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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **13.06.2017**

CORAM:

THE HONOURABLE MR.JUSTICE **T.S.SIVAGNANAM**
AND
THE HONOURABLE MR.JUSTICE **P.VELMURUGAN**

W.A.[MD].Nos. 978 and 980 of 2011
and
MP(MD)Nos.2 & 2 of 2011

Avudaiparvathi
alias Suganda Devi :Appellant in WA 978 of 2011
M.Palaya Naicker :Appellant in WA 980 of 2011

Vs.

1.The District Revenue Officer,
Tirunelveli,

2.The Tahsildar,
Sivagiri Taluk.

3.N.Kasthuri Gandhi :Respondents 1 to 3 in both WAs

4.Avudai Parvathi :Respondent 4 in WA 980 of 2011

PRAYER: Writ Appeal is filed under Clause 15 of the Letters Patent against the orders dated 11.04.2011 passed in W.P.(MD).No.10719 of 2007 and 527 of 2008 respectively.

Prayer in WP(MD). 10719/ 2007 :
Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari, calling for the records relating to proceedings in U3/48346/2005 dated 11/09/200d7 on the file of the 1st respondnet and quashs the same as illegal

Prayer in WP(MD). 527/ 2008 :
Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorari, calling for the records pertaining to the impugned order of the 1st respondent made in U3/48346/2005 dated 11/09/2007 quash the same.

For Appellant & Respondent 4 in W.A.No.980/11 : Mr.M.P.Senthil in both WAs
For Respondents 1 &2 : Mr.V.Muruganantham Additional Government Pleader in both WAs

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For Respondent 3 : Mr.S.Venkatachalapathy,
Senior Counsel
for Mr.S.Wilson in Both WAs

COMMON JUDGMENT
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[Judgment of the Court was made **T.S.SIVAGNANAM, J.]**

These appeals have been filed by both the Writ Petitioners in W.P.(MD)Nos.10719 of 2017 and 527 of 2008. The Writ Petitions were disposed by a Common Order dated 11.04.2011, and the operative portion of the Order reads as follows,

> "12.In these circumstances, I am of the view that there is no infirmity in the order of the first respondent and the writ petitioner is at liberty to approach the competent civil Court to establish her title and whatever is stated in the impugned order could not come in the way of the decision of the Civil Court in the title suit that can be filed by the writ petitioner. The writ petition W.P.(MD).No.10719 of 2007 is disposed of in the above terms.
>
> 13.In W.P.(MD).No.527 of 2008, it is true that a suit in O.S.No.81 of 1980 was filed in a representative capacity of one Mutiah Naicker seeking declaration that S.No.237 is 'Manthai Poramboke' and also he sought for permanent injunction restraining the authorities from proceeding with the construction of a Godwon. The suit was dismissed on 26.02.1986. Against which an appeal was filed in A.S.No.84 of 1986 and the same was also disposed of on 24.02.1990 holding that the construction of godown was only to an extent of 5 cents and therefore, the villagers could have balance land for grazing purpose. In the afore-said suit proceedings, the third and fourth respondents in W.P.(MD).No.527 of 2008 were not parties. Further more, the issue that arose in the suit was not relating to whether 10 cents of private land were also classified as 'Manthai Poramboke'. In any event, it is made clear that the villagers concerned or Muthaiah Naicker or any body else can agitate before the competent Court disputing the title of property of 10 cents in S.No.237. In view of the aforesaid finding, the villagers concerned are given liberty to approach the competent civil Court to dispute the title of the third and fourth respondents in W.P.(MD).No.527 of 2008, if they are so advised. The writ petition No.527 of 2008 is disposed of in the above terms. No Costs."

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2.The dispute between the parties is with regard to grant of patta. The appellant Smt.Avudaiparvathi alias Suganda Devi is the sister of the third respondent. The other appellant M.Palaya Naicker is a third party.

3.The basic issue is whether the property in question is a Manthai Poramboke or a private patta land of the forefathers of Smt.Avudaiparvathi and N. Kasturi Gandhi. It is the case of N. Kasutri Gandhi, third respondent in both the Writ Appeals that the property belongs to their forefathers and the revenue entries were changed as Manthai Poramboke and after considerable period of time, when it came to the knowledge of the third respondent, they moved the District Revenue Officer for correction of the entries in the revenue records, which after enquiry was ordered and it is not a case of fresh grant of patta, but a rectification of an error which occurred in the revenue records.

