IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 11.07.2018

CORAM

THE HON'BLE MR.JUSTICE P.D.AUDIKESAVALU

W.P.No.17687 of 2003
and WPMP No.22117 of 2003

1. R. Rajavel
2. R. Babu
3. V. Anjalai .... Petitioners

Vs.

1. The Special Commissioner cum Commissioner of Land Reforms, Chepauk, Chennai - 600 005

2. D. Umapathy ... Respondents

Writ Petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorari to call for the records relating to order dated 27.02.2003 made in Proceedings No. Pa.Mu. (K3)/R.B.18/2002) (K3)/34143/2002 on the file of the First Respondent and to quash the same.

For Petitioners : Mr.Y. Jyothishchander

For 1st Respondent : Mr.K.S. Suresh Government Advocate

For 2nd Respondent : Ms.Selvi George

ORDER

It is noticed from the impugned proceedings that the father of the Petitioners, viz., Rajamanickam had been granted patta by the Tahsildar, Kancheepuram by proceedings dated 28.11.1995, but that patta was cancelled by the Revenue Divisional Officer by proceedings No.Pa.Mu.2325/99/A5 dated 02.08.2000 on the ground that there was no house or dwelling unit in that property. The Kuzh Peramanallur Village Panchayat by resolution dated 22.09.2000 had confirmed that the father of the Petitioners was in possession of the aforesaid property and that he could construct house in that property.

2. The father of the Petitioners had preferred an appeal before the District Revenue Officer, Kancheepuram and in the said proceedings, a report was called from Tahsildar. The Tahsildar, by Proceeding in Na.Ka.No.5959/2000 dated 28.02.2002 informed that the grand father of the Petitioners, viz.,Adanjan Gramani had settled the property in favour of the father of the Petitioners, and he was having house tax receipts showing the proof of possession in respect of their property. The District Revenue Officer had accepted the report of the Tahsildar and by order dated 15.06.2002 in Na.Ka.No.60797/2000-H1 had directed issuance of patta to the father the Petitioners. Thereafter, the Second Respondent who was an inhabitant of the same village, aggrieved against the order of District Revenue Officer granting patta to the father of the Petitioners for the aforesaid property, filed a revision before the Special Commissioner cum Commissioner of Land Reforms / First Respondent. The First Respondent by Proceedings in Pa. Mu. (K3)/R.B.18/2002) (K3)/ 34143/2002 dated 27.02.2003 observed that the father of the Petitioners had put up the hut only two years earlier and that the land in S. No. 143/1C was required to be maintained as pathway for the school in S. No 144 and for the land in S. No.148 and that patta in respect of that portion has to be issued to the eligible person. The father of the Petitioners, viz., Rajamaickam had died on 06.05.2003, and the Petitioners, who had succeeded to his estate as legal representatives have filed the Writ Petition challenging the order of the First Respondent dated 27.02.2003.

3. Heard Mr.Y. Jyothishchander learned counsel for the Petitioner and Ms.Selvi George, learned counsel appearing for the Second Respondent.

4. Learned counsel for the Petitioner submits that the two Authorities, viz., The Tahsildar and the District Revenue Officer have held in favour of the Petitioner on the factual finding that he was in possession of the property and the First Respondent ought not to have disturbed the same on the specious plea that the land was required to be maintained as pathway for the adjacent school and the neighbouring lands.

5. Ms.Selvi George, learned counsel appearing for the Second Respondent supported the order of the First Respondent contending that the said property was required to be maintained as pathway and the said factual finding does not require any interference.

6. It is apparent from the aforesaid proceedings of the revenue authorities that there has been conflicting views at various

stages in the hierarchy regarding possession of the property claimed to be held by the father of the Petitioners. It must also be recapitulated here that the entry of possession in some revenue records simpliciter does not give any right to retain possession of the property as held by the Ho'ble Supreme Court of India in Muddasani Venkata Narsaiah (dead) through Legal Representatives vs Muddasani Sarojana [(2016) 12 SCC 288) .

7. It is equally settled position of law that where a cloud is raised over the title of the plaintiff and he does not have possession , a suit for declaration and possession with or without consequential injunction is the remedy as reiterated in Anathula Sudhakar vs P. Buchi Reddy (dead) by Lrs [(2008) 4 SCC 594. It will be also useful here to refer the following passage in that decision:-

> " 16. what if the property is a vacant site, which is not physically possessed, used or enjoyed? In such cases the principle is that possession follows title. If two persons claim to be in possession of a vacant site, one who is able to establish title thereto will be considered to be in possession, as against the person who is not able to establish title. This means that even though a suit relating to a vacant site is for a mere injunction and the issue is one of possession, it will be necessary to examine and determine the title as a prelude for deciding the de jure possession. In such a situation, where the title is clear and simple, the court may venture a decision on the issue of title, so as to decide the question of de jure possession even though the suit is for a mere injunction. But where the issue of title involves complicated or complex questions of fact and law, or where court feels that parties had not proceeded on the basis that title was at issue, the court should not decide the issue of title in a suit for injunction. The proper course is to relegate the plaintiff to the remedy of a full-fledged suit for declaration and consequential reliefs."

8. Applying the aforesaid legal principles to the facts of this Court, it would follow that the Petitioners would have to first establish their title to the property in a suit for declaration and consequential relief for possession and injunction and if

they succeed in such suit, it would be open to them to approach the revenue authorities for issuance of fresh patta in accordance with law, unhibited and uninfluenced by the findings in the impugned proceedings.

9. The Writ Petition is disposed of with the aforesaid observations. The order of status-quo passed by this Court on 27.06.2003 shall continue to be in force till 30.09.2018. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

To

The Special Commissioner cum
Commissioner of Land Reforms,
Chepauk, Chennai - 600 005.

+1cc to Mrs.Selvi George, Advocate Sr.45514
+1cc to Y.Jyothish Chander, Advocate Sr.45560
+1dcc to the Government Pleader Sr.45759

W.P.No.17687 of 2003

srg 16/08/2018