IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 03.10.2018

CORAM

THE HONOURABLE Mr.JUSTICE R.SURESH KUMAR

W.P.No.8987 of 2003
and
W.P.M.P.No.11487 of 2003

1.Sabia Beevi
2.Nazira Beevi ... Petitioners

Vs

1.The Special Commissioner &
Commissioner for Land Administration,
Chepauk, Chennai - 600 005.

2.The District Revenue Officer,
Nagerkovil,
kanyakumari District.

3.The Revenue Divisional Officer,
Kanyakumari District at Thakkalai.

4.The Tahsildar,
Elavankodu Taluk,
Kuzhithurai.

5.Shini Beena ... Respondents

Writ Petition is filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus or any other appropriate writ or direction to call for the records on the file of the 1st respondent in proceedings No.PA.MU.C.MA.19/2002 (K4/56525/2000), dated 10.01.2003 and quash the same as illegal, incompetent without jurisdiction and further restore the order of the second respondent in a proceedings No.M4/61554/98 dated 26.09.2000.



For Petitioners : Mr.V.Raghavachari

For Respondents-1 to 4 : K.Ravikumar,
Additional Government Pleader

For respondent-5 : M.B.K.Sreenivasan
for Mr.K.N.Thampi

O R D E R

The prayer sought for in this Writ Petition is for the issuance of a Writ of Certiorarified Mandamus to call for the records on the file of the first respondent in proceedings No.PA.MU.C.MA.19/2002 (K4/56525/2000), dated 10.01.2003 and quash the same as illegal, incompetent without jurisdiction and further to restore the order of the second respondent in proceedings No.M4/61554/98 dated 26.09.2000.

2. The facts, which are necessary to be noticed for the disposal of the writ petition, are as follows:-

(i) The landed property 10 ½ cents at Re-Survey No.343/10 in Keezhkulam Village, Kanyakumari District is the subject matter of the issue raised in this writ petition.

(ii). It is the case of the petitioners, who are the mother-in-law and daughter-in-law, that they have purchased the said property from one Johnson Nadar, Son of Nadankutti Nadar and Annammal, Wife of Selva Nayagam and Manikandan, S/o.Selva Vinayagam. It is the claim of the petitioners that before purchase of the property, the predecessors were in possession of the property and subsequent to the purchase, the petitioners had been in effective possession and they have paying the taxes in respect of the property and patta was also granted in their favour in Patta No.7151. However, on the contrary, the fifth respondent also claimed the title of the property of 10 ½ cents referred to above, as she traced her title by claiming that the fifth respondent's father one Peter claimed to have purchased the said property of 10 ½ cents from one Narayanan Nambudri and Sankaran Nambudri by way of Sale Deed dated 07.02.1961 in Sale Deed No.1523 of 1961.

(iii). It is the claim of the fifth respondent that 10 ½ cents was part of 21 cents of land with original Survey No.243/3B of Kilkulam Village, which was subsequently given as new Survey No.343/1.

(iv). It is the further claim of the fifth respondent that after the purchase of 10 ½ cents in new Survey No.343/1 by her father, as set out above, she applied for separate patta. However, initially for the entire extent of 21 cents at 343/1, joint patta was issued in the name of the father of the fifth respondent and the predecessors-in-title of the petitioners' one Johnson.

(v). However, subsequently on 24.10.1974, the said new Survey No.343/1 was sub divided into two parts, namely, Survey

No.343/1 Part and Survey No.343/10. According to the fifth respondent, 10 ½ cents purchased by her father from Nambudris in the year 1961 was sub divided as 343/10 and in respect of the same, the father of the fifth respondent had executed a settlement dated 11.10.1990 to and in favour of the petitioners.

(vi). Like that, it was the claim of the petitioners that the entire extent of 21cents belongs to Johnson, the father of Selva Nayagam who inherited the same from his father. However, this has been disputed by the fifth respondent stating that the said Selva Nayagam could not have inherited 10 ½ cents purchased by the father of the fifth respondent which had already been sub divided into 343/10.

