

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Date: 12.04.2018
CORAM

THE HONOURABLE THIRU JUSTICE V. PARTHIBAN

W.P.No.30488 of 2012 &
M.P.Nos.1 & 2 of 2012

P.Somasundaram

.. Petitioner

versus

1. The Revenue Divisional Officer,
Coimbatore.

2. The Tahsildar,
Coimbatore North,
Coimbatore.

3. S.Maruthakutty (deceased)

4. Kaliasammal

5. Ponnammal

6. Padmavathi

7. Muthammal

8. Manoharan

9. Sivakami

10. Gautham

11. Premkumar

12. P.Pandiyan

... Respondents

(R4 to R11 substituted as per order of the court dated 5.2.18)
(R12 impleaded as per order of court dated 14.3.18)

Prayer: This Writ Petition is filed under Article 226 of the Constitution of India, praying for issuance of Writ of Certiorari, to call for the entire records pertaining to the order dated 14.09.2012 passed by the 1st respondent in Na.Ka.No.12157/2010/A2 confirming the order dated 6.10.2010 passed by the 2nd respondent in Na.Ka.No.4913/2010/A6 and quash the same.

For Petitioner : Mr.J.Mouli

For Respondents: Mr.J.Pothiraj, Spl.G.P.0R1&R2
Mr.N.Anandvenkatesh-R4 to R11

ORDER

The petitioner has approached this Court, seeking the following relief:

"To issue Writ of Certiorari, to call for the entire records pertaining to the order dated 14.09.2012 passed by the 1st respondent in Na.Ka.No.12157/2010/A2 confirming the order dated 6.10.2010 passed by the 2nd respondent in Na.Ka.No.4913/2010/A6 and quash the same.

2. According to the petitioner, the lands situated in S.F.No.568 and 569/2-A were originally belonging to one late Devi Gounder and the lands situated in S.F.No.567/1-A belonging to one Marappa Gounder son of Devi Gounder. According to the petitioner, the said Marappa Gounder being the only son of Devi Gounder and was enjoying the property as rightful owner till his death. Marappa Gounder died on 16.8.1984 leaving behind four daughters, one son and wife as his legal heirs. During his life time, Marappa Gounder had executed a registered Will dated 29.11.1978 giving right of enjoyment to his eldest daughter Velammal and after the life time of said Velammal, right of ownership to his only son Palanikutty Gounder who is the father of the petitioner herein. Palanikutty Gounder died on 30.01.1990 leaving his son, the petitioner herein, his mother and one minor sister as his legal heirs. On the death of the petitioner's father intestate, all three persons including the petitioner have been enjoying the possession as rightful owners and their names have also been entered in revenue records in 1992.

3. The third respondent who was the son of Late Ayyammal, one is one of four daughters of Marappa Gounder, filed a suit for partition in O.S.No.1466 of 1992 before the I Addl.Subordinate Judge, Coimbatore and the said suit is still pending. According to the petitioner, the third respondent in order to deny the title and ownership of the petitioner, had created certain documents to his advantage. According to the petitioner, a criminal complaint was also lodged against the 3rd respondent for the offences punishable under the provisions of the Indian Penal Code.

4. In the meanwhile, it appears that the 3rd respondent approached the second respondent and requested for inclusion of his name being one of legal heirs of Marappa Gounder, as joint pattadar for the subject property. After hearing the petitioner as well as the third respondent, by order dated 6.10.2010, the second respondent ordered inclusion of the name of the third respondent in the patta. Aggrieved by the order of the second respondent dated 6.10.2010, an appeal was preferred by the

petitioner before the first respondent under Section 14 of the Tamil Nadu Patta Passbook Act, 1993. The first respondent, by order dated 14.9.2012 confirmed the order passed by the second respondent dated 6.10.2010. The orders of both second and first respondents are put to challenge in the present writ petition.

5. During the pendency of the Writ Petition, 3rd respondent expired and therefore, his legal heirs were brought on record as respondents 4 to 11. Respondent No.12 was also impleaded being a subsequent purchaser of a piece of land which is the subject matter of the present Writ Petition.

