IN THE HIGH COURT OF JUDICATUE AT MADRAS

Order Reserved on : 12.12.2018

Order Pronounced on :02.01.2019

CORAM

THE HONOURABLE MR.JUSTICE M.SATHYANARAYANAN

AND

THE HONOURABLE MR.JUSTICE P. RAJAMANICKAM

W.A. No.2585 of 2018
and
CMP.No.20994 of 2018

1. Madras Litrex Pvt. Ltd.,
Rep. By its Managing Director,
Mr.Vinod Bhatia

2.Rekha Bhatia
3.Vinay Bhatia

.. Appellants

Vs.

1.M/s.Shree Arunachala Foundations Pvt.Ltd.,
Rep. By its Managing Director Mr.R.Ravi.

2. The Revenue Divisional Officer,
Ponneri Revenue Division,
Ponneri - 601 204.

3.The Tahsildar,
Gummidipoondi Taluk Office,
Tiruvallur District.

...Respondents

Prayer : Writ Appeal filed under Clause 15 of the Letters Patent to set aside the order dated 10.08.2018 passed by the learned Judge, in W.P.No.1454 of 2016.

PRAYER IN WP.NO.1454/2016:-

Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus, calling for the records of the 1st respondent in his impugned

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proceedings, Na.Ka.379/2015/ A2 dated 29.12.2015 and quash the same as arbitrary, ultravires and illegal and consequently direct the respondents 1 and 2 to maintain status quo regarding revenue records in respect of lands of the Petitioner in Joint Patta, bearing No.563, comprised in Survey No.225/1A1A (Part) measuring an extent of 50.00 acres out of the total extent of 35. 16.5 hectares (i.e) 86.86 acres, situate at Eguvarpalayam Village (also previously known as kumara Muthu Venkatabarathapuram, Mangalapalayam Village), Gummdipoondi Taluk, Tiruvallur District pending decision in the civil disputes between the petitioner and the respondents 3 to 5.

For Appellants Mr.T. Velumani

For Respondents :Mr. V.Lakshmi Narayanan for R.Munusamy for R1

Mr. A. Ansar for R2 & R3 Government Advocate

O R D E R

(ORDER OF THE COURT WAS MADE BY P.RAJAMANICKAM.,J.)

This Writ Appeal has been filed under Clause 15 of the Letters Patent against the order passed in W.P.No.1454 of 2016 dated 10.08.2018.

2. The first respondent herein has filed a writ petition in W.P.No.1454 of 2016 under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus to call for the records of the second respondent herein in his proceedings Na.Ka.376/2015 /A2 dated 29.12.2015 and quash the same as arbitrary, ultravires and illegal and consequently direct the respondents 2 and 3 herein to maintain status- quo regarding revenue records in respect of the lands of the first respondent herein in joint patta bearing No.563, comprised in S.No.225/1A 1A(part) measuring an extent of 50 acres out of the total extent of 35.16.5 hectares (86.86 acres) situated at Eguvarpalayam

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Village (previously known as Kumara Muthu Venkatabarathapuram, Mangalapalayam village) Gummidipoondi Taluk, Tiruvallur District pending decision in the civil disputes between the first respondent herein and the appellants herein.

3. The learned Judge while disposing of the said writ petition has passed an order that all the revenue proceedings including the impugned order and other connected orders issued under the provisions of the Patta Pass Book Act are kept in abeyance till the conclusion of the civil litigations between the parties. He also passed an order that after conclusion of the civil litigation between the parties, the respective parties are at liberty to approach the revenue officials by submitting a fresh application for necessary relief. Feeling aggrieved, the respondents 3 to 5 in the said writ petition have filed the present Writ Appeal.

