IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07/6/2019

C O R A M

THE HON'BLE MR.JUSTICE SUBRAMONIUM PRASAD

Writ Petition No.3656 of 2013

N. Subramaniam ... Petitioner

Vs

1. The District Revenue Officer
   Additional District Magistrate
   Namakkal
   Namakkal District.

2. The Revenue Divisional Officer
   Tiruchengode
   Namakkal District.

3. The Tahsildar
   Tiruchengode Taluk
   Namakkal District.

4. Ponnusamy ... Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of certiorarified mandamus to call for the records relating to the impugned order made in Na.Ka.No.31927-2012-01 dated 10/1/2013 passed by the first respondent, quash the same and consequently direct the respondents 2 and 3 to restore the original position in the Revenue records until the final partition between the sharers in the manner known to law.

For petitioners ... Mr.N.Manokaran

For respondents ... Mr.B.Anand
Government Advocate
for R.R.1 to 3.

Mr.S.Mukunth
for M/s.Sarvabhauman Associates
for R.4.

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O R D E R

Petitioner claims that he is the owner of $1/6^{th}$ share, measuring 73 cents, out of 4.41 acres, in S.F.No.32/1, and also the owner of $1/6^{th}$ share, measuring 57 cents out of 3.46 acres, in S.F.No.32/2 of Vataparappu Village. Petitioner states that he has been in actual possession and enjoyment of the properties without any final partition among the other sharers. Father of the fourth respondent, viz., Late Karuppanna Gounder, had purchased an extent of common 1/3 share each, in SR.No.32/1 and SR.No.32/2, under a sale deed, dated 27/1/1970. Accordingly, he was in possession of the said common 1/3 share, thereafter, his son the fourth respondent continued to be in possession and enjoyment of the same. The petitioner states that, While so, the fourth respondent and his father have collusively created a partition deed, dated 16/11/2004, registered as Document No.4242 of 2004, whereunder, they have purposely included a larger extent of 4.29 acres, in S.No.32/1B, even though they had purchased only undivided extent of 2.62 acres, out of the total extent of 7.87 acres, in S.F.Nos.32/1 and 32/2.

2. According to the petitioner, even though fourth respondent's father had purchased common 1/3 share, in the total extent of 4.41 acres, in S.F.No.32/1 and common 1/3 share, in the total extent of 3.46 acres, in S.F.No.32/2, he has included a larger extent of 4.41 acres, in S.F.No.32/1B, which is over and above an extent of 1/3 share purchased, under the sale deed, dated 27/1/1970. It is stated that fourth respondent has fraudulently obtained patta for a larger extent of the lands inclusive a portion in the common enjoyment in S.F.No.32/1B.

3. On coming to know of the grant of patta, in the name of the fourth respondent, the petitioner filed a petition, dated 30/5/2012, before the Revenue Divisional Officer, Tiruchengode, Namakkal District, challenging the grant of patta, by the Tahsildar, Tiruchengode Taluk, Namakkal District, fourth respondent. Revenue Divisional Officer, Tiruchengode, Namakkal District, issued notice to the fourth respondent, conducted an enquiry and passed an order, dated 19/11/2012, made in Mu.Mu.No.2967/2012-U, whereby the order passed by the Tahsildar, Tiruchengode Taluk, Namakkal District, granting patta transfer order No.4068/611/2004 - 2005, dated 18/11/2004, has been set aside.

4. Against the order, dated 19/11/2012, fourth respondent, filed a revision petition before the District Revenue Officer and the District Revenue Officer, by the impugned order, dated 10/1/2013, set aside the order passed by the District Revenue Officer, restoring the patta issued, in the name of the fourth

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respondent. Order of the District Revenue Officer has been challenged in the instant writ petition.

5. Petitioner states that he has been in possession of 1/6 share of land in two survey numbers, mentioned above and the fourth respondent and his father could have been only in 2.6 acres and that they ought not to have granted patta for 4.41 acres. According to the petitioner, patta has been obtained fraudulently, whereby they have got patta for 4.41 acres instead of 2.62 acres in the aforesaid survey numbers.

6. Mr.S.Mukunth, learned counsel for the fourth respondent would contended that there has been earlier proceedings between the father of the 4th respondent and other members of family regarding grant of patta. Proceedings of the Deputy Tahsildar No.2, Tiruchengode Zone, dated 18/11/2004, passed the following order.