6. Learned counsel appearing for the petitioner would submit that when the partition suit was pending, the revenue authorities, namely, second and first respondents ought not to have decided the claim of the third respondent for inclusion of his name as joint pattadar since the issue involved in respect of title of the subject property between the parties, viz., the petitioner and respondents 4 to 11. According to the learned counsel, the revenue authorities are not empowered to decide the title dispute between the parties and under Section 12 of the Tamil Nadu Patta Pass Book Act, 1983, they can only consider prima facie case as to the entitlement of person for issuance of patta. In order to support his contentions, the learned counsel would draw the attention of this Court to an order passed by a Division Bench of this Court reported in "2011(5) CTC 94 (Vishwas Footwear Company Ltd., rep.by Director, V.Ravi versus The District Collector, Kancheepuram and others)". Therefore, the learned counsel would submit that the impugned orders passed by the first and second respondents would amount to resolution of title dispute and therefore, such orders are legally untenable and therefore, required to be interfered with.

7. Upon notice, Mr.J.Pothiraj, learned Special Government Pleader entered appearance for respondents 1 and 2 and Mr.N.Anand Venkatesh, learned counsel entered appearance for respondents 4 to 11 and filed their counter affidavits.

8. In the counter affidavit filed on behalf of the private respondents 4 to 11, in paragraph 9, it is stated as follows:

"9. I submit that surprisingly even while filing the above writ petition, the first respondent has sought to quash the entire proceedings of the Tahsildar as confirmed by the RDO, he has only added me as a party in the above writ petition and the other persons in whose name the joint patta has been given, has not been added as a party in the above writ petition and if in case the writ petition is allowed, it will have civil consequences

against legal heirs of Ayyammal and Devathal and on this ground alone, the above writ petition is liable to be dismissed. I submit that if at all the 1st respondent is claiming exclusive rights over the properties, the correct forum for him to agitate his rights and to declare his title is only a civil court and this Court while exercising its jurisdiction under Article 226 of the Constitution of India cannot decide the disputed questions of fact and the civil rights of the parties as claimed by the 1st respondent cannot be adjudicated in the above writ petition. The revenue authorities have merely ordered for the issuance of joint patta on the basis of prima facie materials and they have rejected the claim of the 1st respondent herein only based on the fact that he did not produce any materials to substantiate his claim over the properties. That apart, by virtue of a portion of the property already being sold in favour of P.Pandian about which 1st respondent is aware and has also filed a suit challenging the sale deed, the said Pandian is also a necessary party in the above writ petition since his rights over the property is also involved."

9. According to the learned counsel, the revenue authorities have only decided the prima facie case and included the names of the private respondents as joint pattadars and such action on the part of the revenue authorities would noway prejudice the right of the petitioner as his name was also there in the patta. In any case, if the petitioner wants to claim exclusive right of ownership and title, he has to approach the civil Court for establishing his right as such and he cannot indirectly achieve the same by filing the present writ petition, seeking to set aside the orders passed by the revenue authorities.

10. The learned counsel appearing for the petitioner would submit that the suit for partition filed by the private respondents, namely, respondents 4 to 11 who are claiming right in the property, was subsequently withdrawn on 21.3.2017. Therefore, there is no civil case is pending in any civil Court between the parties.

11. At this, the learned counsel for respondents 4 to 11 would submit that a portion of the property which was sold to one Mr.P.Pandian, has also been impleaded as 12th respondent, and the said sale is put to challenge by the petitioner herein

before the Civil Court. In any event, the learned counsel would submit that the names of the private respondents have been included as joint pattadars which includes the name of the petitioner also. Therefore, the petitioner instead of challenging the orders passed by the revenue authorities, can approach a competent civil Court to establish his exclusive ownership of the property in question as against the claim of the private respondents herein if he is so advised.

