



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 04.10.2018

CORAM:

THE HONOURABLE MR.JUSTICE V.PARTHIBAN

W.P.(MD) No.7566 of 2016

and

W.M.P.(MD) Nos.6330 & 8956 of 2016

S.Sumathi

... Petitioner

vs.

1.The District Revenue Officer
Sivagangai, Sivagangai District

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

3.The Tahsildar
Ram Nagar
Devakottai
Sivagangai

4.AR.Thiyagarajan

5.PR.Kannan

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of writ of certiorari calling for the records relating to the impugned order of the 1st respondent herein in Na.Ka.P1/11919/2013 dated 01.03.2016, quash the same.

For Petitioner : Mr.B.Muruganandam

For Respondents : Mr.A.Muthu Karuppan

Additional Government Pleader for R1 to R3

Mr.V.Meenakshisundaram

for Mr.AL.Kannan for R4

Mr.S.Sivathilakar for R5

O R D E R

The case of the petitioner is as follows:

i. The petitioner is the absolute owner of the property, measuring an extent of 18,056 sq.ft., comprised in Survey No.C/3-8, situated at Iravuchery, Devakottai Town, Sivagangai District, having purchased the same from one PR.Kannan / fifth



respondent herein by way of a registered sale deed dated 10.07.2013 vide document No.3054 of 2013.

ii. According to the petitioner, originally one Ramanathan Chettiar, son of Lakshmanan Chettiar, was the absolute owner of the aforesaid property and during town survey made in 1974, Patta was transferred in the name of the said Ramanathan Chettiar as he was the elder member in his family. The said Lakshmanan Chettiar had purchased the subject property from its erstwhile lawful owner and thus, the family of Lakshmanan Chettiar and subsequently his son Ramanathan Chettiar and his ancestors remained in continuous possession and enjoyment of the subject property and Patta was also granted in their favour.

iii. The said Ramanathan Chettiar sold the property in question, on behalf of himself and as power agent of the other members of the family, by way of four separate sale deeds, dated 29.12.1986, one in favour of Karuppayee Ammal, vide document No.161 of 1986, second in favour of K.Periya Karuppan, vide document No.162 of 1986, third in favour of Manimegalai, vide document No.163 of 1986 and fourth in favour of Siva Jothi, vide document No.164 of 1986. Subsequently, it appears that the said Karuppayee Ammal settled her property in favour of her daughter Manimegalai. The petitioner's vendor, namely, PR.Kannan inherited the property from K.Periya Karuppan and Manimegalai being his father and mother. Subsequently, PR.Kannan purchased the other property from S.Siva Jothi on 26.10.2007, by way of a registered sale deed vide document No.3991 of 2007 and purchased another piece of land from one Vijayan on 24.09.2009 vide document No.3394 of 2009. Thus, the petitioner's vendor became the absolute owner of the subject property and had been in absolute possession and enjoyment of the same thereof.

iv. Thereafter, the petitioner purchased the entire extent of the subject land from the said PR.Kannan / fifth respondent herein, for a valid sale consideration of Rs.15,00,000/-. After the purchase of the property in 2013, the petitioner is having valid title, right, possession and enjoyment of the subject property ever since.

v. At the time when the petitioner purchased the property from the fifth respondent, she was informed that the fourth respondent filed an appeal before the second respondent for change of revenue records and the second respondent, after an enquiry, held that the



fourth respondent was not entitled to any relief and the appeal proceedings ended in favour of the fifth respondent on 11.02.2013. In the said circumstances, the petitioner purchased the property, since there was no encumbrance to the same.

