

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 20.02.2018

Coram

THE HONOURABLE Mr. JUSTICE K.K.SASIDHARAN
AND
THE HONOURABLE Mr. JUSTICE P.VELMURUGAN

W.A.No.602 of 2016 &
C.M.P.Nos.8062 and 8063 of 2016

1.Ashok Kumar
2.Jaikumar

.. Appellants/Respondents 4 & 5

Vs.

1.S.Manohar ..1st Respondent/Petitioner

2.The Revenue Divisional Officer
Salem District, Salem.

3.The Tahsildar
Salem Taluk, Salem.

4.The Commissioner
Corporation of Salem
Salem 636 001. .. Respondents 2 to 4/Respondents 1 to 3

Prayer : Writ Appeal filed under Clause 15 of Letters Patent to set-aside the order dated 06.07.2015 made in W.P.No.19679 of 2015, on the file of this Court.

W.P. No. 19679/2015:

Writ Petition filed under Article 226 of the constitution of India to issue a Writ of Mandamus directing the 1st respondent herein to consider the petitioners appeal/representation dated 30.3.2015 and pass orders on merits and in accordance with law with regard to transfer of patta by making necessary entries in TSLR Extract in respect of property bearing Old S.No.186 Ward A Block 12 S.No.37 now T.S.No.74 & 75 Ward-H Block-30 of an extent of 11415 sq.ft. in Hasthampatty Village Salem Taluk and District in favour of the petitioner within a reasonable time framed by this Honourable court.

For Appellants : Mr.Satish Parasaran
Senior Counsel
for Mr.R.Parthasarathy

For R1 : Mr.V.Sekar

For R2 & R3 : Mr.V.Anandhamurthy
Additional Government Pleader

For R4 : Ms.K.Bhuvaneswari

J U D G M E N T

[Order of the Court was made by K.K.SASIDHARAN, J.]

The first respondent filed a writ petition in W.P.No.19679 of 2015 before the writ court to direct the Revenue Divisional Officer, Salem to consider the appeal and decide the same on merits. The learned Single Judge without issuing notice to the appellants, issued a mandamus directing the second respondent to consider the appeal on merits. The said order is under challenge at the instance of the appellants primarily on the ground that before issuing such a direction, the appellants who are in possession of the property ought to have been heard by the learned Single Judge.

2. The learned Senior Counsel for the appellants contended that the appellants are in possession of the land. The patta was granted to the predecessor interest of the appellants long back and as such, before directing the Revenue Divisional Officer to consider the appeal, the appellants should have been heard by the learned Single Judge. The learned Senior Counsel further contended that the first respondent earlier filed a suit for injunction and the same was dismissed for default. According to the learned Senior Counsel, the suit filed by the appellants against the first respondent in O.S.No.100 of 2012 for injunction is now pending on the file of the District Munsif Court, Salem. It is the contention of the learned Senior Counsel that unless declaration is obtained by the first respondent with regard to the title of the property in question, there is no question of considering the appeal by the first respondent for mutation of revenue records.

3. The learned counsel for the first respondent on the other hand contended that the application for modification of the revenue entry was pending before the Revenue Divisional Officer. The first respondent was therefore, perfectly correct in approaching this Court for a direction to the statutory authority to dispose of the appeal on merits. The learned counsel fairly submitted that the Civil Suit filed by the first respondent was dismissed for default. Similarly, the learned counsel admitted the pendency of the Civil Suit filed by the appellants against the first respondent and the pendency of the same before the Civil Court.

4. The materials available on record indicate that the patta of the land in Old Survey No.186, T.S.Nos.74 and 75, Hasthampatty Village, Salem Taluk was originally granted to the predecessor interest of the appellants. The appellants let out a portion of the property to 'Q' Branch police. The first respondent initiated proceedings before the Revenue Divisional Officer on the ground that the revenue records were shown incorrectly in the name of the predecessor interest of the appellants. The first respondent wanted the appellate authority to decide the question of possession and to change the entries in the revenue records.