4. According to the first respondent herein, it is a Private Limited Company incorporated under the Companies Act and it is an owner of the agricultural punja lands measuring 50 acres out of total extent of 200.18 acres situated in S.No.225/1 present S.No.225/1A 1A (part) covered in Paimash Nos.1435, 1445, 1447, 1454, 1455 and 1456 of Eguvarpalayam Village (previously known as Kumara Muthu Venkatabarathapuram, Mangalapalayam village) Gummidipoondi Taluk, Tiruvallur District). The total extent of the property situated in S.No.225/1 is 200.18 acres and the entire extent originally

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belonged to one Nandimandalam Muthu Nagaraja, S/o. Nandimandala Subbaraja. He acquired the same by a Dharkhast order of the Court of Wards Collector, in the Fasli year - 1314 (1905). Thereafter Patta No.294 was issued in the name of the Nandimandalam Muthu Nagaraja for 200.18 acres in S.No.225/1 during Fasli - 1323. The said Nandimandalam Muthu Nagaraja sold an extent of 50 acres of land out of 200.18 acres in S.No.225/1 by a registered sale deed dated 21.03.1938 to one Rangaiah Naidu. Subsequently, a supplementary deed was executed on 04.04.1938 in respect of the said property in favour of the said Rangaiah Naidu. The said Nandimandalam Muthu Nagaraja died on 15.08.1947, leaving behind his son Himachalapathi Raja and daughter Nagammal. The said Rangaiah Naidu created an equitable mortgage on 21.07.1948 in favour of one Perumal Naidu in respect of the aforesaid 50 acres. Thereafter, the said Rangaiah Naidu sold the said 50 acres under a registered sale deed dated 19.06.1958 in favour of Rangabashyam Naidu S/o.Perumal Naidu. Subsequently, the said Rangabashyam Naidu died intestate on 16.02.1967 leaving behind his sons and daughters viz., C.R. Gajapathy, C.R.Narayana, Kousalya, Indira, Rajalakshmi, Shanthi as his legal heirs. Subsequently, S.No.225/1 was sub-divided and S.No.225/1A 1A was allotted to the aforesaid 50 acres and a joint Patta No.563 was issued in the name of the legal representatives of Rangabashyam Naidu and several other persons. The legal representatives of Rangabashyam Naidu through their

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power agent C.R. Gajapathy executed a sale deed dated 21.03.2013 in favour of the first respondent herein in respect of the entire extent of 50 acres situated in S.No.225/1A 1A (part) and from the date of the said purchase, the first respondent herein is in possession and enjoyment of the said property.

5. Their further case is that after purchase of the said property, the first respondent came to know that its vendors have filed a suit in O.S.No.5 of 2006 on the file of the District Munsif Court, Ponneri for permanent injunction against the appellants herein and the said suit came to be dismissed on 23.02.2013 for certain defects in the suit, against which, the appellants herein have filed an appeal before the Sub-Court, Ponneri in A.S.No.72 of 2015 and the same is still pending. In the meanwhile, the first respondent herein made a representation dated 16.04.2013 to the third respondent herein for issuance of a separate patta for the lands purchased by the first respondent herein. Since there was no response from the third respondent herein, the first respondent herein has filed the WP.No.19580 of 2013 before this court to direct the third respondent herein to consider the representation of the first petitioner herein. This court by the order dated 05.12.2013, directed the third respondent herein to consider the first respondent's representation and pass order and only thereafter, the third respondent took the matter for enquiry and ultimately passed an order on 20.10.2014 rejecting the representation of the first

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respondent herein. Aggrieved by the said order, the first respondent herein has filed an appeal before the second respondent herein. The appellants herein also preferred an appeal to the second respondent herein. The second respondent herein by the common order dated 29.12.2015, has rejected the first respondent's appeal. However, he allowed the appeal filed by the appellants herein and directed the third respondent herein to make necessary amendment in the patta. Feeling aggrieved, the first respondent herein has filed WP.No.1454 of 2016.

6. The case of the appellants is that the properties situated in RS.No.225/1 of Eguvarpalayam Village was an Inam properties and on the introduction of Estates Abolition and Ryotwari Conversion Act of 1948, the said properties vested with the Government as per Section 3 of the said Act. The Assistant Settlement Officer held an enquiry and granted patta No.1129 in favour of one Nandimandalam Himachalapathy Raja and others in respect of 200 acres. The said Nandimandalam Himachalapathy Raja and others had conveyed a total extent of 170 acres in favour of appellants herein under various sale deeds and subsequently appellants have sold 30 acres to some other persons and remaining lands are with them and therefore, the first respondent herein and its vendors have no right over the said properties. Their further case is that the vendors of the first respondent herein have filed a suit in O.S.No.5 of 2006