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vi. While so, the petitioner received a notice from the first respondent stating that the fourth respondent had filed a revision petition challenging the order passed by the second respondent dated 11.02.2013. According to the fourth respondent, his claim is only based on the relationship with one Karuppan @ Karuppiyah Chettiar. As according to the fourth respondent, he was the great grandson of the said Karuppan @ Karuppiyah Chettiar. The name of Karuppan @ Karuppiyah Chettiar was found in the settlement register and the fourth respondent, being his great grandson, was entitled to change the revenue records in his favour in respect of the subject property. The revision petition filed by the fourth respondent before the first respondent was contested by the petitioner herein stating that the relationship, as claimed by the fourth respondent, has not been established at all by any piece of evidence, even assuming that the name of Karuppan @ Karuppiyah Chettiar was found in the settlement register. On behalf of the fourth respondent, no material whatsoever had been produced before the first respondent to establish the factum of his relationship with the said Karuppan @ Karuppiyah Chettiar and no legal heirship certificate had been produced for the last three generations to show whether the fourth respondent alone was entitled to inherit the property, after passage of several decades. Except claiming that he was the great grandson of the said Karuppan @ Karuppiyah Chettiar, without any supportive materials, there was no other basis for the claim of the fourth respondent. According to the fourth respondent, some tax receipts were issued in his name, but according to the petitioner herein, those tax receipts did not contain the relevant survey number.

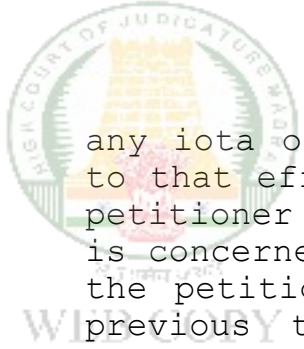
vii. According to the petitioner herein, the fourth respondent did not produce any documents, like, death certificate, legal heirship certificate and succession certificate showing that the name of Karuppan @ Karuppiyah Chettiar said to be found in the settlement register was his great grandfather. Even according to the claim of the fourth respondent, he belongs to the fourth generation and in which case, he had to necessarily prove his relationship with all the three previous generations as to who were all the legal



heirs, how many of them were in possession of the subject property and how many of them were entitled to claim Patta for the subject property. The fourth respondent had not come forward with any such details as required, but merely based his claim on oral assertion that he was the great grandson of the said Karuppan @ Karuppiyah Chettiar.

viii. While matter stood thus, the first respondent, after hearing the parties, has passed an order dated 01.03.2016 in the revision petition filed by the fourth respondent, holding that the name of Karuppan @ Karuppiyah Chettiar has to be restored in the revenue records. According to the petitioner herein, the order, dated 01.03.2016, passed by the first respondent is bereft of any supportive materials to conclude that the subject property originally belonged to Karuppan @ Karuppiyah Chettiar. The first respondent failed to take note of the subsequent events, which unfolded from 1974 and the property changed hands to several persons and ultimately, the petitioner herein had purchased the property from her vendor, namely, the fifth respondent herein, who had valid title and was in possession and enjoyment of the subject property having purchased the property from his lawful vendors in 2007 and 2009 and Patta was also issued in his favour. Because of these facts, the second respondent, after conducting a thorough enquiry felt that the claim of the fourth respondent was unsustainable both in law and on facts and dismissed the fourth respondent's appeal. However, unfortunately, the first respondent overturned the order of the second respondent and restored the name of Karuppan @ Karuppiyah Chettiar in the revenue records in respect of the property in question on the basis of certain presumptions and assumptions. According to the petitioner herein, the fifth respondent, who was the original vendor, had not even been issued notice in the revision proceedings and he alone could have contested the revision more effectively as he was the purchaser of the subject property from his earlier vendors, who belong to the earlier generation. In the absence of notice to the fifth respondent, the order passed by the first respondent cannot be sustainable in law and on that ground alone, the order of the first respondent is liable to be interfered with.

2. The learned counsel appearing for the petitioner would reiterate the above facts and would submit that the fourth respondent has no relationship with the said Karuppan @ Karuppiyah Chettiar. Even assuming that the said Karuppan @ Karuppiyah Chettiar was the original owner of the subject property, not even



any iota of material has been produced to substantiate his claim to that effect. Howsoever, the learned counsel appearing for the petitioner would submit that as regards the title to the property is concerned, the same could be traced from the previous vendor of the petitioner's vendor as narrated above. In fact, in all the previous transactions, the sales were effected by registered documents and there were no materials whatsoever produced for all these years and the Patta had also been changed on the basis of the transfer of title, which took place from time to time.