5. There is nothing on record to show that a competent Civil Court has declared the right of the first respondent for the purpose of issuing a direction to the Revenue Divisional Officer for mutation of records.

6. The suit filed by the first respondent has already been dismissed for default in O.S.No.846 of 2006. The suit filed by the appellants in O.S.No.100 of 2014 is pending on the file of the District Munsif Court, Salem. It would not be possible for the Revenue Divisional Officer, at this point of time, to decide the question of possession, taking into account the contentions taken by the rival parties. We are, therefore, of the view that the application submitted by the first respondent before the Revenue Divisional Officer must be kept pending till a decision is being taken by the competent Civil Court declaring the rights of the parties. It is always open to the first respondent to work out his remedy in the manner known to law for obtaining a decree of declaration.

7. The order passed by the learned Single Judge dated 06 July, 2015 is set aside.

The intra court appeal is disposed of with the above direction. No costs. Consequently, connected miscellaneous petitions are closed.

s/d-

Assistant Registrar(CS VII)

True Copy

Sub-Assistant Registrar

To

1.The Revenue Divisional Officer
Salem District, Salem.

2.The Tahsildar
Salem Taluk, Salem.

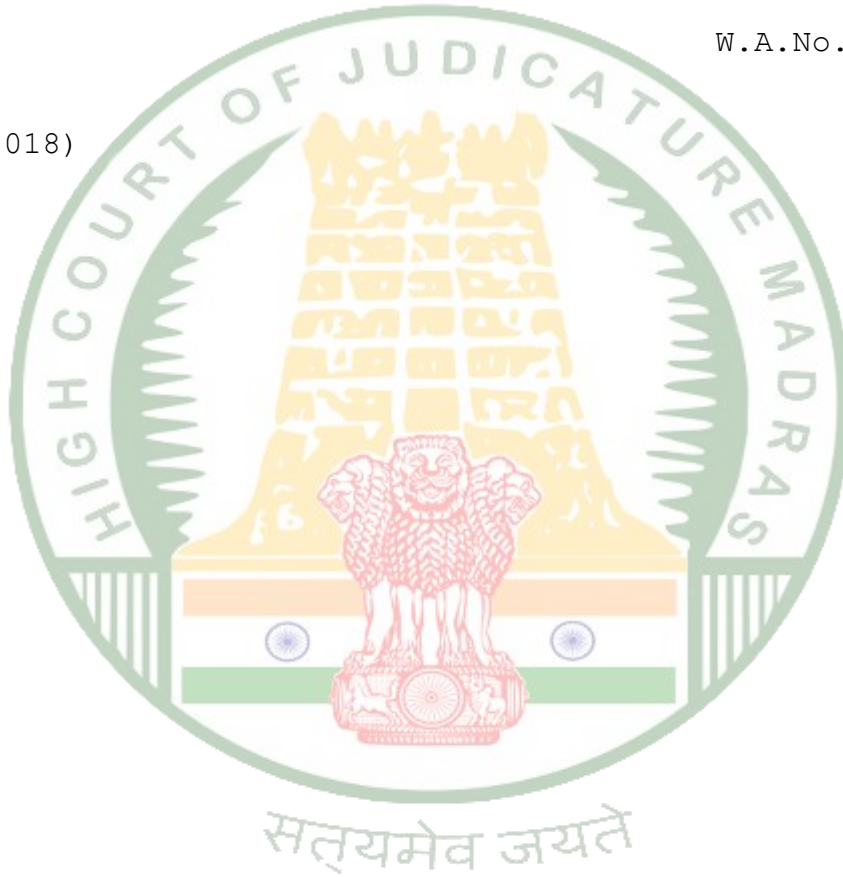
3.The Commissioner
Corporation of Salem
Salem 636 001.

+1 CC to Mr.V. Sekar, Advocate sr 12788.

+1 CC to Mr.R. Parthasarathy, Advocate sr 13164.

W.A.No.602 of 2016

SSV(CO)
SP(13/03/2018)



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