai and his uncle Veluchamy Pillai.

5.2. That apart, a property measuring an extent of 0.55.5 Hectares in Survey No. 282/4 was purchased by the fourth Respondent's uncle Veluchamy for a valuable consideration. Thus, all the aforesaid properties (other than the property purchased by their uncle), jointly belonged to the fourth Respondent's father and his uncle, who were the absolute owners of the property.

5.3. As a matter of fact, the aforesaid properties were jointly held and also the property purchased by the fourth Respondent's uncle were mortgaged in favour of one Kadar Mohideen by means of a registered mortgage deed dated 06.06.1968. Subsequently, a Mel Othi was created in respect of the said property in favour of the said Kadar Mohideen on 05.06.1974. In fact, mortgage deed, dated 05.06.1974 clearly mentions that the mortgagor shall have the right to recover the property at any time on payment of the amount. The mortgage deed also mentions that the mortgage is being effected by giving possession of property to the mortgagee with a right to retain possession till the payment of mortgage money and to enjoy the benefits there from. Therefore, the mortgage is a usufructuary mortgage. Either the Respondent Nos. 4 to 7 or their father had no knowledge of any such making over of mortgage and although, the

Respondent Nos.4 to 7 had made various endeavours to redeem the property, the said Kadar Mohideen had not disclosed the purported making over of mortgage and was delaying whenever the Respondent Nos.4 to 7 tried to recover the property. Since the mortgage is a Usufructuary mortgage, the stand of the Petitioner that he had become the owner of the property, because of the failure on the part of the Respondent Nos.4 to 7 to redeem the property within 30 days and as such, Article 61 of the Limitation Act, 1963 applies, is an incorrect one.

5.4.The right to recover possession by a Usufructuary mortgagee is dealt with under Section 62 of the Transfer of Property Act,1982. In a case of any other mortgage, the right to redeem is covered under Section 60 of the Transfer of Property Act, 1982. In reality, the right to recover possession under 'Usufructuary Mortgage', in terms of Section 62 of the Transfer of Property Act, commences on the payment of mortgage money out of Usufructs or partly out of Usufructs and partly on payment of deposits by the mortgagor.

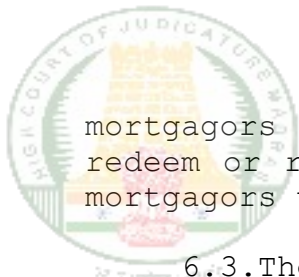
5.5.When the patta in respect of the property originally stood in the name of the fourth Respondent's father Sundaramoorthy Pillai till 2012 and when the same was mutated in favour of the writ Petitioner and a patta was issued in patta No.2648, before effecting such mutation, no notice was given to the fourth Respondent or his brothers, an appeal was filed by the fourth Respondent under Section 12 of the Tamil Nadu Patta Pass Book Act, 1983, before the Revenue Divisional Officer, Ramanathapuram, who ultimately allowed the appeal by restoring the patta in their name by means of order dated 18.06.2014.

5.6.The writ Petitioner being aggrieved against the order dated 18.06.2014, passed in the appeal, preferred a Revision Petition on the file of the District Revenue Officer, Ramanathapuram, which was dismissed on 09.07.2015 by affirming the order passed by the Second Respondent. Under such circumstances, the Petitioner has filed the present writ petition. The writ petition filed by the Petitioner is not maintainable in Law and if the Petitioner is aggrieved by the orders passed under the Tamil Nadu Patta Pass Book Act, 1983, he is to file a suit to establish his title over such property.

6.The Reply Contents of Petitioner:-

6.1.The redemption of mortgage or recovery of possession by virtue of mortgage deed will be 30 years under Article 61(a) of the Limitation Act. If there is any transfer effected at the instance of Mortgagee, the time limit fixed is 12 years from the date of knowledge or transfer under Article 61(b) of the Limitation Act. In fact, this right to recover the mortgaged property shall be extinguished on the determination of the period limited under Section 27 of the Limitation Act., 1963.

6.2.Indeed, the right of redemption and the recovery of possession are regularised under Section 60 of the Transfer of Property Act, 1882. The right to recover possession in so far as the Usufructuary mortgagors are controlled by Section 62 of the Transfer of Property Act. In the present case, the respondent Nos.4 to 7 do claim that they are the legal representatives of one of the mortgagors viz., Sundaramoorthia Pillai and they must establish that they are the legal heirs of one of the



mortgagors viz., Sundaramoorthia Pillai and further they are entitled to redeem or recover possession of the mortgage property on behalf of other mortgagors viz., Veluchamy.