> "Reconsidering the report of the Revenue Inspector, Mousi, second referred above, submitted on the application filed by Thiru Karuppanna Gounder, S/o. Sengoda Gounder of Mookkarayan Thottam, Vattaparappu village, Sir Mousi group, Tiruchengode Taluk, seeking change in patta, order is passed as follows:-
>
> The applicant having purchased lands comprised in S.No.32/1A, 1B, 3B, 3 D, situate in Ettapparappu Village, Tiruchengode Taluk, registered as Document No.685/78 dated 1/7/1978, 242/2004, dated 16/11/2004 in the office of SRO, Tiruchengode and has been enjoying till date. The applicant alone has title over the above said survey number. The vendor has no right whatsover.
>
> Therefore, order is issued to the effect of filing segregating S.No.32/1A, 1B from Sirumousi group Vattaparappu village patta No.82, file patta No.120, the next patta number to the last patta of the village, filling the name of Karupanna Gounder, S/o. Sengoda Gounder, segregating S.No.32/3B, 3D from patta No.7 and file the same in the last village patta No.121, filing the name of Ponnusamy, S/o. Karuppanna Gounder and filing the name of Karuppanan Goundar, S/o. Sengoda Gounder in Patta Nos.81, 78 and 77."

The petitioner would contended that, patta therefore could not be granted to the petitioner.

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7. Petitioner herein has contended that he owns 1/6th share in two survey numbers and that the respondents have fraudulently divided the property among themselves by adding more lands. The District Revenue Officer, Tiruchencode, by an order, dated 19/11/2012, observed as under:-

> "Sale deed No.155/1970 filed by Thiru Subramaniam, applicant was examined. Karupanna Gounder, S/o. Sengoda Gounder (father of the respondent) purchased 1/3rd share from out of lands comprised in S.No.32/1 acres 4.41, S.No.32/2 acre 3.46 aggregating 7.87 acres from one Chinna Gounder (father of Komara Gounder) and others. On examining the accounts relating to Sirumousi village, the lands comprised in S.No.32/1A - 0.15.0 ares - and S.No.32/1B measuring 1.3.5 ares, patta for both covered by patta No.82 having been jointly filed in the names of M.Natarajan and 5 other persons, later on, as per patta change file in the Tiruchencodu Taluk office PT 4068/611/20047-05 dated 18/11/2004, S.Nos.32/1A, B having been separated from patta No.82 has been ordered to be filed as Patta No.120, exclusively in the name of Karuppanna Gounder, S/o. Senkodaga Gounder, in Patta No.120. In this file for change of patta, having the Document No.3935 dated 16/11/2004 in the office of SRO, Tiruchencode, as basis, order for change of patta has been passed. This document is the partition deed entered into between Karupanna Gounder, S/o. Sengoda Gounder and his Son Ponnusamy. In this, the suit property in S.No.32/1A, 1 B fell to the share of Karupanna Gounder, father of the respondent. This property is one which already belonged jointly to M.Natarajan (and) 5 others jointly as per patta No.82. In this, no partition had so far been done between the said six persons. But in the partition deed No.A242/2004 between Karupanna Gounder, S/o. Sengoda Gounder and his son Ponnusamy, Karupanna Gounder, S/o. Sengoda Gounder got the whole 'A' schedule property in S.No.32/1A punjai (Hectare 0.05.0), whole of the property in S.No.32/1B punjai hectare 1.73.5. Therefore, since it comes to be known that segregation of S.No.32/1A and 1 B from patta No.82 on the basis of partition deed and filed as patta No.120 is erroneous, order cancelling the order ref.P.M.No.4068/611.2004-2005 dated 18/11/2004 is passed."

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8. Revenue Divisional Officer, exercising his revisional powers, after looking into the entire documents, observed as under:-

