



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 12.09.2018

CORAM

THE HONOURABLE MRS.JUSTICE PUSHPA SATHYANARAYANA

AND

THE HONOURABLE MRS.JUSTICE T.KRISHNAVALLI

W.A(MD)No.1113 of 2016

and

C.M.P(MD)No.6831 of 2016

S.Muthuramalingam

.. Appellant/Petitioner

Vs.

1. The District Collector,
Sivagangai District,
Sivagangai.

2. The Revenue Divisional Officer,
Devakottai,
Sivagangai District.

3. The Tahsildar,
Karaikudi Taluk Office,
Sivagangai District.

4. Irulappan

5. Murugan

.. Respondents/Respondents

Prayer: Writ Appeal filed under Clause 15 of the Letters Patent against the order dated 12.04.2016 passed in W.P(MD)No.6000 of 2016, on the file of this Court.

Prayer in WP(MD). 6000/ 2016 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus to call for the records relating to the entire proceedings of the 2nd respondent in M.M (A1) 3528/2003 dated 18.08.2004 as well as 3rd respondent impugned proceedings in Ne.Mu.A6 PTRF 89-2013 dated 21.01.2013 and to quash the same, and direct the 3rd respondent to maintain earlier position of patta no. 580 in Survey Nos. 131/2B and 131/6B in Malaikondan Village, Karaikudi Taluk, Sivagangai District.

For Appellant

: Mr.M.Venkatesan

For Respondents

: Mr.Padmavathi Devi,

Special Government Pleader for RR 1 to 3

Mr.K.N.Govardhanam for RR 4 and 5



JUDGMENT

(Judgment of the Court was delivered by PUSHPA SATHYANARAYANA, J.)

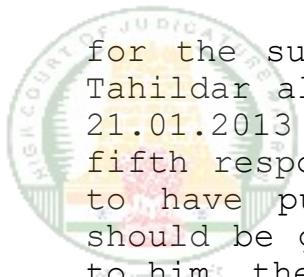
The writ petitioner is the appellant, who preferred the appeal aggrieved by the order of the learned Single Judge dated 12.04.2016 passed in W.P.No.6000 of 2016.

2. The writ petitioner/appellant claimed his title through the sale deed 22.08.2002 executed by one Periyannan and P.Somasundram to the extent of lands in survey No.131/2B - 1.47.5 Ares and S.No.131/6B - 0.17.50 Ares. The vendors of the writ petitioner/appellant purchased the same in the year 1958 under sale deed No.189/58, dated 18.11.1958, from Periyasamy Konar. It is stated that from the year 1958 till the same was sold to the writ petitioner/appellant, the said Periyannan was in peaceful possession and enjoyment of the property. It is seen from the records that there was a sub division of the properties and patta was transferred in favour of the petitioner's vendor on 19.07.2002.

3. While so, without the knowledge of the writ petitioner/appellant, the fourth respondent got registered a Power of Attorney in his favour from Rasu, Bose and Ramachandran, who are the children of the writ petitioner/appellant's vendor. With the help of the said Power of Attorney, the said order of the third respondent dated 19.07.2002 was challenged by the fourth respondent vide an appeal petition dated 25.11.2002. It is stated that as the writ petitioner/appellant's vendor Periyannan did not have any right on the said date, the Sub Collector, Devakottai, passed the order dated 18.08.2004, in Mu.Mu.(A1) 3528/03, cancelling the order dated 19.07.2002. Notice in the said appeal petition was given to the vendor of the writ petitioner/appellant, but the writ petitioner/appellant, being the subsequent purchaser, was not issued with any notice. A review petition has been filed against the said order by the vendor of the writ petitioner/appellant, which was dismissed by the District Revenue Officer, Sivagangai, in Na.Ka.No.20634/2004 dated 11.09.2006, holding that there was no sufficient document produced by the review petitioner.

4. In the meanwhile, after purchase, the writ petitioner/appellant applied for change of patta and accordingly, patta was transferred in favour of the writ petitioner/appellant on 04.10.2002 in Patta No.553 and subsequently, on 04.02.2006, under Patta No.580 was issued in favour of the writ petitioner/appellant. Therefore, the writ petitioner/appellant claimed to be possession and enjoyment of the property having obtained patta in his name.