6.3. The right of mortgagor either to redeem or recover possession of the mortgage property is curtailed in terms of the recitals in 'Mel Othi', dated 05.06.1974 and interms of the recitals of the 'Mel Othi', dated 05.06.1974, the right of the mortgagor to redeem the mortgage property came to an end and that the said right was extinguished as early as on 05.06.1974. Further, the legal heirs of the deceased Karuppana Thevar, was issued with patta as early as on 03.03.2010 and the petitioner was issued with patta on 21.10.2012. Under such circumstances, the issue of patta or right to recover the mortgage property by R4 to R7, can only be decided, if they file a suit for redemption or to recover mortgage property. Viewed in that perspective, the respondent Nos.4 to 7 have no right to question the grant of patta in favour of the petitioner.

7. The Petitioner's Contentions:-

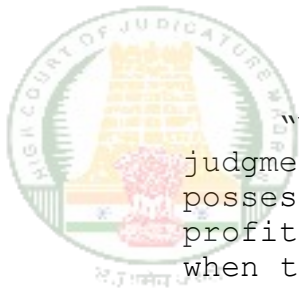
7.1. The Learned Counsel for the Petitioner contends that the order, dated 09.07.2015, passed by the First Respondent, confirming the order of the Second Respondent, dated 18.06.2014, is indeed contrary to facts and against all canons of Law.

7.2. The Learned Counsel for the Petitioner urges before this Court that the Respondent Nos.1 and 2 had failed to mention that the 'Othi' of the year 1968, was not redeemed either by the original mortgagor or by the alleged Legal Heirs of one of the original owners.

7.3. According to the Petitioner, the original owners handed over the possession as early as in the year 1968 and they can obtain their possession only when the mortgage is redeemed and furthermore, their claim for redemption is not available on the ground of bar of limitation and any any event, they have to approach the Civil Court for any relief and under such circumstances, the patta, which was transferred in the name of mortgagee, cannot be disturbed. The Learned Counsel for the Petitioner projects an argument that the Respondent Nos.1 and 2 failed to appreciate that as per Section 60(5) of Transfer of Property Act, the claim of the Respondent Nos.4 to 7, is barred for want redemption and that the mortgagee became absolute owner.

7.4. The Learned Counsel for the Petitioner submits that the Respondent Nos.4 to 7 had no valid title over the properties and in Law, their remedy is only to file a Civil Suit and establish their right. The Learned Counsel for the Petitioner submits that the Respondent Nos.4 to 7 should establish that they are the Legal Heirs of one of the original owners. Added further, it is the stand of the Petitioner that the Respondent Nos.4 to 7 cannot maintain an appeal before the Second Respondent/Revenue Divisional Officer, Paramakudi, Ramanathapuram District.

7.5. At this juncture, the Learned Counsel for the Petitioner relies on the decision of the Hon'ble Supreme Court in SINGH RAM (D) THR. L.Rs. v. SHEO RAM AND OTHERS reported in 2015 (3) CTC 197, wherein at special page 203, at paragraph No.11, it is observed as follows:-



"We are in agreement with the view taken in the impugned judgment that in a usufructuary mortgage, right to recover possession continues till the money is paid from the rents and profits or where it is partly paid out of rents and profits when the balance is paid by the mortgagor or deposited in Court as provided under Section 62 of the T.P. Act."

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7.6.Also, in the aforesaid decision, at page No.205, at paragraph No.12, it is among other things observed and held as under:-

"A perusal of above provisions shows that Article 61 refers to right to redeem or recover possession. While right of mortgagor to redeem is dealt with under Section 60 of the T.P. Act, the right of usufructuary mortgagor to recover possession is specially dealt with under Section 62. Section 62 is applicable only to usufructuary mortgages and not to any other mortgage. The said right of usufructuary mortgagor though styled as 'right to recover possession' is for all purposes, right to redeem and to recover possession. Thus, while in case of any other mortgage, right to redeem is covered under Section 60, in case of usufructuary mortgage, right to recover possession is dealt with under Section 62 and commences on payment of mortgage money out of the usufructs or partly out of the usufructs and partly on payment or deposit by the mortgagor. This distinction in a usufructuary mortgage and any other mortgage is clearly borne out from provisions of Sections 58, 60 and 62 of the T.P. Act read with Article 61 of the Schedule to the Limitation Act. Usufructuary mortgage cannot be treated at par with any other mortgage, as doing so will defeat the scheme of Section 62 of the T.P. Act and the equity. This right of the usufructuary mortgagor is not only an equitable right, it has statutory recognition under Section 62 of the T.P. Act. There is no principle of law on which this right can be defeated. Any contrary view, which does not take into account the special right of usufructuary mortgagor under Section 62 of the T.P. Act, has to be held to be erroneous on this ground or has to be limited to a mortgage other than a usufructuary mortgage. Accordingly, we uphold the view taken by the Full Bench that in case of usufructuary mortgage, mere expiry of a period of 30 years from the date of creation of the mortgage does not extinguish the right of the mortgagor under Section 62 of the T.P. Act."