3. The attempt of the fourth respondent to reopen the title issue, after so many decades, is to achieve a collateral purpose with an oblique motive and his appeal before the second respondent and the revision before the first respondent lacks *bona fides* and also lacks merits and substance. The second respondent fully recognized this position and rightly rejected the appeal of the fourth respondent. Unfortunately, the first respondent, without going into the issue of *locus standi* of the fourth respondent has passed the impugned order detrimental to the interest of the petitioner herein. The first respondent ought to have first seen whether the fourth respondent had any *locus standi* to maintain such appeal in the absence of any proof to establish his relationship with the so-called Karuppan @ Karuppiyah Chettiar. Unless or until the relationship was established, the question of considering the revision petition at the instance of the fourth respondent would not arise at all. However, the first respondent, without appreciating the nebulous claim of the fourth respondent about his relationship with Karuppan @ Karuppiyah Chettiar, has gone about adjudicating the matter and concluded against the petitioner herein. Therefore, the learned counsel appearing for the petitioner would submit that the order of the first respondent cannot be countenanced either in law or on facts and the same is liable to be interfered with.

4. Per contra, the learned counsel appearing for the fourth respondent would submit that in the settlement register, the name of Karuppan @ Karuppiyah Chettiar figured in respect of the subject property and the fourth respondent, being the great grandson of Karuppan @ Karuppiyah Chettiar, was entitled to succeed to the subject property and recognizing such fact, the first respondent has passed the order by restoring the name of Karuppan @ Karuppiyah Chettiar. As regards the allegation that the fifth respondent being not issued any notice, the learned counsel for the fourth respondent would submit that in any event, the petitioner herein had represented and he, having stepped into the shoes of the fifth respondent, after purchase of the property, had contested the case effectively. Therefore, the absence of notice to the fifth respondent did not cause any prejudice to the petitioner herein and therefore, the said contention is liable to be rejected.

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5. The learned counsel appearing for the fourth respondent would further submit that in any case, the first respondent has



only restored the entries in the name of Karuppan @ Karuppiyah Chettiar and not included the name of the fourth respondent as he has not concluded the relationship as between the fourth respondent and the said Karuppan @ Karuppiyah Chettiar. Therefore, it is not open to the petitioner herein to emphasize on the fact whether the fourth respondent was related to the said Karuppan @ Karuppiyah Chettiar. It is for the fourth respondent to establish the fact of his relationship with the said Karuppan @ Karuppiyah Chettiar and he can claim change of entries in the revenue records either by approaching the Authority concerned or by way of approaching the competent Civil Court. In the said circumstances, the petitioner herein cannot feel aggrieved by the impugned order passed by the first respondent, dated 01.03.2016 and in case she is not satisfied with the order passed by the first respondent, it is always open to her to challenge the same before the competent Civil Court and it is certainly not open to her to get any relief before this Court under Article 226 of the Constitution of India. According to the learned counsel for the fourth respondent, the first respondent in fact has directed the party to seek appropriate remedy before the Civil Court, in case any parties are aggrieved by the order. Therefore, he would submit that instead of approaching the Civil Court, the petitioner has approached this Court, which cannot adjudicate the factual dispute as between her and the fourth respondent. The proper course available to the petitioner is to approach the Civil Court and establish her claim as against the fourth respondent.