(vii). In that context, as per the claim made by the said Selva Nayagam on the strength that he had inherited the property from his father, the Tahsildar concerned (i.e) the fourth respondent, by an order dated 20.05.1996, had issued a patta in the name of Selva Nayagam for both Survey Nos.343/1 part and 343/10 also.

(viii). Aggrieved over the said issuance of patta by the fourth respondent, Tahsildar, by his order dated 20.05.1996, the fifth respondent preferred an appeal before the third respondent on 19.09.1996. The third respondent, on considering the claim made by the fifth respondent and after having taken into account the available records, has passed an order on 22.07.1998 reversing the order passed by the Tahsildar, and cancelled the patta issued in the name of Selva Nayagam for both survey Nos.343/1 Part and 343/10.

(ix). In the meanwhile, the property in question had been purchased by the petitioners herein from the said Selva Nayagam on 27.09.1996. Therefore, as against the order of the Revenue Divisional Officer dated 22.07.1998, the petitioners preferred an appeal before the second respondent, the District Revenue Officer, who in turn, passed an order, of course, after having spot inspection of the land in question on 26.09.2000 whereby he reversed the order passed by the third respondent/Revenue Divisional Officer and restored the order passed by the fourth respondent, the Tahsildar, who gave patta in favour of the said Selva Nayagam, who was the predecessor-in-title for the present petitioners.

(x). Aggrieved over the said order passed by the second respondent, the District Revenue Officer dated 26.09.2000, the fifth respondent preferred a revision before the first respondent (i.e), the Special Commissioner for Land Administration.

(xi). The first respondent, in turn, has passed an order dated 10.01.2003 setting aside the order passed by the second respondent dated 26.09.2000 and restoring the order passed by the third respondent/Revenue Divisional Officer dated 22.07.1998. As against the said order passed by the first respondent dated 10.01.2003, the petitioners have filed this Writ Petition with the aforesaid prayer.

3. Mr.V.Raghavachari, the learned counsel appearing for the petitioners has made a submission that, in fact, the issue had already been decided by the Civil Court in Civil Suit O.S.No.468 of 1975 on the file of the Additional District Court, Padmanabhapuram by judgment and decree dated 28.07.1976. In this regard, the learned counsel would further enlarge his argument by stating that, the mother of the fifth respondent one Anet Pactria Bella filed the said suit in O.S.No.468 of 1975 claiming decree for declaration in her favour for the properties situated in Survey Nos.244/0A, 243/3B and 240/1A. Insofar as the other two survey numbers are concerned, it does not have any bearing on the issue raised in the writ petition. However, insofar as Survey No.243/3B is concerned, this is exactly the old Survey No. of the subject property, which was subsequently given a new Survey No.343/1 and it has been subsequently sub divided into 343/1 part and 343/10.

4. Therefore, the learned counsel for the petitioners submits that, the Civil Court passed a decree rejecting the claim of the mother of the fifth respondent stating that she does not have any title over the properties in respect of the three survey numbers including the Survey No.243/3B of Keezhkulam Village. The learned counsel would further submit that, as against the said judgment and decree, an appeal was preferred in A.S.No.176 of 1976 on the file of the Subordinate Court, Padmanabhapuram, and the appellate Court also, by judgment and decree dated 08.04.1980, rejected the said appeal filed by the mother of the fifth respondent by confirming the judgment and decree of the trial Court. Therefore, by relying upon these two Civil Court judgments and decrees, the learned counsel for the petitioners has submitted that, as against the order passed by the trial Court as well as the first Appellate Court, no further appeal had been filed by anyone and the said decrees and judgments had become final, which has already given a declaratory decree against the mother of the fifth respondent, who exactly claimed title over three properties including the properties at Old Survey No.243/3B. The fifth respondent, who is none other than the daughter of the plaintiff, namely, Anet Pactria Bella, cannot claim any title over the property whether it is 10 ½ cents or any extent in the same Survey No. namely, 243/3B, which has been admittedly re-surveyed and new number has been given as 343/1 and subsequently sub-divided into 343/1 Part and 343/10.