7.7.That apart, in the aforesaid decision at page No.206, the Learned Counsel for the Petitioner refers to the observations made in paragraph No.13, which runs as under:-

"13. We may now refer to decisions of this Court.

(i) In Prabhakaran & Ors. vs. M. Azhagiri Pillai & Ors., (2006) 4 SCC 484, suit of mortgagor for redemption was held to be within limitation. However, in para 13, it was observed:-

"13. Article 148 of the Limitation Act, 1908 (referred to as 'old Act') provided a limitation of 60 years for a suit against a mortgagee to redeem or to recover possession of immovable property mortgaged. The corresponding provision



in the Limitation Act, 1963 ("the new Act" or "the Limitation Act" for short), is Article 61(a) which provides that the period of limitation for a suit by a mortgagor to redeem or recover possession of the immovable property mortgaged is 30 years. The period of limitation begins to run when the right to redeem or to recover possession accrues. In the case of a usufructuary mortgage which does not fix any date for repayment of the mortgage money, but merely stipulates that the mortgagee is entitled to be in possession till redemption, the right to redeem would accrue immediately on execution of the mortgage deed and the mortgagor has to file a suit for redemption within 30 years from the date of the mortgage. Section 27 of the Limitation Act provides that "at the determination of the period hereby limited to any person for instituting a suit for possession of any property, his right to such property shall be extinguished". This would mean that on the expiry of the period of limitation prescribed under the Act, the mortgagor would lose his right to redeem and the mortgagee would become entitled to continue in possession as the full owner." The above observations do not take into account the special right of usufructuary mortgagor under Section 62 of the T.P. Act to recover possession which commences after mortgage money is paid out of rents and profits or partly out of rents and profits and partly paid or deposited by mortgagor. Thus, we are unable to accept the same as correct view in law."

8. The Submissions of Respondent Nos.1 to 3:-

8.1. The Learned Additional Government Pleader for the Respondent Nos.1 to 3, contends that in the instant case, the Petitioner's Revision Petition came to be dismissed on 09.07.2015 by the First Respondent/District Revenue Officer, Ramanathapuram District, who came to the conclusion that the registered 'Othi' and 'Mel Othi' made by the Petitioner's father Sundaramoorthy Pillai and his brother Veluchamy Pillai were not redeemed for over thirty years and that the suit lands in Survey Nos.270/1, 282/4, 282/6 and 283/3 are in the enjoyment of one Karuppana Thevar and his legal heirs for over 26 years, as established from document No.475/86 and on that basis change of patta proceedings were undertaken. Also, as per Muthukulathoor Sub Registrar's document Nos.1656/11 and 1966/12, in respect of suit lands, the patta No.2648 came to be changed as separate patta in the name of the Petitioner. Moreover, for the group survey Nos.270/1, 282/4, 282/6 and 283/3, based on 'Othi' document, since patta was transferred, as per Revenue Standing Order 31, the procedures were not followed and finally, the order of the Second Respondent/Revenue Divisional Officer was confirmed and consequently, the Revision Petition was dismissed.

8.2. In fact, the petition filed by the Fourth Respondent and others before the Second Respondent for cancellation of patta stood in the name of the Respondent therein (K.Ravichandran-writ Petitioner) was disposed of by cancelling the patta and granted in favour of Karuppana Thevar sons viz., (i) Moorthy (ii) Mohan (iii) Buvanendran and (iv) Ravichandran (writ Petitioner). Resultantly, the separate patta transfer order was annulled as per order dated 26.10.2012 in STR 558/12 in Muthukulathoor circle office file number and in respect of the suit lands, the



Petitioners and the Respondent therein were directed to establish their right before the Civil Court and seek appropriate remedy thereof.

