

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.02.2018

CORAM:

THE HONOURABLE MR. JUSTICE K.KALYANASUNDARAM

W.P.No.34561 of 2013 &

M.P.Nos.1 of 2013 & 1 of 2014 &

W.M.P.No.30172 of 2017

1.P.S.Aravamudhan

2.Priyanka

W/o.Balaji Ramamurthy,
116, Apt C, Congressional Drive,
Wilmington, Delaware,
Zip Code 19807,
United States of America,
Represented by her Father and Natural Guardian,
Power of Attorney,
P.S.Aravamudhan

3.A.Shravya

... Petitioners

Vs.

1.The Revenue Divisional Officer,
Madurandhagam,
Kancheepuram District.

2.The Tahsildar,
Madurandhagam,
Kancheepuram District.

3.The Tahsildar,
Cheyoor & Post,
Kancheepuram District.

4.Kasthuri (Deceased)

5.Amsa

6.Vijayalakshmi @ Vijaya

7.Vadivel Chettiar

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8.K.V.Chinnaswamy

9.C.Gopinath

10.C.Premnath

.. Respondents

(R-8 to R-10 are substituted as LR
of deceased R-4 Kasthuri, as per order
dated 10.11.2017 in W.M.P.No.30808 of 2017
in W.P.No.34561 of 2013)

PRAYER: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorari to call for the records relating to the impugned proceedings of the first respondent in Na.Ka.1240/2013/C, dated 19.10.2013 and quash the same.

For Petitioners : Mr.V.Selvaraj

For Respondents : Mr.V.Shanmuga Sundar
Special Government Pleader for R1 to R3
Mr.D.Ravichander for R4 to R10

O R D E R

This Writ Petition has been filed challenging the notice issued by the first respondent in Na.Ka.No.1240/2013/C, dated 19.10.2013.

2. The case of the petitioners is that the petitioners 2 and 3 are the daughters of the first petitioner, while respondents 4 to 6 are his sisters. The first petitioner's father P.Seethapathy Naidu died on 11.03.1996 leaving behind his wife Krishnaveni Ammal, the first petitioner and the respondents 4 to 6 as his legal-heirs. However, before his demise, he bequeathed his properties in favour of the first petitioner through a Will dated 10.10.1995. The mother of the first petitioner died on 30.11.2005.

3. The petitioners would state that as per the Will, mutation in the revenue records had taken place in the name of the first petitioner. Thereafter, the first petitioner sold a portion of the properties by a registered sale deed dated 07.01.2009 and on 18.09.2012, he settled some of the properties in favour of his daughters 2 and 3, vide settlement deeds registered as document Nos.9881 and 9880 of 2012. As such, the petitioners have been in possession and enjoyment of the properties. While so, the first respondent issued the impugned notice for enquiry for issuance of joint patta based on the application of the fourth respondent dated 20.05.2013, contending that the first respondent has no jurisdiction to conduct enquiry, petitioners have filed the present Writ

Petition.

4. The first respondent filed a counter, stating that patta was transferred in the name of the first petitioner based on the unregistered Will which is now challenged by the fourth respondent. The first respondent, as an appellate authority, has issued notice, which cannot be challenged in this Writ Petition. In paragraph No.18 of the counter, it is stated that the person who gave consent has now come up with a request for issue of joint patta for their ancestral properties. So, duty is caused upon the first respondent to consider it and pass appropriate orders.

5. In the Counter affidavit filed by the fourth respondent, it is stated that the Will is a forged and fabricated document. The testator had never executed the Will and patta was transferred in the name of the petitioners behind the back of the fourth respondent. Hence, she gave an application for modification of patta.

6. Heard Mr.V.Selvaraj, learned counsel for the petitioners; Mr.V.Shanmuga Sundar, learned Special Government Pleader for the respondents 1 to 3 and Mr.D.Ravichander, learned counsel for the respondents 4 to 10 and perused the records.

7. The learned counsel for the petitioners submitted that based on the Will dated 10.10.1995, the patta was rightly transferred in the name of the first petitioner, when his mother was alive. During the patta transfer proceedings, the first petitioner's mother and the respondents 4 to 6 had appeared before the Tahsildar and filed letters separately stating that they have no objection for transfer of patta in the name of the first petitioner. After that, the first petitioner sold some properties to the third parties and also settled portion of the properties in favour of his daughters.