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against the appellants on the file of the District Munsif, Ponneri, for the relief of permanent injunction restraining them from interfering with their possession and enjoyment of the property measuring 50 acres situated in S.No.225/1 of Eguvarpalayam Village and the learned District Munsif, after full trial, has dismissed the said suit on 22.02.2013 holding that the plaintiffs therein failed to prove that they are in possession of the said property. Their further case is that the third respondent herein without considering the fact that the suit which was filed by the vendors of the first respondent herein was dismissed, directed the parties to approach the civil court and get declaration of title, but the appellate authority (second respondent herein) has rightly held that since already the suit which was filed by the vendors of the first respondent herein came to be dismissed, the first respondent herein cannot claim patta and directed the third respondent herein to delete the name of the vendors of the first respondent in the joint patta.

7. Heard Mr.T.Velumani, learned counsel for the appellants and Mr.V.Lakshmi Narayanan for the first respondent and Mr. A.Ansar, learned Government Advocate for the respondents 2 and 3.

8. Learned counsel for the appellants has submitted that the suit which was filed by the vendors of the first respondent herein seeking permanent injunction restraining the appellants

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herein was dismissed by the learned District Munsif, Ponneri, holding that the plaintiffs therein failed to prove title and also possession over the properties, but without taking into consideration of the aforesaid facts, the Tahsildar, Gummidipoondi (third respondent herein) by the order dated 20.10.2014 has directed the parties to approach the civil court and get appropriate relief and only thereafter, the proceedings for transfer of patta can be issued. He further submitted that as against the said order, the first respondent herein has filed an appeal before the Revenue Divisional officer of Ponneri (second respondent herein). Likewise, the appellants herein also filed an appeal before the same authority. He further submitted that the appellate authority (second respondent herein) by the order dated 29.12.2015, taking into consideration, already the suit which was filed by the vendors of the first respondent herein came to be dismissed by the District Munsif, Ponneri, set aside the order passed by the Tahsildar. Gummidipoondi and directed the Tahsildar to delete the name of the first respondent herein in the joint patta No.563. He further submitted that under the said circumstances, the direction of the learned Judge that all the revenue proceedings including the impugned order are kept in abeyance till the conclusion of the civil litigation between the parties, is not sustainable and therefore, he prayed to allow this appeal and set aside the order passed by the learned Judge in WP.No.1454 of 2016 dated

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10.08.2018.

9. Per contra, learned counsel for the first respondent/writ petitioner has submitted that based on the observation made by the learned District Munsif, Ponneri in the judgment passed in O.S.No.5 of 2006 that the defendants are in possession of the suit property, the second respondent herein has passed the order dated 29.12.2015 directing the third respondent to remove the name of the vendors of the first respondent herein from the joint patta No.563. He further submitted that in the suit filed by the vendors of the first respondent, the learned District Munsif ought not have given a finding that the defendants are in possession of the suit property. He further submitted that against the said finding and dismissal of the suit, the vendors of the first respondent herein have filed an appeal before the Sub-court, Ponneri in A.S.No.72 of 2014 and the same is still pending. He further submitted that since there is a dispute with regard to the title, the said question has to be decided only by the civil court and not by the revenue authorities. He further submitted that as per Rule 4 of the Tamilnadu Patta Pass Book Rules, 1987, when there is a dispute regarding title, the authority concerned has to direct the parties to approach civil court without making any alteration in the patta and hence the learned Judge has rightly passed an order to keep in abeyance of the revenue proceedings till the conclusion of the civil litigation between

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the parties and therefore, he prayed to dismiss the above writ appeal.

10. In support of the aforesaid contentions, the learned counsel for the first respondent/writ petitioner has relied upon the decision of this court in *A. Asirul Fasil Vs. District Revenue Officer (WP (MD) No.12676 of 2011 dated 04.04.2014)* reported in *LNIND 2014 MAD 3840.*

11. This court has given careful consideration to the rival submissions made on behalf of both sides and also perused the materials available on record.