9.The Contentions of Respondent Nos.4 to 7:-

9.1.In response, the Learned senior Counsel for the Respondent Nos.4 to 7, contends that the patta in respect of the property in question initially was in the name of the fourth Respondent's father Sundaramoorthy Pillai, till 2012. When the same came to be mutated in favour of the Petitioner, a patta was issued bearing No.2648 and furthermore, before effecting such mutation, no notice or any opportunity of hearing was accorded to the fourth Respondent or to his brothers.

9.2.The Learned senior Counsel for the Respondent Nos.4 to 7, brings it to the notice of this Court that the fourth Respondent filed an appeal under the Patta Pass Book Act, 1983, before the Second Respondent. After conducting a detail enquiry and also taking into account of the order passed by the Third Respondent/Tahsildar, Muthukulathoor, transferring patta in favour of the Petitioner was in negation to the principles of natural justice, the Second Respondent allowed the appeal and restored the patta in their names and when the writ Petitioner being aggrieved over the same filed Revision petition before the First Respondent, the same was dismissed on 09.07.2015.

9.3.The Learned senior Counsel for the Respondent Nos.4 to 7, brings it to the notice of this Court that inasmuch as the mutation of patta in favour of the writ Petitioner, was effected by the Third Respondent/Tahsildar without hearing the Respondent Nos.4 to 7 (being the legal heirs of Sundaramoorthy Pillai) the said order is an illegal one.

9.4.At this stage, the Learned Senior Counsel for the Respondent Nos.4 to 7, cites a decision in RV THEVAR MEMORIAL GIRLS HIGH SCHOOL v. THE DIRECTOR OF SCHOOL EDUCATION reported in 2002 (4) CTC 129, wherein it is held that 'the order passed by the Appellate Authorities directing the re-instatement without giving opportunity to management cannot be interfered with in writ proceedings since interference will amount to revival of illegal order of termination passed by the management.'

9.5.The Learned Senior Counsel for the Respondent Nos.4 to 7, relies on the decision of the Hon'ble Supreme Court in HARBANS v. OM PRAKASH reported in 2006 (1) CTC 678, wherein it is held that 'in the absence of stipulation regarding period of limitation in mortgage deed it can be redeemed at any time.'

9.6.Besides the above, the Learned Senior Counsel for Respondent Nos.4 to 7 relies on the decision in C.SABESAN CHETTIAR (DECEASED) v. THE DISTRICT REVENUE OFFICER reported in 2011 (2) CWC 337, where Mr.JUSTICE M.VENUGOPAL, is a member, wherein at special page Nos.344 to 346, at paragraph Nos.29 to 34, it is observed as under:-

"29.As per Section 4 of the Tamil Nadu Patta Pass-Book Act, 1986 (4 of 1986), the entries in the Patta Pass-book and the certified copies of entries in the Patta Pass-book shall be presumed to be true and correct, until the contrary is proved or a new entry is lawfully substituted therefor. As a matter of fact, Section 6 of the Act envisages that the entries in the Patta Pass-book issued by the Tahsildar as per Section 3 shall be



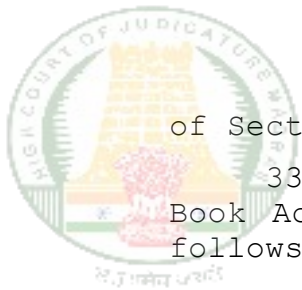
prima facie evidence of title of the person, in whose name the Patta Pass-book has been issued to the parcels of land entered in the Patta Pass-book, free of any prior encumbrance, unless otherwise specified therein. However, the Patta Pass-book being a prima facie evidence is a rebuttable presumption in law, as opined by this Court.

30. From a reading of Rule 4(4) of the Tamil Nadu Patta Pass Book Rules, it is clear that if the Tahsildar is satisfied that a dispute concerning ownership of patta is already pending in a Court or issues are raised before him which impinge on personal laws or laws of succession and all the parties interested do not agree on the ownership in writing, he shall direct the concerned parties to obtain a ruling on ownership from a competent Civil Court having jurisdiction before changing the entries already recorded and existing in the various Revenue Records. The Learned Single Judge, in paragraph No.19 of the order, had specifically held that in terms of Sub-Rule (4) of Rule 4, the First Respondent / District Revenue Officer ought to have directed the parties to go before the competent Civil Forum for adjudication of dispute with regard to the ownership, as the Fourth Respondent/Writ Petitioner and the Deceased Appellant / Fourth Respondent disputes the version projected by each one of them.

