IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.08.2019

CORAM

THE HONOURABLE MR.JUSTICE K.KALYANASUNDARAM

W.P.No.7265 of 2017
&
WMP No.7921 of 2017

K.Vidya Sankar ..Petitioner

Vs

1.The District Collector,
Office of the District Collector,
Tiruppur District.

2.The Revenue Divisional Officer,
Office of the Revenue Divisional Officer,
Udumalpet, Tiruppur District.

3.The Tahsildar,
Office of the Tahsildar,
Madathukullam, Tiruppur District.

4.A.Umamaheswari

5.D.Ganavadivel

6.Kamala Ganapathi Subramaniam .. Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, seeking issuance of a writ of Certiorarified Mandamus calling for the records relating to the Patta issued by the 3rd respondent in Patta No.100 including the names of the respondents 4 and 5 and the proceedings of the 2nd respondent in Na.Ka.No.3543/2015/A1 dated 02.12.2016 and quash the same and thereby direct the respondents 2 and 3 not to mutate the revenue records by entering the names of the respondents 4 and 5 in respect of the Trust propeties situated at Komaralingam Village, Madathukulam Taluk, Tiruppur District comprised in S.No.642/1, 642/2, 643/1, 643/2, 644/1, 644/2, 644/3 in all admeasuring 22.66 acres and S.Nos.645/1, 645/2, 646/1, 646/2, 647/1, 647/2 in all admeasuring 22.66 acres situated within the Sub Registration District of Kaniyur and Registration District of Tiruppur till the disposal of the suits in O.S.No.73 of 2012 on the file of District Judge, Tiruppur and O.S.No.89 of 2015 on the file of the Subordinate Judge, Udumalpet.

For Petitioner : Dr.R.Gouri

For Respondents : Mr.I.Sathish,
Additional Govt. Pleader for R1 to R3
Mr.M.S.Krishnan, Sr. Counsel for
Mr.U.Karunakaran for R4 to R6

O R D E R

The mutation in the revenue records, based on the sale deeds, dated 22.06.2014 registered as Document Nos.783 & 785 of 2014, is under challenge in this Writ Petition.

2. The case of the petitioner is that one Late Kaniyur Krishna Iyer, the founder of Ramakulam Estate had three sons, viz., Venkatakrishna Iyer, Ramasamy Iyer and Varadharaja Iyer. The petitioner claims to be lineal descendant of K.Ramasamy Iyer. The said Kaniyur Krishna Iyer had executed a Will in the year 1984 and died in the year 1989. By the Will, he settled many of his landed properties for the Trust, and as per the Will, the Management of the Trust is to be vested with his eldest son and thereafter in order of primogeniture. The testator's first son had natural son-K.V.Rajagopalan, but the said K.V.Rajagopalan and his minior son-Muthukrishnan predeceased Venkatakrishna Iyer and thereafter, he adopted K.V.Ganapathy Subramaniam as his son.

3. The petitioner would further state that the said K.V.Ganapathy Subramanian was managing the Trust properties from the year 1934 and for the period between 1963 and 2006, there was total mismanagement and hence, a suit in O.S.No.384 of 2006 was filed against Kamala, wife of Late Ganapathy Subramanian before the District Court, Coimbatore and on jurisdictional issue, it was transferred to District Judge, Tiruppur and renumbered as O.S.No.73 of 2012. It is alleged that during the pendency of the above suit, the sixth respondent had executed sale deeds in favour of the respondents 4 and 5 on 26.02.2014. The sale deeds are under challenge in O.S.No.89 of 2015, on the file of Sub Court, Udumalpet and as a counterblast, respondents 4 and 5 filed the suit in O.S.No.213 of 2015 before the Sub Court, Udumalpet, for permanent injunction.

4. The grievance expressed by the petitioner is that despite the pendency of the suits, Revenue Records have been mutated in favour of respondents 4 and 5, relying on sale deed dated 26.02.2014. The appeal preferred before the second respondent was also not properly considered.

5. Dr.R.Gouri, learned counsel for the petitioner would argue that the respondents 4 and 5 are pendente lite purchasers and unless, the suits are disposed of, they are not

entitled for mutation of revenue records. In support of the contention, the decision in Vishwas Footwear Company Ltd., vs. The District Collector, Kancheepuram [2011 (5) CTC 94] is relied upon.