> "As regards site in S.No.32-1A, 1B, 2A and 2 B, the documents submitted at the time of enquiry, file in the office of the Revenue Divisional Officer, Tiruchengode, were considered.
>
> On the application filed by one Tmt.Perumayammal, wife of (Late) Nalla Gounder and her heir, Thiru Subramaniam, and others objecting to the order passed by the Tahsildar, Tiruchencodu, in Na.Ka.U.P.9/6 (2)/78-79 dated 31/7/78, sub dividing the patta land comprised in S.No.32/3 situate in Sirumousi village group Vattaparappu, Tiruchencodu Taluk, order rejecting the demand of the applicants were passed by the Divisional Officer, Sankagiri, vide his proceedings Mu.Mu.10485-89 - (P) dated 30/7/1990. It is very evident that in the appeal filed before the Revenue Divisional Officer, Sankagiri, Tmt. Perumayammal and others have not made any objections regarding their rights over the land in S.No.32/1A, 1B, 2 A, 2B. Further, without objecting to the order regarding change of patta, vide proceedings P.M.No.4068-6(2)-2004-05 dated 18/11/2004 of the Regional Deputy Tahsildar, Tiruchencodu, the objection now raised by Thiru Subramaniam regarding S.No.32/1A, 32/1B is not acceptable. Further, in the revenue documents relating to S.No.32/1A, 1 B, 2A, 2 B, entries have already been made jointly in the names of 6 persons. But the petitioner and respondents, having made separate and standard divisions have been enjoying the same till date. They have been enjoying the same by making change in patta in their respective names. In these circumstances the land in S.No.32/1A and 32/1B are being enjoyed only Ponnusamy, S/o.Thiru Karuppanna Gounder, the applicant. The request made for adding the other persons jointly in the above portion is not in consonance with the principles of natural justice.
>
> It has also been stated by the Village Administrative Officer, Sirumousi Group Vattaparappu, Tiruchencode Taluk that the right claimed by Thiru Subramaniam of Pallakkattai, Vattaparappu Village over land in S.No.32-1A and 32-1B have no possession or enjoyment whatsoever.

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Further, as per possession over the site, without objecting to the sub-division of S.No.32/2 into 32/2A and 32/2B and further sub-division of S.No.32/2B into 32/2B1, 2B2, the objection now made regarding right over S.No.32/1A and 1B is not acceptable. It is quite evident that Ponnusamy, S/o. Karupanna Gounder, the applicant is in possession of lands in S.Nos.32/1A and 32/1B.

It has also been found out that the name of Karuppannan, father of Ponnusamy has been wrongly mentioned in Patta No.82 in respect of S.No.32/2B1 in Sirumousi group, Vattaparappu village. As either Ponnusamy or his father Karuppannan have no possession whatsoever over the land comprised in this survey number, order cancelling the name of Karuppannan, S/o.Sengoda Goundar appearing in Patta No.82 is passed. In these circumstances, order is hereby issued, cancelling the order passed by the Revenue Divisional Officer, Tiruchencode, in ref.Mu.Mu.2967/12, dated 19/11/2012 removing S.Nos.32/1A and 1 B from Patta No.120 and adding the names of 6 persons in Patta No.82."

9. Perusal of the order of the Revenue Divisional Officer, would show that as early as 30/7/1990, it was found that the fourth respondent had possession of the property and pattas were granted. Petitioners herein did not challenge the said findings. The Revenue Divisional Officer, after looking into the documents came to the conclusion that the petitioner is not in possession and enjoyment of land in S.No.32/1A-32/1B.

10. It is well settled that patta does not grant title. The learned counsel for the petitioner placed reliance on a judgment passed by Vishwas Footwear Company Ltd., rep., by its Director, Chennai Vs. 1.The District Collector, Kancheepuram and four others, {2011 (5) CTC - 94}, wherein the Hon'ble Division Bench has held as under:-

"17. The question as to whether the Revenue Authorities be it the Tahsildar exercising power under Section 3 or under Section 5 or under Section 10 or the Revenue Divisional Officer exercising power under Section 12, can consider only a prima facie case as to the entitlement of a person or persons for issuance of Patta. In the event such officers encounter a dispute which could be resolved only by a competent Civil Court, they would not have jurisdiction to enter into such Civil dispute for adjudication. To this extent, the judgments in Kuppuswami Nainar's casefollowed

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in Chockkappan's case may be relied upon. The learned Judge in the order under Appeal has also relied upon those judgments and we are in agreement with the same.