12. This Court has considered the submissions of the learned counsels and is in agreement with the submissions made by the learned counsel for respondents 4 to 11. The orders passed by the second and first respondents herein are only based on the prima facie finding that the private respondent (3rd respondent) was also one of the legal heirs of the deceased Marappa Gounder and therefore, he was also included as joint pattadar. This Court does not see any sound basis for the arguments advanced on behalf of the petitioner to find fault with the orders passed either by the second or first respondent. This Court does not see any infirmity in the order passed by the revenue authorities since the revenue authorities even as per the Division Bench order cited by the learned counsel for the petitioner, are empowered to bring any changes in the revenue record on the basis of prima facie finding. In the present case, such prima facie finding had taken place in the form of the impugned orders passed by second and first respondents. This Court does not find any scope to interfere with the orders impugned in the writ petition.

13. Accordingly, the Writ Petition is dismissed as devoid of merits. No costs. Consequently, connected MPs 1 and 2 are closed. However, as rightly contended by the learned counsel for respondents 4 to 11, it is always open to the petitioner to approach a competent civil Court to establish his exclusive right and ownership over the property in question as against the claim of the other legal heirs, viz., private respondents herein. The petitioner cannot be allowed to achieve such result indirectly by seeking to quash the orders passed by the second and first respondents. Efficacious remedy for the petitioner would lie only before the competent civil Court and not before this Court.

sd/-

Asst.Registrar (CS IV)

/true copy/

Sub Asst. Registrar

suk

To

1. The Revenue Divisional Officer,
Coimbatore.

2. The Tahsildar,
Coimbatore North,
Coimbatore.

+1cc to Mr.L.Mouli, Advocate,S.R.No.27379

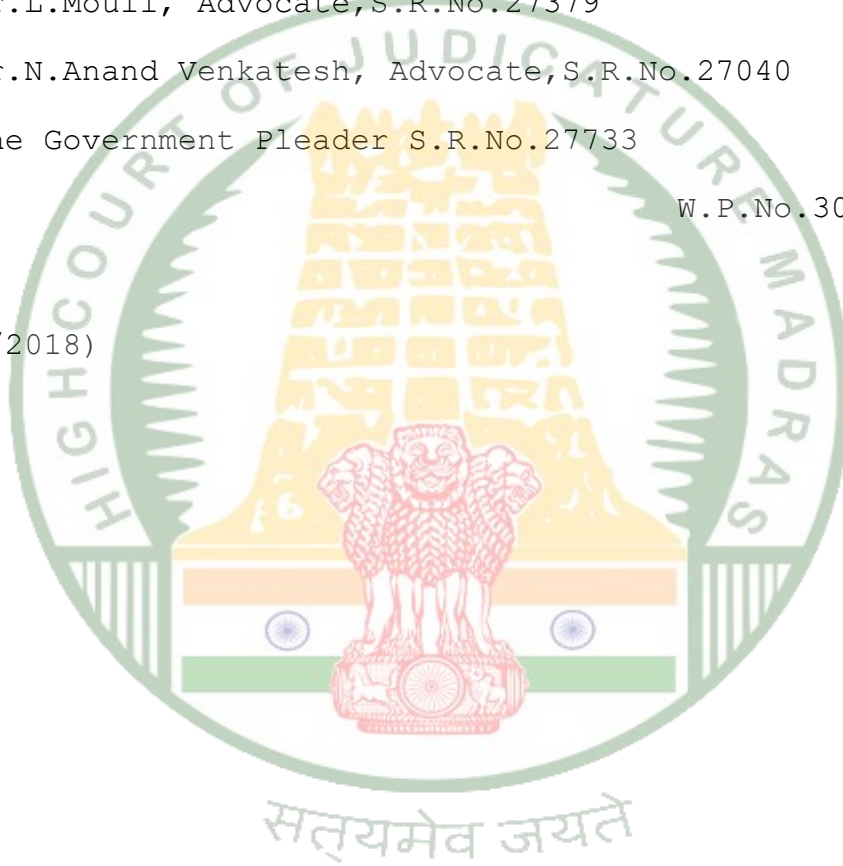
+1cc to Mr.N.Anand Venkatesh, Advocate,S.R.No.27040

+1cc to the Government Pleader S.R.No.27733

W.P.No.30488 of 2012

KGK(CO)

RRK(17/05/2018)



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