6. Per contra, Mr.M.S.Krishnan, learned Senior Counsel appearing for respondents 4 and 5 would urge that the disputed properties were included as item No.3 in O.S.No.384 of 2006, and it was transferred and renumbered as O.S.No.73 of 2012, pending before the Principal District Judge, Tiruppur. According to the learned Senior Counsel, on the basis of the memo filed by the petitioner, the property in dispute has been deleted. Subsequently, the said suit itself came to be dismissed for default on 22.11.2017. Similarly, O.S.No.89 of 2015 was also dismissed for non-prosecution on 15.04.2019.

7. The learned Senior Counsel would submit that admittedly, the patta was standing in the name of the sixth respondent for more than 60 years, the petitioner claims right over the property through the Will and until its execution is proved before competent Civil Court, the petitioner has no right over the property. He further added that marking of patta before the Civil Court came for consideration in C.R.P.No.1008 of 2019 and this Court, while rejecting the case of the petitioner has observed that the patta can be marked subject to the objections of the petitioner. Only thereafter, the petitioner left the suits for default.

8. Mr.I.Sathish, learned Additional Government Pleader for respondents 1 to 3 would submit that in respect of the property in dispute, a patta was already issued in the name of the sixth respondent and after the property was sold in favour of the respondents 4 and 5, they have been included as joint pattadhars. Since the petitioner failed to produce the relevant documents to establish his title, the appeal was rejected and inclusion of the name of respondents 4 and 5 would be subject to the result of the civil suits.

9. Heard the rival submissions made on either side and perused the materials available on record.

10. In the instant case, it is not in dispute that the petitioner has filed a suit in O.S.No.384 of 2006 before the learned Additional District Judge, Coimbatore, to declare the suit properties as Trust Properties and also sought for permanent injunction, but no interim order was granted restraining the sixth respondent to sell the property during the pendency of the suits. The respondents 4 and 5 purchased the property from the sixth respondent in the year 2014 and the sale was challenged by the petitioner in O.S.No.89 of 2015. The records produced by the respondents would show that both the suits in O.S.No.384 of 2006 (transferred and renumbered as O.S.No.73 of 2012 and O.S.No.89 of 2015 have been dismissed for non-prosecution.

11. It is an admitted fact that in respect of the property in dispute, patta was issued in favour of the sixth respondent and 50 others and based on the sale deeds, dated 26.02.2014, names of the respondents 4 and 5 have been included as joint pattadhars.

12. A perusal of the impugned order shows not only the petitioner, 9 others have also submitted their representations for cancellation of patta issued in favour of the respondents 4 and 5. According to them, they are the cultivating tenants. It is further evident from the impugned order that during the enquiry on 12.11.2015 and 22.11.2015, no documents were produced by the alleged tenants to substantiate their case and in the 'A' Register, the name of the sixth respondent has been entered and in O.S.No.213 of 2015, the Sub Court, Udumalpet, granted an order of interim injunction in favour of the respondents 4 and 5 in I.A.No.477 of 2015. After analyzing the entire fact situation, the second respondent rejected the appeal.

13. The Division Bench of this Court, in the case of Vishwas Footwear Company Ltd. (supra) held that Revenue Divisional Officer has no jurisdiction to go into the disputed question of title at that time of an application for cancellation of patta is being considered and the Revenue Divisional Officer has only a limited jurisdiction to find out prima facie as to the tile and when the title is in dispute and there are rival claims, he shall refer the parties to the Civil Court for adjudication before altering the patta and depending upon the decree that may be passed by the Civil Court and the relevant entries in the patta could be effected by the Revenue Divisional Officer. The relevant paragraphs of the Division Bench Judgment are extracted hereunder:-

Vishwas Footwear Company Ltd., V. The District Collector, Kancheepuram [2011 (5) CTC 94]

> "12. ......
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> ......
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> ......
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> By that provision, in the event any modification is required on an Application by any person, it can be made either by reason of the death of any person or by reason of transfer of interest in the land or by reason of any subsequent change in the circumstances. This Section also does not empower the Tahsildar to cancel the Patta already granted, as the power of the Tahsildar to modify the entries in the Patta Pass Book is limited only in case of death of the person who was holding the Patta Pass Book or by reason of the transfer of interest in the land or by reason of any other subsequent change in the circumstances. In the event

an Application is made that the Patta Pass Book has been wrongly issued in favour of any person and consequently claiming title over the land entitling such person to grant of Patta, that person can only file a Suit for declaration that the entries made in the Patta Pass Book should be cancelled and consequently for a mandatory injunction for grant of Patta.