"18. As far as the power of this Court to entertain a Writ Petition on disputed questions, we may refer to the following decisions of the Supreme Court in Arya Vysya Sabha v. The Commissioner of Hindu Charitable and Religious Institutions & Endowments, Hyderabad, 1976 (1) SCC 292; Rourkela Shramik Sangh v. Steel Authority of India Ltd., 2003 (4) SCC 317 and Himmat Singh v. State of Haryana, 2006 (9) SCC 256. Therefore, when disputed questions are involved, this Court will not entertain the Writ Petition and adjudicate upon such dispute, as it is for the parties to approach the Civil Court to decide the issue. However, in the event the order challenged in the Writ Petition is questioned on the ground of want of jurisdiction, certainly this Court would entertain the Writ Petition and particularly when such an order was passed when effective remedy is available before a Civil Court for a person or persons who seek for cancellation of Patta. As already pointed out, though the Fourth Respondent has filed Appeal to the Revenue Divisional Officer seeking for cancellation of Patta, in view of the fact that the Revenue Divisional Officer cannot go into the Civil dispute, his order cancelling the Patta by deciding the disputed question of title is without jurisdiction. In this context, we may refer to the Proviso to Section 14 of the Act which bars the Suit. The Proviso reads that if any person is aggrieved as to any right of which he is in possession by an entry made in the Patta Pass Book under this Act, he may institute a Suit against any person denying or interested to deny his title to such right of declaration of his right under Chapter VI of the Specific Relief Act and the entry in the Patta Pass Book shall be amended in accordance with any such declaration. By that Proviso, in the event any grievance is made by the Fourth Respondent over the Patta granted to the Appellant, he should have approached the Civil Court for necessary orders. In the event the Revenue Divisional Officer had no jurisdiction to go into the disputed question of title and in spite of that fact if he decides the same, on the very same yardstick, the further remedy is only a Revision under Section 13 of the Act which is limited to calling for and examining the records of either the Tahsildar or the Appellate Authority by the District Revenue Officer and such Revisional power cannot be

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equated to Appellate power. Hence, the contention of the Fourth Respondent that the Appellant has got an effective remedy of Appeal and without availing such remedy cannot file the Writ Petition, has no merit. Accordingly, the said contention is rejected.

19. Nevertheless, the core question involved in the Writ Petition is as to whether in the given facts and circumstances of the case, it could be entertained in the event Patta has been granted in favour of a particular individual. On the strength of the title or possession, if any other person makes an Application to the Revenue Divisional Officer for cancellation of that Patta and in the event both the individuals claim title over the property, the Revenue Divisional Officer cannot adjudicate such disputed questions and accepting the case of the other person, he cannot cancel the Patta. The right course to be adopted by the Revenue Divisional Officer in such case is only to refer the Applicant who has come before him seeking for cancellation of Patta to Civil Court, especially when his claim is disputed by the individual who is holding the Patta granted by the Competent Authority. In the event the Revenue Divisional Officer by exceeding his jurisdiction decides the question of title and cancels the Patta, certainly the aggrieved person can approach this Court by way of a Writ Petition on the ground that the Revenue Divisional Officer was not competent to go into the title. The question of alternative remedy is not available to the aggrieved person as for the very same reason the District Collector also cannot go into the disputed question regarding the title or possession, as the case may be, in the event an Appeal is filed.

20. It is the specific case of the Appellant herein that the property was initially registered in the name of one Ramanathan and others, who were granted Patta No. 243 in the year 1963. Thereafter, the property was conveyed to one Palani and he was issued with the Patta No. 707. The said Palani conveyed 80 cents of land in Survey No. 93/3 to one Shoba Ramalingam in the year 1981, who was issued with the Patta No. 459. The Appellant-Company acquired 51 cents of land in Survey No. 93/3 from the said Shoba Ramalingam by a registered Sale Deed in the year 1992 and was issued with the Patta No. 1515. As far as the other land in Survey No. 93/4A is concerned, the land was originally owned by Shoba Ramalingam having purchased from one Annamalai Chettiar in the year 1981 by a registered Sale Deed and she has been issued with the Patta No. 459. The Appellant-Company acquired 57 cents from the said Shoba