5. The learned counsel for the petitioners has pointed out that, these aspects have not been considered by the Land Commissioner in the order impugned, the Land Commissioner has proceeded to state that, the fifth respondent, had not claimed the title through her mother, but she claimed title from her father, who purchased the property from Nambudris as set out above and after enjoying the same for some years, he settled the same on 11.10.1990 in favour of the fifth respondent, who is the daughter of him from whom alone, he traced the title and claimed the property. Therefore, the property of 10 ½ cents claimed by the fifth respondent was wrongly included in the patta issued by the fourth respondent on 20.05.1996 and the same had been accepted by the first respondent in the order impugned.

6. In this regard, the learned counsel for the petitioners would further submit that, unless the first respondent gives a clear-cut finding by tracing the title of both the petitioners as well as the fifth respondent and gives exact Survey Number (i.e) Old Survey No.243/3B, which is corresponding to new Survey No. 343/1 and its full extent and who were the original owners (i.e) predecessors-in-title of the property originally before this Sub Division, such a finding cannot be given by the first respondent, who is the head of the Revenue Administration Department and therefore, based on the documents available before the Revenue Department, this issue could have been very well resolved by the first respondent, however, without taking any efforts to decide the issue, he has simply brushed aside the Civil Court's decree, which has negated the claim of the fifth respondent's mother, and had passed the order, which is impugned herein. Therefore, it requires interference by this Court.

7. Per contra, Mr.B.K.Sreenivasan learned counsel for Mr.K.B.Thampi appearing for the fifth respondent would submit that, as has been rightly stated by the first respondent in the impugned order, the fifth respondent has not claimed title with regard to the subject property through her mother. It is not known whether Old Survey No.243/3B was having only 21 cents of extent or beyond 21 cents. It might have been larger extent than 21 cents with the said Old Survey No.243/3B. The issue was, according to the learned Counsel for the fifth respondent, only about 21 cents, for which, the said Nambudris were the owners and who claimed the title, which has been explained in the sale deed dated 07.02.1961 in sale deed No.1523 of 1961. Out of 21 cents available in the said Old Survey No.243/3B for which, the Nambudris were the owners, they sold 10 ½ cents by 1961 sale deed to the father of the fifth respondent, who after purchase of the same enjoyed the said property and subsequently, it was sub-divided into 343/1 part and 343/10.

8. The learned Counsel for the fifth respondent would further elaborate that, the new sub divided No.343/10 exactly denotes the property of 10 ½ cents purchased by the fifth respondent's father. Therefore, the fifth respondent's father one Mr.Peter settled the entire 10 ½ cents at 343/10 to and in favour of the fifth respondent on 11.10.1990. Therefore, the fifth respondent has never claimed title over the property through her mother. Therefore, what has been stated or what has been decided by the Civil Court, where the suit was triggered by the mother of the fifth respondent, has nothing to do with the claim of the fifth respondent as her claim towards the property in dispute is independent, by virtue of settlement deed dated 11.10.1990 from her father.

9. The learned Counsel for the fifth respondent has further submitted that, this aspect has been properly considered by the Revenue Divisional Officer and subsequently by the first respondent in the impugned order. The learned counsel has also pointed out that, the said Selva Nayagam, who was the predecessor in-title for the petitioners, had never claimed Patta for 343/10 and he claimed patta for some other Survery Number along with 343/1. However, the fourth respondent in the order dated 20.05.1996 wrongly issued a patta in favour of the said Selva Nayagam not only for survey No.343/1 but also for 343/10, which is an exclusive property of the father of the fifth respondent, who purchased the same from Nambudris in the year 1961. Therefore, in order to set right the wrong order passed by the fourth respondent, the fifth respondent approached the Revenue Divisional Officer and subsequently, the Revenue Divisional Officer, by order dated 22.07.1998 corrected the wrong order passed by the fourth respondent. The said stand has been taken by the first respondent in the impugned order dated 10.01.2003 also.

