



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 15.11.2016

CORAM:

THE HONOURABLE MR.JUSTICE M.GOVINDARAJ

W.P. (MD) No.2227 of 2011

and

M.P. (MD) No.2 of 2011

J.Azaria

... Petitioner

-vs-

1.The District Revenue Officer
Office of the D.R.O.,
Theni District, Theni

2.The Revenue Divisional Officer
Periyakulam, Theni District

3.The Thasildhar
Periyakulam, Theni District

4.P.Balasubramanian

5.P.Somasundaram

6.P.Kasi

7.P.Kasi Ammal

8.K.Chellammal

... Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India for issuance of writ of certiorari to call for the records relating to the orders passed by the first respondent, dated 24.01.2011, in Na.Ka.No.45236/08/D4 and the order of the second respondent, dated 04.09.2008, in Na.Ka.No.1889/07/21 and quash the same.

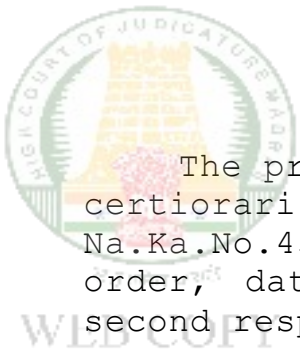
For Petitioner : Mr.N.Dilip Kumar

For Respondents : Mr.S.Kumar

Addl. Govt. Pleader for R1 to R3

Mr.S.Visvalingam for R4 to R7

No appearance - R8

**ORDER**

The prayer in this writ petition is for issuance of a writ of certiorari to quash the order, dated 24.01.2011, in Na.Ka.No.45236/08/D4, passed by the first respondent and the order, dated 04.09.2008, in Na.Ka.No.1889/07/21, passed by the second respondent.

2. According the petitioner, he had purchased the land in dispute, measuring an extent of 7 Cents in Survey No.121/2 and 15 1/8 Cents in Survey No.121/3A of Pottavayal Thenkarai Village, Periyakulam Taluk, Theni District, from the eighth respondent herein. The third respondent / Thasildar, Periyakulam Taluk issued a Patta Passbook in his favour on 27.10.2000. The respondents 4 to 7 claimed that they are the original owners and the eighth respondent had no title over the land in dispute. However, the third respondent / Tahsildar, without issuing notice to the land owners, had granted Patta in favour of petitioner. Aggrieved by the same, the respondents 4 to 7 approached the second respondent / Revenue Divisional Officer, Periyakulam and the second respondent had gone into the revenue records and passed the order dated 04.09.2008, holding that the land in dispute was owned by the contesting parties and the eighth respondent sold the said land in exercise of her entitlement. It is also observed in the order that the writ petitioner had agreed to approach the Civil Court to establish the title and therefore, he had cancelled the Patta issued in favour of the petitioner and directed transfer of Patta in favour of the respondents 4 to 7 as they are the title-holders.

3. Challenging the order of the second respondent, the writ petitioner filed a revision before the first respondent / District Revenue Officer, Theni District, wherein he has raised the issue of jurisdiction of the second respondent in deciding title to the property and sought for setting aside the order of the second respondent. The first respondent, after enquiring all the parties, has passed an order, dated 24.01.2011, confirming the finding of the second respondent that the sale effected by the eighth respondent in favour of the petitioner is not acceptable without partition. Aggrieved by the orders passed by the respondents 1 and 2, the petitioner has filed this writ petition.

4. The fourth respondent has filed a counter affidavit stating that the eighth respondent is not the title-holder and the person, who has no title, is not entitled to convey the property and even assuming that she has title over the land in dispute, before transferring the Patta, the third respondent must have issued notice to the joint Pattadars.



6. From the perusal of the documents produced by either sides, it is seen that there were several documents of title with respect to the land in dispute. Insofar as the respondents 4 to 7 are concerned, a Patta Passbook has been produced bearing No.2667, which is a joint Patta in the name of all the contesting respondents. Whereas, Pattas bearing Nos.4373 and 4370 have been issued in favour of the writ petitioner. The eighth respondent is said to have inherited the title through a Gift Deed, dated 24.07.1981. But, there is no Patta in the name of the 8th respondent is available in the typed set of documents produced by the petitioner. The petitioner has also not stated anything about the Patta issued in favour of the eighth respondent.

7. The contention of the respondents 4 to 7 that the joint Patta standing in their name has been suddenly changed and the Patta in respect of their property was issued in favour of the petitioner by the third respondent, without notice, has much force. The respondents 1 and 2, while passing orders, have ventured into the issue of title to the property in dispute and have passed the impugned orders. The respondents 1 to 3 are revenue authorities. They have no jurisdiction to decide the issue of title, while exercising their powers as such. Title of property should be decided by the Civil Court. Further, it is flagrant from the orders of the respondents 1 and 2 that they have ventured into the issue of title and therefore, the impugned orders passed by the respondents 1 and 2 are not sustainable in the eyes of law. At the same time, the action of the third respondent in transferring the Patta, without issuing notice to the respondents 4 to 7, who claim to be the owners of the land in dispute, is also not correct and the same is also liable to be set aside.

8. In the result, the writ petition is allowed and the impugned orders, dated 24.01.2011, 04.09.2008 and 27.10.2000, passed by the respondents 1, 2 and 3 respectively are set aside. The writ petitioner and the respondents 4 to 7 are directed to approach the third respondent with proper documents substantiating their claim and the third respondent is directed to conduct an enquiry into the matter and after hearing all the parties, make appropriate entries in the revenue records, within a period of eight weeks from the date of receipt of a copy of this order and communicate the decision taken to the parties concerned forthwith. It is open to the parties aggrieved to exercise their right of appeal in the manner known to law before the second respondent and the first respondent thereafter. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar



To:

1.The District Revenue Officer,
Office of the D.R.O.,
Theni District, Theni.

2.The Revenue Divisional Officer,
Periyakulam, Theni District.

3.The Thasildhar,
Periyakulam, Theni District.

+1 CC to Mr.N.DILIP KUMAR, Advocate, SR No.69363

+1 CC to Mr.S.VISVALINGAM, Advocate, SR No.69238

+1 CC to THE SPECIAL GOVERNMENT PLEADER, SR No.69328

krk

SH/GSV-PM:29.11.2016:4P/7C

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