6. The learned Additional Government Pleader appearing for the respondents 1 to 3 made his submissions to the effect that the first respondent has passed orders on the basis of the materials placed before him for consideration and such orders need not be interfered by this Court in its exercise under Article 226 of the Constitution of India. According to the learned Additional Government Pleader, the first respondent felt that Karuppan @ Karuppiyah Chettiar was the rightful owner of the subject property during the relevant time and therefore, ordered restoration of his name in the revenue records. However, the first respondent did not go into the question whether the fourth respondent was merely a great grandson of Karuppan @ Karuppiyah Chettiar as claimed by him. Therefore, the petitioner herein cannot said to be aggrieved by the order passed by the first respondent as the fourth respondent was not granted any relief.

7. At this juncture, the learned counsel appearing for the petitioner would submit that the very fact that the name of Karuppan @ Karuppiyah Chettiar has been restored in the revenue records and which factor would enure to the advantage of the fourth respondent, who claims himself to be a great grandson of Karuppan @ Karuppiyah Chettiar. According to the learned counsel for the petitioner, the factum of the professed relationship of the fourth respondent with the said Karuppan @ Karuppiyah Chettiar has not been established even before this Court as no material

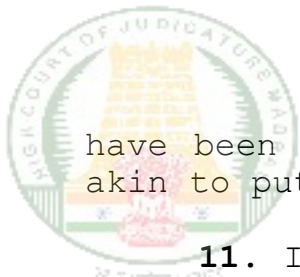


whatsoever had been placed for consideration. In the absence of material in support of his claim, the fourth respondent cannot be allowed to take advantage of the order passed by the first respondent and claim ownership rights on the basis that he was descendant of the said Karuppan @ Karuppiyah Chettiar. Therefore, he would submit that the first respondent ought to have directed the fourth respondent to approach the Civil Court to establish his claim as being a great grandson of Karuppan @ Karuppiyah Chettiar in the first place before he claims to alter the revenue records as against the interest of the petitioner herein. In such circumstances, the learned counsel would plead to this Court to set aside the order, dated 01.03.2016, passed by the first respondent in the revision filed by the fourth respondent.

8. Heard the learned counsels on either side and perused the materials and the pleadings placed on record.

9. As rightly contended by the learned counsel appearing for the petitioner herein, the fourth respondent has not produced any material whatsoever in support of his claim that he was the great grandson of Karuppan @ Karuppiyah Chettiar, even assuming that the name of Karuppan @ Karuppiyah Chettiar figured in the settlement register. In the absence of any material to show his relationship with the said Karuppan @ Karuppiyah Chettiar in clinching terms, the first respondent ought to have dismissed the revision petition on the ground of *locus standi* alone of the fourth respondent to maintain the revision petition. However, the first respondent appeared to have overlooked such a crucial factor and proceeded to hold an enquiry in the revision proceedings and held against the petitioner herein at the instance of the fourth respondent.

10. From the order passed by the first respondent, it could be seen that there was no proper appreciation of claim of the petitioner in regard to several transactions, which had taken place from 1974 till 2013, when the properties were purchased by the petitioner herein. The first respondent has also not appreciated the fact that the fourth respondent had not come up with any kind of details as to who were the legal heirs of the first generation and who held the properties and how the properties were devolved on other generations and who enjoyed such properties. In the absence of such crucial details, this Court is unable to appreciate as to how the first respondent had come to the conclusion only on the basis of the assertion of the fourth respondent. In fact, as rightly contended by the learned counsel appearing for the petitioner, the first respondent ought to have directed the fourth respondent to approach the competent Civil Court to establish his relationship with the so-called Karuppan @ Karuppiyah Chettiar, even assuming that Karuppan @ Karuppiyah Chettiar was the rightful owner of the subject property at the time of purchase. Only after the fourth respondent establishes the relationship, he can maintain any application for change of revenue entries. But, instead of doing so, the revenue entries



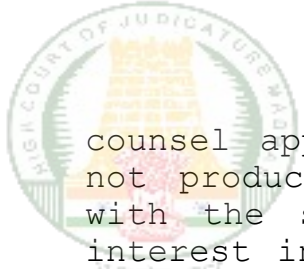
have been changed at the fourth respondent's instance, which was akin to putting the cart before the horse.

