



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 14.12.2016

CORAM:

THE HONOURABLE MR.JUSTICE M.S.RAMESH

W.P. (MD) No.15693 of 2013

and

M.P. (MD) No.2 of 2013

K.Jothi

... Petitioner

-vs-

1.The District Revenue Officer
Thanjavur, Thanjavur District

2.The Revenue Divisional Officer
Thanjavur, Thanjavur District

3.V.Veerasamy

4.M.Kaliyaperumal

... Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India for issuance of writ of certiorarified mandamus to call for the records relating to the proceedings of the second respondent issued in Na.Ka.No.5626/08/A5, dated 28.04.2010, as confirmed by the orders passed by the first respondent in Tha.Pa.No.22/2010/Vu 2, dated 12.01.2012 and quash the same and consequently restore the patta in favour of the petitioner in respect of the land in S.No.1/13B N.Vallundanpattu Village, Thanjavur Taluk and District, within a time frame.

For Petitioner : Mr.F.Deepak

For Respondents : Mr.T.R.Janarthanam
Addl. Govt. Pleader for R1 & R2
Mr.M.Sathiamoorthy for R3 & R4

O R D E R

The petitioner and the respondents 3 and 4 are rival claimants over the lands in Survey No.1/13B, measuring an extent of 0.04.5 Hectares.

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2. By an order, dated 28.04.2010, the second respondent had



granted a Joint Patta in favour of the respondents 3 and 4. Aggrieved against the order of the second respondent, an appeal was preferred before the first respondent by the petitioner. While confirming the order passed by the second respondent, the first respondent had made observations over the rights and title of the respondents 3 and 4 as well as the petitioner in connection with the subject lands. Aggrieved against the said order, the petitioner has filed this writ petition.

3. Heard Mr.F.Deepak, learned counsel appearing for the petitioner, Mr.T.R.Janarthanam, learned Additional Government Pleader appearing for the respondents 1 and 2 and Mr.M.Sathiamoorthy, learned counsel appearing for the respondents 3 and 4.

4. From a reading of the order passed by the first respondent, it is seen that he had determined the title of the parties, namely, petitioner as well as the respondents 3 and 4. It is a settled law that the revenue officials, while determining grant of Patta, cannot go into the title of the parties, which power is vested only with the Civil Courts. No doubt, the revenue officials in Patta proceedings can express their views on the question of title, but the same cannot be conclusive. In a Judgment passed by this Court, in W.A.No.1275 of 2006, dated 28.07.2011, **Vishwas Footwear Company Ltd., vs. The District Collector, Kancheepuram and others**, relying upon various Judgments of this Court as well as the Hon'ble Supreme Court, the Division Bench of this Court has held as follows:

"21.In the light of the judgments in Kuppaswami Nainars case and Chokkappans case, the person who has applied to the Revenue Divisional Officer for cancellation of patta should be directed to approach the civil Court to establish the title and for seeking the grant of patta after cancelling the patta granted in favour of the appellant company. On this ground, the appellant is entitled to succeed. Accordingly, the order of the learned single Judge is set aside. The order impugned in the writ petition is set aside and the patta granted in favour of the appellant company is restored. However, we make it clear that this order shall not stand in the way of the said Alamelu Ammal to approach the civil Court to establish the title and to consequently seek for cancellation of patta granted in favour of the appellant company and for further direction for grant of patta in favour of the said Alamelu Ammal. With these observations and directions, the writ appeal is allowed. No costs."



5. In an another Judgment, in W.A.No.1342 of 1994, dated 26.10.1994, **Kuppuswami Nainar vs. The District Revenue Officer, Thiruvannamalai & others**, the Division Bench of this Court has held as follows:

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"4. Now, the question for consideration is, having regard to the fact that the District Revenue Officer has expressed his opinion on the question of title whether the order under question should be interfered with. It may be pointed out here that in a petition under Article 226 of the Constitution the question of title regarding immovable kproperty cannot properly be gone into, because a mass of evidence may be required for adjudicating the question of title. Even if we are to interfere with the order under appeal, it is the other party, who has to go to a civil court and establish title. As far as the exercise of jurisdiction under Art.226 of the Constitution is concerned, it does not matter to it whether 'A' party goes to civil court or 'B' party. Therefore, we are of the view that the question of title has to be decided by the civil court, without reference to the order under question. Hence, we decline to interfere with the order challenged in the writ petition. However, we make it clear that in the event a suit for declaration of title and for appropriate consequential relief is filed, the civil court shall decide such a suit, without reference to the findings recorded by respondents 1 and 2 in the impugned orders, but only on the basis of the pleadings of the parties and evidence adduced by them before it. We also make it clear that any opinion expressed by the learned single Judge, contrary to what we have stated above, shall also stand modified accordingly. With these observations, the writ appeal is dismissed. Consequently, C.M.P.No.15872 of 1994 filed along with the appeal is also dismissed."

6. The above proposition is squarely applicable to the facts of the present case also. The conduct of the first respondent as well as the second respondent in determining the title of the parties is contrary to the above proposition. At this juncture, the learned counsels for the petitioner as well as the respondents 3 and 4 would submit that if liberty is given to the parties to approach the Civil Court, they would establish their title therein.

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7. In the light of the observations made above and in the



light of the submissions of the respective learned counsels, the petitioner as well as the respondents 3 and 4 are granted liberty to approach the appropriate Civil Court redressing their grievances to establish their title.

8. In view of the liberty as granted above, the writ petition is allowed and the impugned orders, dated 12.01.2012 and 28.04.2010, passed by the respondents 1 and 2 respectively are quashed. It is made clear that the observations made by the respondents 1 and 2 in the impugned orders shall not be taken as observations in support of either of the parties. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Deputy Registrar(T&P)

/True Copy/

Sub Assistant Registrar

To:

1.The District Revenue Officer,
Thanjavur, Thanjavur District.

2.The Revenue Divisional Officer,
Thanjavur, Thanjavur District.

+1 cc to MR.G.SANKARAN, Advocate SR.No.80764

+1 cc to Special Government Pleader SR.No.80866

+1 cc to MR.M.SANTHIAMOORTHY, Advocate Sr.No.80685

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SMA/SKS-RR/02.01.2017:4P/6C