

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.10.2017

CORAM:

THE HONOURABLE MR. JUSTICE S.VAIDYANATHAN

W.P.No.12289 OF 2004

Sri Karpagambal Mills Ltd.,
rep. by its Managing Director,
Mr.P.Lakshmanan Chettiar,
Cholapuram South,
Rajapalayam Taluk,
Virudhunagar District.

... Petitioner

vs.

1. State of Tamil Nadu,
rep. by its Special Commissioner
and Commissioner for Land Administration,
Chepuak, Chennai 600 005.
2. The District Revenue Officer,
Virudhungar.
3. The Sub-Collector,
Sivakasi,
Virudhunagar District.
4. The Tahsildar,
Rajapalayam,
Virudhunagar District.

5. R.Shanmugavel

... Respondents

Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a writ of certiorari, calling for the entire records relating to the impugned order No.Pa.Mu.Ke.4/24005/2002, dated 15.09.2003 served on 08.10.2003 on the file of the 1st respondent and quash the same as illegal, arbitrary and without jurisdiction.

For Petitioner	:	Mr.J.R.K.Bhavanantham for Mr.P.B.Balaji
For Respondents 1 to 4	:	Mr.R.Venkatesh, Government Advocate
For 5th Respondent	:	No appearance

O R D E R

Heard the learned counsel for the petitioner and the learned Government Advocate appearing for respondents 1 to 4. Though the name of the 5th respondent is printed in the cause list, none appeared on his behalf. Hence, the matter is taken up for disposal on merits.

2. The petitioner has come up with this Writ Petition seeking to quash the impugned order 15.09.2003 passed by the 1st respondent herein.

3. According to the petitioner, he has purchased lands comprised in S.No.1434/A1 of an extent of one acre and twelve cents vide Sale Deed dated 22.07.1994 from one Shanmugavelammal and others for a valuable sale consideration and he had put up fence and paid kist for the property and thereby, continued to be in possession and enjoyment of the said property. After verification of revenue records, the 4th respondent issued patta for the said property in the name of the petitioner. While so, the 5th respondent herein claiming rights in the subject property, made an application to the District Collector and in turn, the 4th respondent was directed to hold an enquiry into the matter.

4. Thereafter, the 4th respondent held a full-fledged enquiry and held that the 5th respondent has not filed any document to prove his claim. Hence, the 5th respondent preferred an appeal before the 3rd respondent. After inquiring into the matter, the 3rd respondent also concurred with the view taken by the 4th respondent and directed the 5th respondent to approach the Civil Court to ascertain his title since the dispute relates to a period of 50 years. But, without approaching the Civil Court, the 5th respondent chose to file a Revision before the 2nd respondent, who, after thorough verification of records, affirmed the orders of the 3rd and 4th respondent. Challenging the same, the 5th respondent filed a Revision before the 1st respondent and he succeeded to get a direction of issuance of joint patta in his favour. Aggrieved by the said order, the petitioner is before this Court.

5. In the counter affidavit filed by the 3rd respondent, it is stated that the 3rd respondent, conducted an enquiry on the revision petition filed by the 5th respondent and after perusing the records relating to the land in dispute, he ascertained that the Chitta copy produced by the 5th respondent is a good old record and the names of seven joint pattadhars were found in the Chitta. However, finding it difficult to solve the five decade old issue and in view of the fact that the 5th respondent had not produced any Tax receipt to establish his

right and enjoyment over the land in question, the 3rd respondent directed the 5th respondent to approach the Civil Court for appropriate remedy.

6. It is further stated in the counter that the 5th respondent, without approaching the Civil Court filed a revision petition before the 2nd respondent/District Revenue Officer, Virudhunagar, who, after verification of documents, upheld the proceedings of the 3rd respondent. Challenging the proceedings of the 2nd respondent, the 5th respondent filed a revision petition before the 1st respondent, who, on thorough examination of the records, came to the conclusion that it is quite reasonable to include the name of the 5th respondent as Joint pattadhar of the land in question, as his grandfather's name has already been registered in Patta No.808 for the lands in S.No.1434-A1, measuring 1-12 acres, and cancelled all the proceedings of respondents 2 to 4. As per the orders of the 1st respondent, necessary changes have been carried out in the Village accounts of Cholapuram Village, Rajapalayam Taluk, Virudhunagar District, thereby including the name of the 5th respondent as a Joint Pattadhar of the land in question.

7. Admittedly, there is no evidence except the Patta or the Legal Heir Certificate which is referred to in the counter, to include the name of the 5th respondent as a Joint Pattadhar in the land in question. As pointed out by the petitioner, in paragraph 5 of the impugned order, there is a categorical finding that the 5th respondent has not produced any document to establish his claim. The only remedy available to the 5th respondent is to approach the Civil Court. But, the Appellate Authority, i.e. the 1st respondent herein, whose impugned order is the subject matter of the Writ Petition, usurped the civil jurisdiction and passed orders with regard to legal heirship. It is true that the 1st respondent is empowered to issue patta, if the orders of the original authority and the first appellate authority are bad. But, when there is a dispute to the title, only after adjudication, the 5th respondent is entitled to canvas and get relief in his favour. When the Sale Deed in question is not in dispute, the 1st respondent ought not to have interfered with the order of the Original Authority. Hence, this Court finds much force in the contention of the petitioner and the remedy to the 5th respondent lies only before the Civil Court.

8. In view of the above, the 5th respondent is directed to approach the Civil Court for appropriate relief. The period of pendency of the proceedings before various authorities including the present Writ Petition can be excluded for the purpose of limitation, if the 5th respondent approaches the Civil Court.

This Writ Petition is disposed of with the above direction

and observation. No costs. Consequently, connected
W.P.M.P.No.14361 of 2004 is closed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

(aeb)

To:

1. The Special Commissioner
and Commissioner for Land Administration,
State of Tamil Nadu,
Chepuak, Chennai 600 005.
2. The District Revenue Officer,
Virudhunagar.
3. The Sub-Collector,
Sivakasi,
Virudhunagar District.
4. The Tahsildar,
Rajapalayam,
Virudhunagar District.

+1cc to the Government Pleader, S.R.No.73412

W.P.No.12289 of 2004

SAI (CO)
GN(07/11/2017)

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