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Ramalingam by a registered Sale Deed of the year 1992 and has been issued with the Patta No. 1515. It is the specific case of the Appellant that a portion of the land to an extent of 0.163 square metres in Survey No. 93/4 was acquired by the Highways Department and they were paid compensation. It is their further case that right from the date of purchase, they are in possession of the land. On the other hand, it is the case of the Fourth Respondent, E. Kumar that he submitted a Petition dated 21.2.2005 requesting the grant of Patta in Survey No. 93/3 to an extent of 1.32 acres in favour of Alamelu Ammal from whom he has got Power of Attorney for the said property. He claimed that the said Alamelu Ammal was the owner of the property. The Revenue Divisional Officer, having gone into the rival claims, ultimately decided that the land belongs to Alamelu Ammal and on that ground the Power of Attorney holder was entitled to seek for cancellation of Patta given in favour of the Appellant-Company and consequently, directed the registration of Patta in favour of the said Alamelu Ammal. In the impugned proceedings dated 16.7.2005, for the purpose of cancelling the Patta granted in favour of the Appellant, the Revenue Divisional Officer, having gone into the rival contentions, found that Thiru Palani Achari, S/o Kanniappa Achari had mistakenly sold the land to Tmt. Shoba Ramalingam registered in Document No. 743 of 1981. By this finding, he has gone into the genuineness of the sale effected in the year 1981 in the proceedings under Section 12 of the Act after a lapse of nearly 24 years. In our opinion, the dispute being one of Civil nature, the title of either the Appellant-Company or the said Alamelu Ammal cannot be gone into by the Revenue Divisional Officer. The Revenue Divisional Officer having gone into such title has not only decided to cancel the Patta in favour of the Appellant-Company, but also directed the registration of Patta in favour of Alamelu Ammal. Both the above acts are without jurisdiction. In the event the act of the Revenue Divisional Officer is without jurisdiction, the Writ Petition is maintainable. Accordingly, the contention of Mr. P. Wilson that the Writ Petition itself is not maintainable cannot be accepted."

11. This Court is of the opinion that unless the shares of the petitioners and respondents are not declared and shares are not demarcated, objections regarding patta cannot be considered.

12. Section 10 of the Patta Pass Book Act, reads as under:-

"Modification of entries in the Patta Pass Book

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- (1) Where any person claims that any modification is required in respect of any entry in the Patta Pass Book alredy issued under Section 3 either by reason of the death of any person or by reason of the transfer of interest in the land or by reason of any other subsequent change in circumstances, he shall make an application to the Tahsildar for the modification of their relevant entries in the Patta Pass Book.

(2). An application under sub-Section (1) shall contain such particulars as may be prescribed and shall be accompanied by the documents, if any, relied on by the applicant as evidence in support of his claim.

(3) (a) Before passing an order on an application under sub-Section (1), the Tahsildar shall follow such procedure as may be prescribed and shall also give a reasonable opportunity to the parties concerned to make their representations either orally or in writing. If the Tahsildar decides that any modification should be made in respect of entries in the Patta Pass Book, he shall pass an order accordingly and shall make such consequential changes in the Patta Pass Book, as appear to him to be necessary, for giving effect to his order.

(b). If the Tahsildar decides that thereis no case for effecting any modification in the entries in the Patta Pass Book, he shall reject the application.

(c). An order under clause (a) or clause (b) shall contain the reasons for such order and shall be communicated to the parties concerned in such manner as may be prescribed."

13. Patta is granted primarily on a finding of possession. Documents have been given by both sides to show, who is in possession. Petitioner has not produced any document to show that he is in possession. District Revenue Officer has after seeing the records has found that the revenue documents relating to S.Nos.32/1A, 1B, 2A, 2B stand in the names of six persons. Finding of fact is that lands for which patta has been granted to the fourth respondent, the petitioner and his family members are not in possession. Thus, as stated earlier, it is not mean that title of the property is with fourth respondent. Parties have to get their title declared only by filing an appropriate civil suit. Sale deeds are not before this Court and therefore, this Court is not in a position to identify the properties purchased by respective parties and then giving directions to

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the Officers to demarcate the share based on the schedule annexed to the title deeds.

14. Issue raised by the petitioner being purely a question of fact and after specifying that District Revenue Officer has not gone into possession of tile like deciding the issue of grant of patta. I find no merit in the case of the petitioner.

15. Accordingly, writ petition is dismissed, giving liberty to the parties to approach the Civil Court, to file an appropriate suit. Trial Court, on the inspection of the said suit shall decide the question of title and the deviation of the properties completely uninfluenced by the findings made by the revenue authorities on the issue of grant of patta. No costs.

Sd/-
Deputy Registrar

//True Copy//

Sub Assistant Registrar

mvs/pkn

To

1. The District Revenue Officer
Additional District Magistrate
Namakkal
Namakkal District.

2. The Revenue Divisional Officer
Tiruchengode
Namakkal District.

3. The Tahsildar
Tiruchengode Taluk
Namakkal District.

+1 cc to Mr.N.Manokaran, Advocate, Sr.No. 46002
+1 cc to M/s.Sarvabhauman Associates, Advocate Sr.No.45992

W.P.No.3656 of 2013

CSL/25.06.2019

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