12. The undisputed facts are as follows:-

The vendors of the first respondent herein/writ petitioner have filed a suit in O.S.No.5 of 2006 on the file of the District Munsif, Ponneri, against the appellants herein for the relief of permanent injunction restraining them from interfering with their peaceful possession and enjoyment of the properties measuring about 50 acres of agricultural lands situated in R.S.No.225/1 of Eguvarpalayam Village (previously known as Kumara Muthu Venkatabarathapuram, Mangalapalayam village) Gummidipoondi Taluk, Tiruvallur District. The learned District Munsif, Ponneri, by the judgment and decree dated 22.02.2013, has dismissed the said suit by holding that the plaintiffs therein have failed to prove their possession. Aggrieved by the same, the plaintiffs therein have filed an appeal in A.S.No.72 of 2014 on the file of the Sub-Judge,

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Ponneri and the same is still pending. After dismissal of the aforesaid suit, the first respondent herein has purchased the properties covered under the aforesaid suit from the plaintiffs therein under a registered sale deed dated 21.03.2013 and thereafter, he submitted an application before the Tahsildar, Gummidipoondi Taluk (third respondent herein) stating that the Patta No.563 has been issued jointly in favour of one Nandimandalam Himachalapathy Raja and 11 others and since he has purchased the aforesaid property, his name should be entered in the patta passbook and the names of other persons have to be deleted. The Tahsildar, after conducting enquiry, by the order dated 20.10.2014 has directed the parties to approach the civil court and get appropriate order and only thereafter, the proceedings with regard to the transfer of patta can be entertained. Aggrieved by the said order, the first respondent herein and also the appellants herein have filed appeals before the Revenue Divisional Officer, Ponneri (the second respondent herein).

13. The second respondent herein relying upon the observations made by the learned District Munsif, Ponneri in the judgment passed in O.S.No.5 of 2006, by the order dated 29.12.2015 has dismissed the appeal filed by the first respondent herein and allowed the appeal filed by the appellants herein and directed the Tahsildar, Gummidipoondi (third respondent herein) to delete the names of the vendors of the

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first respondent in the joint patta No.563.

14. At this juncture, it would be relevant to refer to Section 14 of the Tamil Nadu patta Pass Book Act, 1983 which reads thus:

"14. *Bar of suits:- No suit shall lie against the Government or any officer of the Government in respect of a claim to have an entry made in any Patta Pass-book that is maintained under this Act or to have any such entry omitted or amended:*

> *Provided 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, for a declaration of his rights under Chapter VI of the Specific Relief Act, 1963 (Central Act 47 of 1963); and the entry in the Patta Pass-book shall be amended in accordance with any such declaration."*

15. A plain reading of the proviso attached to the Section 14 of the aforesaid Act would show that if any person is aggrieved as to any entry made in the Patta Pass Book, he may institute a suit against any person denying his title or right, for a declaration of his rights under Chapter VI of the Specific Relief Act, 1963 and the entry in the Patta Pass Book shall be amended in accordance with any such declaration. In this case, the suit in O.S.No.5 of 2006 on the file of the District Munsif, Ponneri was filed by the vendors of the first respondent herein

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for bare injunction only. The learned District Munsif while holding that the plaintiffs therein failed to prove their possession has made observation that the defendants therein are enjoying the suit property. Based on the said observation, the second respondent ought not to have directed the third respondent herein to make necessary amendment in the joint Patta No.563. Because in the said suit, title of the appellants herein not declared.

16. In *C.Sabesan Chettiar (Deceased) and others vs. The District Revenue Officer, Coimbatore District, Coimbatore on 11th August, 2011 (5) CTC 241*, a Division Bench of this court, after referring to the decision in *Samsuddin Rowther And Anr. vs Avvammal and Others, 1992 (2) MLJ 252* has held that when there is a dispute between the rival parties touching upon the title to the property the competent forum would be only the civil court and not the revenue authorities.

17. In *Vishwas Footwear Company Ltd., Vs. The District Collector, Kancheepuram and others, 2011 (5) CTC 94*, a Division Bench of this court after referring to the earlier Division Bench decision of this court in *Kuppuswami Nainar Vs District Revenue Officer, Tiruvannamalai and others 1995 (1) MLJ 426* and *Chockkappan and two others Vs. State of Tamilnadu 2004 (1) CTC 136* has observed in paragraph No.21 as follows :

> *"21. In the light of the judgments in Kuppuswami Nainars case and Chockkappans case, the person who*

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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."