31. At this juncture, we deem it appropriate to quote the decision of this Court in Samsuddin Rowther and another V. Avvammal and others [(1992) 2 M.L.J. 252 at page 260], wherein, in paragraph 33, it is observed as follows:

"33. Thus it is seen that the patta passbook is only providing prima facie evidence and it is rebuttable. The Proviso to Sec. 14 of this Act enables an aggrieved person to file a suit. In the present case, these proceedings are already pending in which the question of title is canvassed. The patta-passbook issued during the pendency of these proceedings will not conclude the question. Whoever wins in these proceedings ultimately, is entitled to get the entry in the patta passbook rectified in accordance with the decision. There is no substance in the argument that the only remedy of the defendants is only to file a fresh suit against the plaintiffs for declaration of their title under the Specific Relief Act. Learned Counsel submits that the burden is placed squarely on the defendants by this Act and it is for them to establish their title by so independent proceeding. I do not agree. Evidence has been let in by both the parties in the present proceedings and the question of title was already in issue. Hence, there is no necessity for the defendants to file a fresh suit to decide the question of title."

32. Section 12 of the Tamil Nadu Patta Pass-Book Act, 1986 refers to filing of an Appeal by any person aggrieved by an order made by the Tahsildar within such period as may be prescribed, appeal to such authority as may be prescribed and the decision of such authority on such appeal shall subject to the provisions



of Section 13, be final.

33. Added further, Section 13 of the Tamil Nadu Patta Pass-Book Act, 1986 deals with preferring of Revision which runs as follows:

"Any officer of the Revenue Department not below the rank of District Revenue Officer authorised by the Government, by notification in this behalf for such area as may be specified in the notification, may of his own motion or on the application of a party call for and examine the records of any Tahsildar or appellate authority within his jurisdiction in respect of any proceeding under this Act and pass such orders as he may think fit:

Provided that no such order prejudicial to any person shall be made unless he has been given a reasonable opportunity of making his representation."

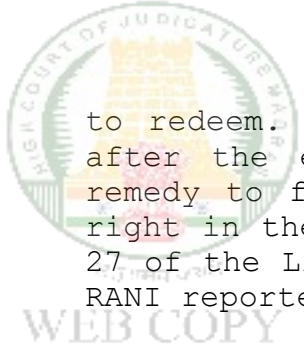
34. As per Section 9 of the Civil Procedure Code, if a suit is expressly or impliedly barred under a provision of law, the Court cannot take cognizance of it. However, Section 14 of the Tamil Nadu Patta Pass-Book Act, 1986, though speaks of Bar of Suits by stating that 'No suit shall lie against the 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', yet, the said Section also enjoins as follows:

"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."

9.7. It is to be relevantly pointed out that the mortgagor, in Indian Law, is a person, who had parted with some rights of ownership and the right of redemption, is a right, which he exercises by means of his residuary ownership to resume what he has parted with, as per decision in *Ms L K TRUST v. EDC LTD* reported in AIR 2011 SC 2060.

9.8. To put it succinctly, the 'Right of Redemption' is recognised under the Transfer of Property Act, 1882 and the said statutory and legal right cannot be extinguished by any agreement made at the time of mortgage, as part of the mortgage consideration, as per decision in *SHIVDEV SINGH v. SUCHA SINGH* reported in (2000) 4 SCC 326. A right to redeem can be extinguished by the act of the parties or by a decree of Court, or also by means of operation of Law.

9.9. It is to be remembered considered that limitation for a suit for redemption is under Article 61(a) of the Act, 1963, 30 years from the time when the right to redeem accrues within that period, the mortgagor is entitled to redeem if the mortgage was not foreclosed. The period of 30 years, is to be computed from the date when the mortgagor is entitled



to redeem. In this connection, this Court significantly points out that after the expiry of the period to redeem the mortgage, not only the remedy to file a suit for redemption of the mortgage is barred, but the right in the property in dispute is also extinguished by means of Section 27 of the Limitation Act, 1963, as per decision in BANARASI DASS v. JIWAN RANI reported in AIR 1991 P & H 85, at page 86.

9.10. It cannot be forgotten that Section 61 of the Transfer of Property Act, speaks of 'Right to redeem separately or simultaneously'. Section 62 of the Transfer of Property Act, 1882, applies to 'Usufructuary Mortgages'. The right of redemption in Usufructuary Mortgage arises only after the payment of loan and no limitation period applies unless the parties agreed that the mortgage is for specific period, as per decision in PRAKASH CHAND v. AMAR SINGH reported in AIR 2011 HP 21.