10. It is further pointed out by the learned Counsel for the fifth respondent that, in the order of the District Revenue Officer dated 26.09.2000, which was impugned before the first respondent, he has stated that, he had also made a spot inspection of the land in question and after having enquired with the neighbouring land owners, he claimed to have found that the property in question was in possession of the petitioners, and not in the possession of the fifth respondent. Therefore, on that ground also, the second respondent claimed to have passed the order dated 26.09.2000. In this Context, the learned Counsel pointed out that, based on the possession, no order of title or grant of Patta can be passed by the Revenue authorities and therefore, for the said reason alone since the order of the second respondent dated 26.09.2000 was confirmed,

the same also had been taken into account in proper perspective by the first respondent i.e the Land commissioner, in the order impugned.

11. By making all these submissions, the learned counsel appearing for the fifth respondent has submitted that the first respondent after having thoroughly examined all these aspects, passed the impugned order. Therefore, it does not require any interference of this Court.

12. I have also heard Mr.K.Ravikumar, the learned Additional Government Pleader appearing for the official respondents, who has submitted that, the order passed by the Tahsildar, since has been reversed by the Revenue Additional officer, this has been in turn further reversed by the District Revenue Officer and the said order was questioned before the first respondent i.e., Land Commissioner, he after having collected records and after getting the reports from the lower level officers of the Revenue Department, including the respondents herein, had passed a detailed order, which is impugned herein. In the order of the first respondent, he has considered the Civil Court's decree as claimed by the petitioners and also had considered the orders passed by the other official respondents and has come to a right conclusion that the joint patta issued in the name of Selva Nayagam for the entire property including the property of 10 ½ cents at Survey No.343/10 was without any basis and therefore, in that context, the first respondent had interfered with the order passed by the second respondent and accordingly, set aside the said order including the order passed by the Tahsildar by restoring the order of the Revenue Divisional Officer dated 22.07.1998.

13. I have considered the said rival submissions made by the learned counsel for the parties including the learned Additional Government Pleader for the Official respondents and also perused the materials placed before this Court.

14. On perusal of those documents which have been heavily relied upon by both sides, this Court finds that as claimed by the petitioners, who are the subsequent purchasers from the said Selva Nayagam, who was the predecessor-in-title of the schedule mentioned property, the issue was once referred to the Civil Court by the mother of the fifth respondent herself by filing a separate suit in O.S.No.468 of 1975 where a decree was passed on 28.07.1976 rejecting the claim of the mother of the fifth respondent over title of the property in three survey numbers which include the Survey No.243/3B.

15. It is an admitted fact by both sides that, the subject land had the original survey number as 243/3B which had

been subsequently given re-survey Number as 343/1 and subsequently it has been subdivided into 343/1 part and 343/10. Therefore, there is no doubt about the original survey number of the property in question as it can be traced from the Survey No.243/3B.

16. In that context, the Civil Court's decree has got or gained some importance because, the three survey numbers mentioned by the mother of the fifth respondent includes survey number 243/3B also. Though the fifth respondent's mother claimed title over the properties in the said Survey number also on the strength of the sale deed dated 09.12.1959, when the same also had been rejected by the Civil Court and the said judgment and decree had been subsequently confirmed by the lower appellate Court, the first respondent-Land Commissioner should not have brushed aside the said aspect by merely citing the reason that the fifth respondent's mother claimed title from the sale deed dated 09.12.1959 whereas the fifth respondent claimed the title through her father from the sale deed dated 07.02.1961 and the subsequent settlement deed dated 11.10.1990.

17. However, the fact remains that, the property in question is originally in Survey No.243/3B. It is the contention of the Nambudris, who were the vendors of the father of the fifth respondent that, Survey No.243/3B was containing 21 cents of land for which they were the owners and on the strength of their ownership, they executed a sale deed in favour of the fifth respondent in the year 1961 for 10 ½ cents. If the fifth respondent's mother claimed the title over the property including Survey No.243/3B on the strength of Sale Deed dated 09.12.1959, it is not known under what basis the Nambudris bequeathed the property in the same Survey number atleast for 10 ½ cents to and in favour of the father of the fifth respondent, who is none other than the husband of the plaintiff, namely, the said Anet Pactria Bella, who lost her case before the Civil Court.