11. It is needless to mention that when the name of Karuppan @ Karuppiah Chettiar is restored, it will enure the advantage of the fourth respondent as against the interest of the petitioner for whom to claim right over the property, even assuming that any civil litigation is to be pursued by the parties concerned. Such a position will only enure to the interest of the fourth respondent, when the fact of the matter is that no materials whatsoever were produced or made available in order to establish his claim or relationship with the said Karuppan @ Karuppiah Chettiar.

12. Even otherwise, from the records it could be seen that the transfer of title over the subject property has been clearly narrated in the affidavit filed in support of the writ petition. Over a period of time, all those registered documents cannot be brushed aside or slighted by the first respondent, when he passed order in the revision, which is impugned in this writ petition. The first respondent has miserably failed to appreciate the various sale deeds registered over a period of time and the transfer of revenue records on the basis of such transactions. If the first respondent had any doubt about the revenue entries at the instance of the fourth respondent, he ought to have directed the fourth respondent to approach the competent Civil Court in order to get his claim established, after letting in proper evidence. Unfortunately, by passing the impugned order, the first respondent has indirectly held that the fourth respondent was to have a say in the title over the property, which is in possession of the petitioner. Once an order is passed restoring the name of Karuppan @ Karuppiah Chettiar in the revenue register, it is needless to mention that the fourth respondent would take undue advantage of such change in the revenue records, in any proceedings to be initiated in respect of the property concerned. Therefore, this Court is of the considered view that such a scenario would only help the undeserving person, namely, the fourth respondent herein for claiming ownership of the property owned by the petitioner on the basis of the conclusion reached by the fourth respondent. The argument advanced on behalf of the fourth respondent that even the fourth respondent has not granted any relief appears to be an acceptable argument at a first blush. But, if the same is examined, it could be seen that the fourth respondent could derive a great advantage in his favour in establishing his claim over the property as against the interest of the petitioner herein by using the order passed by the first respondent. Whether intended or unintended such an order passed by the first respondent at the instance of the fourth respondent, as rightly contended by the learned counsel appearing for the petitioner, cannot be countenanced both in law or on facts.

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13. Even otherwise, as rightly contended by the learned



counsel appearing for the petitioner, the fourth respondent has not produced any material whatsoever to prove his relationship with the so-called Karuppan @ Karuppiyah Chettiar for claiming interest in the property purchased by the petitioner. There was absolutely no details and explanation forthcoming from the fourth respondent as to what happened to all the previous generations and why the fourth respondent has suddenly woken up after several decades. Obviously, the fourth respondent's intention is not to establish his relationship, but in the guise of doing so, he was only seeking to achieve a nefarious purpose to unjustly enrich himself. The fourth respondent in such circumstances cannot be allowed to succeed in his attempt to achieve illegitimate purpose by using the proceedings before the first respondent.

14. For the above said reasons, this Court is in agreement with all the submissions made by the learned counsel appearing for the petitioner and is of the considered view that the impugned order of the first respondent in Na.Ka.P1/11919/2013, dated 01.03.2016, is hereby set aside as it is unsustainable in law.

15. Accordingly, the writ petition is allowed. No costs. Consequently, interim stay already granted in W.M.P.(MD) No.6330 of 2016 is made absolute and the vacate stay petition in W.M.P.(MD) No.8956 of 2016 is dismissed.

Sd/-

Assistant Registrar (Crl Side)

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Sub Assistant Registrar(CS-I)

To:

1.The District Revenue Officer,
Sivagangai, Sivagangai District.

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

3.The Tahsildar,
Ram Nagar, Devakottai,
Sivagangai.

+1 CC To MR.B.MURUGANANDAM, Advocate SR. NO.88738

+1 CC To MR.A.L.KANNAN, Advocate SR. NO. 88883

W.P.(MD) No.7566 of 2016

and W.M.P.(MD) Nos.6330 & 8956 of 2016

KRK