



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 26.09.2016

CORAM:

THE HONOURABLE MR.JUSTICE M.SATHYANARAYANAN

and

THE HONOURABLE MS. JUSTICE V.M.VELUMANI

W.A. (MD) No.1308 of 2016

M.Kannan

... Appellant/Petitioner

Vs.

The District Revenue Officer,
O/o.the District Collector,
Collectorate,
Sivagangai District.

... Respondent/Respondent

PRAYER: The Writ Appeal is filed under Clause 15 of the Letters Patent, to call for the records and set aside the order passed by this Court in W.P.(MD) No.10797 of 2015, dated 25.07.2016.

Prayer in WP(MD). 10797/ 2015 :

Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus to call for the records relating to the impugned proceedings of the respondent in Na.Ka.Bi4/15508/2013 (ந.க.பி4/15508/2013) dated nil 05.2014 and quash the same as illegal and irrelevant and consequently directing the respondent to measure the exact extent of the property as per the sale deeds in No.2048 dated 10.08.1945 and no.2926 dated 28.07.1943 and demarcate the boundaries and issue the patta in the name of the legal heirs including the petitioner, as requested by the petitioner in his representation dated 20.12.2012.

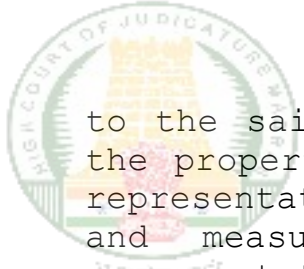
For Appellants : Mr.M.Kannan(Party in Person)

For Respondent : Mr.R.Velmurugan
Government Advocate

JUDGMENT

(Judgment of this Court was made by M.SATHYANARAYANAN, J.)

The petitioner on an earlier occasion had filed W.P.(MD) No.10548 of 2013 contending that the property comprised in Survey No.10548 of 2013, Sivagangai District belonged to his grandfather and thereafter, it was inherited by his father, after his demise, he along with his brothers and sisters were succeeded



to the said estate. Since he wants to know the exact extent of the property along with boundaries, he submitted an application / representation on 20.12.2012 to the respondent therein, to survey and measure the land and since the said application / representation has not been disposed of, he filed the said Writ Petition.

2. This Court vide order dated 03.07.2013 has directed the respondent viz., the District Revenue Officer, Sivagangai, to consider and dispose of his representation, on merits, after issuing notice to all the parties concerned and pass orders within the stipulated time. In compliance of the order, the respondent herein had passed an order dated Nil/05/2014 in Na.Ka.Bi4/15508/2013 stating among other things that in respect of the said survey number, the previous documents of title, dated 10.08.1945 and 18.10.1943 were verified and those lands were not in possession of the petitioner's grandfather and during his life time, he had mortgaged the same. There was very many oral mortgages in favour of some other persons and as per the Enam Abolition Act 26 of 1948, the lands were also taken possession by the Government on 07.09.1949. It is further stated by the respondent that after Abolition, the lands were taken possession and the pattas were issued in name of persons who are in possession and therefore, the name of the petitioner, his brother and sisters cannot be included by granting joint patta and rejected the said application.

3. The petitioner aggrieved by the said order passed by the first respondent had filed W.P.(MD)No.10797 of 2015 and Notice was ordered to the respondent. The respondent in the counter affidavit took a stand that there is no record to show that Registration of Survey No.1/16, as per the revenue records and as per the local enquiry, the lands yet to have been owned by the ancestors of the petitioner, such as Survey Nos.5/21, 6/2 and twenty four other survey numbers have been sub-divided into various survey numbers and pattas were also issued to different people, according to their enjoyment during Updating Registry Scheme (UDR) and really the petitioner's forefather and his heirs were in possession, definitely pattas would have been issued to them during the settlement period. The points putforth by the petitioner cannot be countenanced and prays for dismissal of the writ petition.

4. The Learned Judge after taking note of the rival submissions observed that the petitioner had placed reliance upon two sale deeds without any other documents to prove the identify or establish the title and enjoyment of the property and the civil Court is the competent forum to decide the issue relating to title and enjoyment. Therefore, the Learned Judge has dismissed the Writ Petition granting liberty to the petitioner to establish the title and enjoyment, in accordance with law, before the competent



civil forum and as and when the trial Court grants decree, the petitioner can move the appropriate authorities for modifying the revenue records. The petitioner aggrieved by the said order, has filed this Writ Appeal.

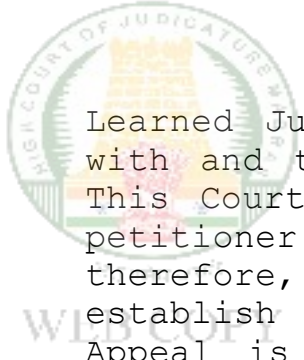
5. The petitioner / party-in-person has drawn the attention of this Court to the Encumbrance Certificate and would submit that in the Encumbrance Certificate, there is any other Encumbrance is there and therefore, the stand of the respondent is wholly unsustainable and the petitioner merely prays for survey and measurement of the land by fixing the boundaries and in the light of the same there cannot be any impediment by directing the respondent to do so.

6. Per contra, Mr.R.Velmurugan, the learned Government Advocate, who accepts notice on behalf of the respondent, has invited the attention of this Court to the impugned order, which is the subject matter of challenge in this Writ Appeal as well as the counter affidavit filed in the Writ Petition and would contend that a thorough scrutiny of the entire records have been done and the petitioner was also afforded all reasonable opportunities to substantiate his case, however, the petitioner has failed to produce any other documents except the two sale deeds and in the light of UDR Scheme, pattas were granted in favour of the persons who were in possession and if really the petitioner's forefather were in possession, definitely patta ought to have been issued to them and in the absence of any records, the submission made by the petitioner need not be considered.

7. The Court paid its anxious consideration to the rival submissions and also perused the materials placed before it.

8. A perusal of the impugned order would disclose that the petitioner was afforded reasonable and sufficient opportunity to substantiate his case and however, he has failed to produce any documents, except the two sale deeds. The respondent on going through the relevant records and also the sale deeds had found that there is no materials to show as to the existence existence of Survey No.1/16 in the revenue records and under Updating Registry Scheme (UDR), the Survey Numbers have been divided into various survey numbers and pattas were issued in favour of the persons, who were in possession. If really the petitioner's forefather's were in possession, they would have been definitely granted patta under Updating Registry Scheme (UDR). In the considered opinion of this Court, the findings came to be rendered on the basis of the records.

9. The Learned Judge having found that for proving title, possession and enjoyment, the petitioner has to approach the civil Court and accordingly, granted the said liberty. In the considered opinion of this Court, the reasons assigned by the



Learned Judge in dismissing the Writ Petition cannot be faulted with and there is no error apparent on the face of the record. This Court is also of the opinion that the points urged by the petitioner require pleadings, oral and documentary evidence and therefore, he has to approach the competent civil forum to establish his right, title and possession. Therefore, the Writ Appeal is dismissed and the order made in W.P.(MD)No.10797 of 2015, dated 25.07.2016, is confirmed. However, there shall be no order as to costs.

Sd/-

Assistant Registrar(CS-I)

/True Copy/

Sub Assistant Registrar

To

The District Revenue Officer,
O/o.the District Collector,
Collectorate,
Sivagangai District.

+1cc to M/s.M.Kannan, Advocate SR.No.55523
+1cc to Special Government Pleader SR.No.55858

W.A. (MD)No.1308 of 2016

26.09.2016

mpk

SD/CK/05.10.2016/4P/4C