4.This contention was seriously rebutted by the appellant in the other appeal, namely W.A.No.980 of 2011, stating that the classification has been rightly made as Manthai Poramboke. There is also a reference to a suit filed by Thiru M.Pallaya Naickar, which is now pending in appeal as A.S.No.87 of 2013, on the file of District Munsif Court, Sivagangai and therefore the Writ Court ought not to have embarked upon the exercise of deciding the question of title. Similar is the objection raised by the appellant Smt. Avudaiparvathi stating that the Writ Court overstepped its jurisdiction and virtually decided the title, which has been held as impressible by the decision of the Division Bench of this Court in the case of **Vishwas Footwear Company Limited Vs. District Collector, Kancheepuram and others, 2011 (5), CTC 1994.**

5.The senior counsel appearing for the third respondent N.Kasturi Gandhi would submit that there is another decree which was passed in A.S.No.84 of 96 on the file of Sub Court, Tenkasi, 24.02.1990 and in a suit filed by Thiru. Muthiyah Naickar father of M.Palaya Naickar, and the decree would be put against the third respondent in the pending proceedings and the decree will not bind them as they were not party defendants to the said suit / appeal. If a person is not a party to the proceedings, obviously such a decree would not bind them. However, it is always open for the party to seek for a declaration, that a decree of the Civil Court passed in an earlier proceedings is not binding upon the parties and if such a suit is filed, the Court will take decision as to whether, the said decree in A.S.No.84 of 1996 would in any manner have any impact on the claim made by the third respondent, N. Kasturi Gandhi.

6.Thus the only apprehension of all the parties is that when the matter is taken up by the Civil Court, the orders passed by the revenue authorities should not be relied upon by the respective parties to prove the possession or otherwise and if the same is done, then it would amount to endorsing the view of the revenue authorities, who has no jurisdiction to take a decision on the title to the immovable properties. This view is supported by the decision of the Hon'ble Supreme Court in the case of **Rajinder Singh Vs. State**

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of Jammu and Kashmir and others, (2008) 9 SCC, 368, wherein it was held that neither the authorities under the Tenancy Act (Jammu and Kashmir Tenancy Act,1980) nor the High Court could have entered into the question of ownership, title or inheritance in the proceedings, which was the subject matter before the Hon'ble Supreme Court and ought to have decided the controversy limited to mutation entry in the revenue record as it is well settled that the revenue record confers no title to the party.

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7.Further, reliance was placed on the decision in the case of **Suraj Bhan Vs. Financial Commissioner, (2007) 6 SCC 186,** wherein, it was held that the entries are relevant only for “fiscal purpose” in the substantive rights of title and of ownership contesting claimants can be decided only at a competent Civil Court in an appropriate proceedings.

8.In the light of the above referred decisions, the parties, when they approach Civil Court in the fresh cases to be filed or in the pending proceedings, can place no reliance upon the revenue entries or orders passed by the revenue authorities for the purpose of establishing their right, title and ownership over the properties which is subject matter of this litigation.

9.This observation would be sufficient to safeguard the interest of all concerned, namely the appellants as well as respondents and further, We observe that the Civil Court which is seized of the matter or any fresh proceedings that may be initiated by any one of the parties, the Court shall decide the matter based on the oral and documentary evidence placed before it, and not rely on any of the observations or entries made in the revenue records.

10.Taking into consideration of the above observations and to avoid further litigation among the parties, We direct that the ***status quo*** with regard to the revenue entries prevailing as on today (13.06.2017) shall continue and the revenue authorities shall not effect any mutation, till the parties obtain appropriate relief from the Civil Court.

11.With the above observations and directions, the Writ appeals are dismissed. No Costs. Consequently, Connected Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(A.E)

/True Copy/

Sub Assistant Registrar

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To

1.The District Revenue Officer,
Tirunelveli.

2.The Tahsildar,
Sivagiri Taluk,
Tirunelveli.

3.The District Munsif,
Sankarankovil.

4.The Sub court, Tenkasi.

5.District Munsif, Sivagangai.

+1cc to THE SPECIAL GOVERNMENT PLEADER in SR. No.60192
+1cc to Mr.R.NANDAKUMAR Advocate in SR. No.60142
+2cc to Mr. S.WILSON Advocate in SR. No.59991
+1cc to M/s.M.P.SENTHIL Advocate in SR. No.60030
DSK/GK
JS/KKR/SAR.1/28.06.2017/5P-11C

JUDGMENT MADE IN

W.A.[MD].Nos. 978 and 980 of 2011
and
MP(MD)Nos.2 & 2 of 2011
13.06.2017

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