14. Keeping the above in mind, the issue is to be considered. The Writ Appeal raises two important questions. Firstly, whether the Revenue Divisional Officer would be competent to go into the disputed question of title while considering the Application for cancellation of patta. In fact, the law on this is not res integra. As early as in the year 1995, a Division Bench of this Court in Kuppuswami Nainar v. The District Revenue Officer, Thiruvannamalai, 1995 (1) MLJ 426 has observed as follows:

> "3. No provision is brought to our notice in the Standing Orders of the Board of Revenue taking away the jurisdiction of the Civil Court to adjudicate upon the question of title relating to immovable property. Revenue Officers in a Patta proceeding may express their views on the question of title, but such expression of opinion or decision is not conclusive and it is only intended to support their decision for granting Patta. Ultimately, it is the Civil Court which has to adjudicate the question as to whether the person claiming Patta is the title holder of the land. Even if the Revenue Authorities decide the question of title, that will not in any way affect the jurisdiction of the Civil Court, which has to decide the question without reference to the decision of the Revenue Authorities.
>
> 4. Now the question for consideration is, having regard to the fact that the District Revenue Officer has expressed his opinion on the question of title, whether the order under question should be interfered with. It may be pointed out here that in a Petition under Article 226 of the Constitution, the question of title regarding immovable property cannot properly be gone into, because a mass of evidence may be required for adjudicating the question of title. Even if we are to interfere with the order under Appeal, it is the other party, who has to go to a Civil Court and establish

title. As far as the exercise of jurisdiction under Article 226 of the Constitution is concerned, it does not matter to it whether "A" party goes to Civil Court or "B" party. Therefore, we are of the view that the question of title has to be decided by the Civil Court without reference to the order under question. Hence, we decline to interfere with the order challenged in the Writ Petition. However, we make it clear that in the event a Suit for declaration of title and for appropriate consequential relief is filed, the Civil Court shall decide such a Suit, without reference to the findings recorded by Respondents 1 and 2 in the impugned orders, but only on the basis of the pleadings of the parties and evidence adduced by them before it. We also make it clear that any opinion expressed by the learned Single Judge, contrary to what we have stated above, shall also stand modified accordingly. With these observations, the Writ Appeal is dismissed. Consequently, C.M.P. No. 15872 of 1994 filed along with the Appeal is also dismissed."

15. Following the said judgment, one of us (DMJ) in Chockkappan's case has held that the Revenue Divisional Officer has no jurisdiction to go into the disputed questions of title at the time when an application for cancellation of patta is being considered. As far as this law is concerned, there cannot be a second opinion as to the limited jurisdiction of the Revenue Divisional Officer only to find out prima facie as to the title and when the title is in dispute and there are rival claimants, he should refer the parties to civil Court for adjudication and depending upon the decree that may be passed by the civil Court, relevant entries in the patta could be effected by the Revenue Divisional Officer.

21. In the light of the judgments in Kuppuswami Nainar's case and Chockkappan's case, the person who has applied to the Revenue Divisional Officer for cancellation of patta should be directed to approach the civil Court to establish the title and for seeking the grant of patta after cancelling the patta granted in favour of the Appellant company. On this ground, the Appellant is entitled to succeed. Accordingly, the order of the learned single Judge is set aside. The order impugned in the writ petition is set aside and the patta granted in

favour of the Appellant company is restored. However, we make it clear that this order shall not stand in the way of the said Alamelu Ammal to approach the civil Court to establish the title and to consequently seek for cancellation of patta granted in favour of the Appellant company and for further direction for grant of patta in favour of the said Alamelu Ammal. With these observations and directions, the writ appeal is allowed. No costs."

14. Taking note of the fact that the patta in respect of the property stood in the name of the sixth respondent and it has been mutated in favour of the respondents 4 and 5, based on the sale deeds, dated 22.06.2014 and also keeping in view the above decision, in my considered opinion, no warrant of interference is required in this Writ Petition.

15. In such view of the matter, the Writ Petition fails and the same is dismissed. There is no order as to costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1.The District Collector,
Office of the District Collector,
Tiruppur District.

2.The Revenue Divisional Officer,
Office of the Revenue Divisional Officer,
Udumalpet, Tiruppur District.

3.The Tahsildar,
Office of the Tahsildar,
Madathukullam, Tiruppur District.

+1cc to Dr.R.Gouri, Advocate Sr.73708
+1cc to Mr.V.Karunakaran, Advocate Sr.73709
+1cc to the Government Pleader Sr.74645

W.P.No.7265 of 2017 &
WMP No.7921 of 2017

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