5. While so, the fourth respondent seems to have sold the property in favour of one Karuppiah on 12.04.2002. The said Karuppiah also executed a Power of Attorney in favour of Periakkal, who is the wife of the fourth respondent, and she, in turn, had executed a sale deed dated 13.04.2009 in favour of their son fifth respondent. The fifth respondent had applied for change of patta



for the survey Nos.131/2, 131/6 and 171/7. The third respondent-Tahildar also vide his proceedings in Ne.Mu.P.T.R.No.89-2013, dated 21.01.2013 passed an order changing the patta in the name of the fifth respondent and issued patta No.658. As the appellant claimed to have purchased the property earlier and got valid title, he should be given notice and it is stated that without issuing notice to him, the above order was passed.

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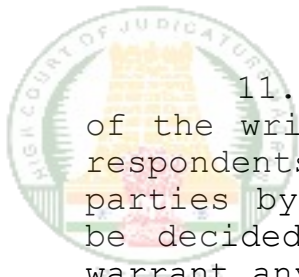
6. According to the writ petitioner/appellant, the above said documents were all forged and the respondents 4 and 5, having created those forged documents, were trying to interfere with the possession of the writ petitioner/appellant, constraining him to file O.S.No.85 of 2002 on the file of the District Munsif Court, Karaikudi, for the relief of declaration and injunction. Pending the suit, the third respondent is alleged to have changed the patta in favour of the fifth respondent, which was again said to be without notice to the writ petitioner/appellant.

7. It is the allegation of the writ petitioner/appellant that despite having knowledge that he is the owner of Survey No.131/2B and 131/6B and the patta for the same stands in his name, the respondents 4 and 5, clandestinely, obtained an order on 21.01.2013 vide the proceedings in Ne.Mu.P.T.R.89-2013, from the third respondent. The said order was put to challenge in the writ petition.

8. The Hon'ble single Judge dismissed the writ petition vide the impugned order dated 12.04.2006.

9. Heard the learned Counsels on either side.

10. It is to be stated that even before the impugned order was passed, the writ petitioner/appellant had filed O.S.No.85 of 2012. It is the definite case of the writ petitioner/appellant that he was not issued with any notice in any of the above referred proceedings, though he claimed to be the owner of the property and also had obtained the patta. The said claim of the writ petitioner/appellant is not correct, as in the suit filed much prior to that, the fifth respondent, as the defendant No.7, had filed his written statement on 15.08.2012. In the said written statement, the fifth respondent had denied the title of the writ petitioner/appellant and also mentioned about the patta transfer dated 04.10.2002 and also mentioned about the proceedings initiated by him before the third respondent-Tahsildar for change of patta. It is also relevant to note that the writ petitioner/appellant filed O.S.No.163/2005 against the fourth respondent herein, which was dismissed for non-prosecution on 13.03.2006. Therefore, the allegation of the writ petitioner/appellant that he has not been issued with any notice or he did not have knowledge about the same cannot be countenanced. The suit filed by the writ petitioner/appellant is said to be pending till today. Having rightly resorted to the civil proceedings, it is open to the writ petitioner/appellant to prosecute the suit and get appropriate relief from the civil court on merits.



11. From the foregoing facts, it is clear that the purchase of the writ petitioner/appellant is much after the purchase by the respondents 4 and 5. Therefore, without deciding the title of the parties by the competent civil court, the issuance of patta cannot be decided. Hence, the order passed by the writ court does not warrant any interference.

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12. In the result, this writ appeal is dismissed. There will be no order as to costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CRL.SIDE)

/True Copy/

Sub Assistant Registrar(CS-IV)

To

1. The District Collector,
Sivagangai District,
Sivagangai.
2. The Revenue Divisional Officer,
Devakottai,
Sivagangai District.
3. The Tahsildar,
Karaikudi Taluk Office,
Sivagangai District.

+1CC TO MR.M.VENKATESHAN, ADVOCATE IN SR.NO.84022.

+1 cc to Special Government Pleader, SR.No.84358.

GG

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W.A(MD)No.1113 of 2016
12.09.2018