8. It is further submitted that the respondents 4 to 6 have no moral or legal right to approach the respondents 2 and 3 for modification of the patta and it could be modified only on certain circumstances i.e., in case of death of the owner and transfer of property, but, in this case, both situations did not arise. Further it is contended the private respondents could have preferred an appeal under Section 12 of the Tamil Nadu Patta Pass-Book Act, 1983, (In short "the Act") if they felt aggrieved by the order of the Tahsildar, within a period of 30 days as per Rule 14 of the Tamil Nadu Patta Pass-Book Rules, 1987 (In short "The Rules") and as per Rule 15, revision could be filed against order of the Appellate Authority under Section 13 of the Act, within a period of 90 days.

9. It is further contended that consent given by the private respondents was admitted by the first respondent in his counter, hence, estoppel will operate against them and to establish their title, they have to approach the Civil Court as per Section 15 of the Act.

10. The learned special Government Pleader submitted that a challenge is made to enquiry notice, and the petitioner could have appeared before the first respondent and contested the proceedings, instead of filing this Writ Petition.

11. The learned counsel for the respondents 4 to 10 submitted that the petitioners have no locus standi to challenge the impugned notice in the Writ Proceedings. It is further submitted that the impugned notice is not the first notice and the petitioners have appeared before the first respondent pursuant to the earlier notices issued on 27.06.2013, 17.07.2013 and 06.08.2013 and sought time to file a reply. So, now they are estopped from challenging the notice.

12. It is vehemently contended by the learned counsel for the respondents 4 to 10 that the private respondents have never appeared before the Authorities at the time issuance of patta in favour of the first petitioner and everything had been done behind their back. So, as per Section 10 of the Act, it is open for them to approach the Authorities for modification or prefer an appeal under Section 12 of the Act before the Appellate Authority.

13. In the instant case, it is a case of the petitioners that after the demise of the first petitioner's father in the year 1996, based on the Will dated 10.10.1995, the first petitioner, became the absolute owner of the properties and patta was transferred in favour of the first petitioner by the competent authority after due enquiry. The petitioners have enclosed the no objection letters of Krishnaveni Ammal and the respondents 4 to 6 in the typed-set, in support of their case.

14. According to the learned counsel for the respondents 4 to 10, the Will is a forged and fabricated document and they did not appear before the Authorities and gave no objection for transfer of patta as alleged by the petitioners. It is not in dispute that patta in the name of the first petitioner was issued in the year 2003. Perusal of the counter reveals that the Official respondents have stated in categorical terms that the persons, who had given consent now seek for issuance of joint patta. In the light of the materials produced by the petitioners and statement made by the Official respondents, the contention of the private respondents cannot be countenanced.

15. It is to be noted that admittedly the father of the first petitioner died about two decades ago, the private respondents, though claim right over the properties, however, so far not approached competent Civil Court to establish their right. After lapse of ten years, the fifth respondent seeks issuance of joint patta.

16. It is settled law that the Revenue Officials have no authority to decide the title and the persons aggrieved have to prove their title before the Civil Court. It is also seen from the records that the first petitioner had transferred the rights over the properties in favour of third parties and his children.

17. Taking note of the above facts, in the considered view of this Court, the notice impugned in this Writ petition cannot be sustained. Accordingly, the impugned notice is quashed. However, liberty is given to the private respondents to approach the Civil Court to establish their right and if any suit is filed, the civil Court shall give opportunity to all the necessary parties and decide the issues on merits and in accordance with law.

18. In the result, the writ petition is allowed. There is no order as to costs. Consequently, connected miscellaneous petitions are closed.

rns

Sd/-
Assistant Registrar

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Sub-Assistant Registrar

To

1.The Revenue Divisional Officer,
Madurandhagam,
Kancheepuram District.

2.The Tahsildar,
Madurandhagam,
Kancheepuram District.

3.The Tahsildar,
Cheyoor & Post,
Kancheepuram District.

+1CC to Mr.V.Shanmuga SundarAdvocate SR.NO.13718

+1CC to Mr.V.Selvaraj Advocate SR.NO.13804

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MK:27/03/2018



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