18. These aspects should have been considered by the first respondent in proper prospective by tracing out the following factors, namely, the total extent of land at Old Survey No.243/3B, who were the original owners of the entire extent of land, on how the Nambudris claimed the title over 21 cents in the said Survey No.243/3B and apart from 21 cents of land, any other land was available in the said survey number 243/3B and if so, whether the land in question belongs to the said Nambudris is a different land than the one claimed by Anet Pactria Bella through the Civil suit. If these questions had been answered by the first respondent by verifying the revenue records, as the first respondent is the custodian of the revenue records, the issue could have been resolved.

19. In this context, the contention made by the learned counsel appearing for the petitioners that once the Civil Court passed the decree rejecting the claim of the mother of the fifth respondent for claiming the title for three properties including the property at 243/3B and the very same survey number had been quoted in respect of the disputed property also, whether the revenue authorities had any right for taking a decision brushing aside the Civil Court's decree, in the opinion of this Court, has got some force.

20. However, it is the definite case of the fifth respondent that, there had been no quarrel with regard to 21 cents of land at Old Survey No.243/3B and the same had been given as new Survey Number 343/1 for which the said Nambudris were the owners from whom the father of the fifth respondent purchased the property in the year 1961, who in turn, after sub division (i.e) 343/1 part an 343/10 had settled the property of 343/10 consisting of 10 ½ cents to and in favour of the fifth respondent. Therefore, on that strength, she claimed title over the property. Since the claim of the fifth respondent as well as her mother are contra to each other as both claimed title originating from the original survey No.243/3B unless the total extent of said survey number is ascertained and the ownership of the entire extent of land of 243/3B is ascertained by the revenue people, the issue raised in this writ petition, cannot be resolved. Therefore, this Court is of the considered view that, since the first respondent without deciding these issues cropped up herein as has been mentioned above, passed the impugned order setting aside the order of the second respondent and restoring the order of the third respondent, the said impugned order is liable to be interfered with.

21. In the result, this Writ Petition is disposed of with the following order:

(i) the impugned order is set aside.

(ii) the matter is remitted back to the first respondent for re-consideration.

(iii) While making the re-consideration, the first respondent shall first answer the question as to the total extent of the land at Old Survey No.243/3B at Keezhkulam Village and also the owner or the owners of the entire extent of the said survey number and based on which, the claim of the fifth respondent, claiming title of 10 ½ cents at sub-divided re-survey No.343/10 has to be accepted or not, can be decided. Accordingly, the first respondent can pass an order giving the reasons for his ultimate decision going to be reached in this regard.

(iv) While making such exercise, the first respondent shall also give notice to both parties (i.e) the petitioners, who are the successors-in-title from the said Selva Nayagam in whose favour the fourth respondent passed an order giving patta dated 20.05.1996 and also to the fifth respondent and after giving an opportunity of being heard, the issue can be decided as indicated above.

(v) The aforesaid exercise shall be undertaken by the first respondent within a period of three months from the date of receipt of a copy of this order.

22. With these directions, the Writ Petition is disposed of. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS-III)

//True copy//

Sub Assistant Registrar

srn
To

1.The Special Commissioner &
Commissioner for Land Administration,
Chepauk, Chennai - 600 005.

2.The District Revenue Officer,
Nagercoil, kanyakumari District.

3.The Revenue Divisional Officer,
Kanyakumari District at Thakkalai.

4.The Tahsildar,
Elavankodu Taluk, Kuzhithurai.

+1cc to Mr.K.N.Thampi, Advocate SR.No.68665

+1cc to Mr.V.Raghavachari, Advocate SR.No.68077

+1cc to Government Pleader SR.No.68565

W.P.No.8987 of 2003
and
W.P.M.P.No.11487 of 2003

RSI(CO)
GMY(26/08/2019)