9.11. The Usufructuary mortgagor's right under Section 62 of the Transfer of Property Act continues till mortgage money is paid. Until then, the limitation, does not begin for the purpose of Article 61 of the schedule to the Limitation Act. In case of Usufructuary mortgage, mere expiry of the period of 30 years from the date of mortgage does not extinguish the right of mortgagor under Section 62 of the Transfer of Property Act, as per decision in SINGH RAM (D) THR. LRs. v. SHEO RAM reported in AIR 2014 SC 3447.

10. In the instant case on hand, the dispute between the Petitioner and R4 to R7 relates to issuance of patta centering around the mortgage of the properties in Mela Muthukulathoor Group, Muthukulathoor Taluk, Ramanathapuram District, measuring an extent of (a) 0.55.0 Hectares in S.No.282/4; (b) 0.40.5 Hectares in S.No.282/6; (c) 0.69.5 Hectares in S.No.283/3 and (d) 0.49.0 Hectares in S.No.270/1. In short, they mortgaged the aforesaid properties in favour of Kadar Mohideen on 06.06.1968 for Rs.4,600/- by executing an 'Othi' deed and the subsequent 'Mel Othi' made in favour of the said Kadar Mohideen on 05.06.1974 for Rs.5,000/-. Also the controversy concerns with redemption of mortgage by the original owners within the period of three years and the said mortgages were also not redeemed by the sons of Sundaramoorthy Pillai, who was one of the original owners. Therefore, this Court, comes to an inevitable and inescapable conclusion that the controversies/disputes between the Petitioner and R4 to R7 relate to the title of the lands pertaining to the subject matter in issue viz., the redemption of mortgage, bar of limitation and resultantly boils down to the aspect of ownership, which are indeed mixed question of Fact and Law, which needs to be gone into in detail by adducing oral and documentary evidence by examining the witnesses in a regular trial and the legal course open to the respective parties is to approach the competent Civil Court seeking necessary reliefs.

11. It is to be remembered that the rival claims to the property by the petitioner and the respondent Nos.4 to 7 cannot be gone into in a summary proceedings under Article 226 of the Constitution, because it requires detailed examination and evidence. In writ proceedings, the High Court cannot go into the disputed question of fact like an appellate Court. The resort to the jurisdiction under Article 226 of the Constitution is not meant as an alternative remedy for necessary reliefs,

which may be obtained by the parties concerned in a Civil suit. Furthermore, the jurisdiction under Article 226 of the Constitution of India, cannot be pressed into service for settling private disputes or for deciding disputes, for which, remedies under General Law, Civil Law or Criminal Law, are very much available. It cannot be gainsaid that under Article 226 of the Constitution of India, a Court of Law acts under certain self imposed restrictions/limitations, as a matter of prudence and policy.

12. One cannot brush aside an important fact that there are serious disputes between the Petitioner and the Respondents 4 to 7 touching upon the subject matter of the properties in question and as per Rule 4(4) of Tamil Nadu Patta Pass-Book Rules, 1987, when the parties interested do not agree on the ownership, then, the Tahsildar shall direct the concerned parties to obtain a Ruling on the ownership from the competent Civil Court having jurisdiction before changing the entries as already recorded and existing in the Revenue records.

13. In upshot of the above detailed qualitative and quantitative discussions, this Court, taking note of the entire conspectus of the facts and circumstances of the present case, in an encircling fashion, not expressing any opinion on the merits of the subject matter in issue and not displacing the order of the First Respondent, dated 09.07.2015, simpliciter, directs the petitioner and the respondent Nos. 4 to 7, to file a necessary suit for seeking declaration of ownership or for redemption of the Usufructuary mortgage or for such other relief(s) as they deem fit and proper, before the competent Civil Court, in the manner known to Law and in accordance with Law, if they so desire/advised, with a view to resolve the controversies between the parties, in a complete and comprehensive manner and to give quietus.

14. With the above observations and directions, the writ petition is disposed of. No costs. The connected Miscellaneous Petitions are also dismissed.

Sd/
Assistant Registrar(AS)

/True Copy/

Sub Assistant Registrar.

To:

1. The District Revenue Officer, Ramanathapuram.
2. The Revenue Divisional Officer, Paramakudi, Ramanathapuram.
3. The Tahsildar, Mudukulathoor, Ramanathapuram District.
- +1CC to M/S. Ajmal Associates, SR.No. 33704
- +1CC to M/S. V. Sitharanjandas, Advocate, SR.No. 32681

Order Made in
W.P. (MD) No. 12492 of 2015
and
M.P. (MD) No. 1 of 2015
and
WMP (MD) No. 6053 of 2016