IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.11.2018

CORAM :

THE HON'BLE MR.JUSTICE D.KRISHNAKUMAR

W.P.No. 9209 of 2011
and
M.P.Nos.1 of 2011 & 1 of 2012

P.Kaliamoorthy ... Petitioner

Vs.

1.The District Revenue Officer,
Cuddalore.

2.The Revenue Divisional Officer,
Cuddalore.

3.Bagyavathi
No.4, Rice Mill Street
Murugambakkam
Puducherry. ...Respondents

PRAYER:
The Writ Petition is filed under Article 226 of the Constitution of India to issue a Writ of Certiorari, calling for the records relating to the proceedings of the first respondent dated 31.12.2010 in Na.Ka.Vi.3.18638/2010 and quash the same.

For Petitioner : Mr.M.Baskaran

For Respondents : Mr.M.Karthikeyan,
Addl.Govt.Pleader for R1& R2

: No Appearance for R3.

O R D E R

This writ petition is filed seeking to quash the proceedings of the first respondent dated 31.12.2010 in Na.Ka.Vi.3.18638/2010.

2. The learned counsel for the petitioner would submit the 3rd respondent herein has filed an application before the Revenue Divisional Officer to cancel the patta in the name of

the writ petitioner, Kaliyamoorthy from her father's property. The 3rd respondent had further submitted that the said Kaliyamoorthy has nothing to do with her father's property. The 2nd respondent issued an order on 18.03.2008 advising the 3rd respondent to approach the Court for declaring the ownership of the property. Against the said order, the 3rd respondent preferred an appeal before the 1st respondent/ District Revenue Officer, Cuddalore. The 1st respondent allowed the appeal preferred by the 3rd respondent and cancelled the patta granted in the name of the writ petitioner and directed the parties to approach the Civil Court to resolve the issues. Challenging the said order, the petitioner is before this Court.

3. According to the learned counsel for the petitioner, the petitioner has obtained the joint patta on 02.11.2004 and and thereafter the 2nd respondent has passed the order on 18.03.2008. Against the same, the 1st respondent has passed the impugned order.

4. The learned Additional Government Pleader representing the respondents 1 and 2 would submit that the 1st respondent has filed a detailed counter affidavit stating that the dispute between the parties are purely civil in nature. Though it is the claim of the writ petitioner that he is the legal heir of the Palani Padayatchi, no records have been produced before the authorities to prove the said contention. Therefore, the patta granted in favour of the writ petitioner was cancelled and both the parties were advised to approach the civil court for seeking the remedy.

5. On perusal of the impugned order, it is seen that the writ petitioner also claims to be the legal heir of Palani Padayatchi and to that extent, he has also filed the legal heir certificate dated 27.09.2000 in the typeset of papers. On the basis of the said document, the writ petitioner father's name is Narayanaswamy and not Palani Padayatchi. Therefore, the patta granted in favour of the writ petitioner is cancelled.

6. In similar circumstances, a Division Bench of this Court has taken a similar view in the case of Kuppuswami Nainar Vs. The District Revenue Officer reported in 1995 (1) MLJ 426. In paragraphs 3 and 4, the Division Bench has held as follows :

> "3. No provision is brought to our notice in the Standing Orders of the Board of Revenue taking away the jurisdiction of the civil court to adjudicate upon the question of title relating to immovable property. Revenue Officers in a patta proceedings may express their views on the question of title, but such expression of opinion or decision is not

conclusive and it is only intended to support their decision for granting patta. Ultimately, it is the civil court which has to adjudicate the question as to whether the person claiming patta is the title-holder of the land. Even if the revenue authorities decide the question of title, that will not in any way affect the jurisdiction of the civil court, which has to decide the question without reference to the decision of the revenue authorities.

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 Art.226 of the Constitution the question of title regarding immovable property 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, ..."

Following the aforesaid judgement, the dispute with regard to title of the property can be decided only by the Civil Court. Therefore, the impugned order passed by the 1st respondent to approach Civil Court is perfectly valid and the prayer of the writ petitioner is liable to be rejected.

7. In view of the above, this Court is inclined to pass the following orders :

1. The petitioner is directed to approach the Civil Court to seek his remedy, within a period of four weeks from the date of receipt of a copy of this order.
2. During the said period, the interim orders granted by this Court on 12.04.2011 shall be in force, till four weeks. It is open to the writ petitioner to file application for interim orders, if so advised.
3. In the event of filing the suit, the Civil Court shall decide the application and suit on merits, without being

influenced by any of the observations made in the present order.

8. The writ petition is dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

[Note : Registry is directed to return the original impugned order filed along with the writ petition.]

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To

1. The District Revenue Officer,
   Cuddalore.

2. The Revenue Divisional Officer,
   Cuddalore.

3. The Section Officer,
   Current Section, (Correspondence Seat),
   High Court, Madras.

+1cc to Mr.M.Baskaran, Advocate, S.R.No.78831
+1cc to Mr.S.K.Rakhunathan, Advocate, S.R.No.78628
+1cc to the Government Pleader, S.R.No.79212

W.P.No.9209 of 2011
and
M.P.No.1 of 2011 &
M.P.No.1Of 2012

MP(CO)
CS/18/2/2019