18. In *A. Asirul Fasil Vs. District Revenue Officer,* (supra), this court after referring to the decisions in *Vishwas Footwear Company Ltd., Vs. The District Collector, Kancheepuram and others, Kuppuswami Nainar Vs District Revenue Officer, Tiruvannamalai and others*, and *C.Sabesan Chettiar (Deceased) and others vs. The District Revenue Officer, Coimbatore District, Coimbatore*, has observed in paragraph Nos.22 and 23 as follows:

"22. As per Rule 4 of the Patta Pass Book Rules, when there is a dispute regarding title, the authority concerned can relegate the parties to civil court without making any alteration in the patta. Insofar as the impugned proceedings passed by

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the second respondent is concerned, the patta that stood in the name of the petitioner has been cancelled after going into the title, which the second respondent cannot do. He has also not relegated the parties to the civil Court. On this ground, the impugned proceedings of the second respondent, is set aside.

23. Insofar as the order of the first respondent, he has rightly refused to go into the title, but has relegated the petitioner to approach this Court instead of a civil court. The nature of the dispute is such that oral as well as documentary evidences have to be let in. As held above, only a civil court can decide the title dispute between the parties. Therefore, with the above modification, the order of the first respondent is sustained. Either of the party may approach the civil Court to confirm their title and possession. Normally, once the impugned proceedings of the second respondent is set aside, the patta would get restored in the name of the petitioner. Since, the identification of the property itself is in question, the issuance of patta is directed to be kept under abeyance until disposal of the civil suit and the third respondent is directed to issue patta to the appropriate party succeeding in the civil suit. The civil Court shall decide the suit based on the documentary as well as oral evidence excluding the findings of the revenue authorities challenged in this writ petition. "

19. From the aforesaid decisions, also it is clear that when there is a dispute regarding title, the authority concerned has to direct the parties to approach the civil court without

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making any alteration in the patta. Therefore, the impugned proceedings of the second respondent herein is liable to be set aside.

20. The learned Judge in the order passed in W.P.No.1454 of 2016 in paragraph Nos.6 and 7 has observed as follows:

> *"6. Admittedly, in the present case, the respective parties namely, the writ petitioner and the respondents 3 to 6 had already approached the competent Civil Court and a Civil Suit in O.S.NO.40 of 2015 is pending before the Competent Civil Court. The Suit was filed for declaration to set aside the sale deed and for the consequential relief. This apart, A.S.No.72 of 2015 filed against the judgment and Decree passed in O.S.No.5/2006 is also pending before the Sub Court, Ponneri. Thus, the civil litigations now pending between the parties are to be adjudicated and to be concluded in all respects. Only thereafter, the respective parties are at liberty to submit a fresh application for grant of patta, cancellation of patta, alterations or modifications in the revenue records. The exercise of grant of patta or cancellation of patta or modifications can be done by the competent authorities only after the conclusion of the civil litigations and thereafter, based on the records available.*
>
> *7. This being the factum of the case, all the revenue proceedings including the impugned order and other connected orders issued under the provisions of the Patta Pass Book Act are kept in abeyance till the conclusion of the civil litigations between the*

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parties. After the conclusion of the civil litigations between the parties, the respective parties are at liberty to approach the revenue officials by submitting a fresh application for necessary relief."

21. As already pointed out that the suit in O.S.No.5 of 2006 was filed by the vendors of the first respondent herein for bare injunction only. The suit filed by the appellants herein in O.S.No.40 of 2015 on the file of the District Munsif, Ponneri, also not for declaration of their title. On the contrary, they have filed the said suit to grant a permanent injunction restraining the defendants therein from interfering with their peaceful possession of the suit property; to declare that the sale deed dated 25.03.2013 executed by the first defendant therein in favour of the second defendant therein is null and void and for permanent injunction restraining the second defendant therein from alienating or encumbering the suit property to any third party. So, it is clear that neither the appellants herein nor the first respondent herein have filed a suit for declaration of title in compliance of the proviso attached to the Section 14 of the Tamil Nadu Patta Pass Book Act, 1983. Therefore, the observation made by the learned Judge that the civil litigations now pending between the parties are to be adjudicated and to be concluded in all respects and only thereafter, the respective parties are at liberty to file a fresh application for grant of patta, the cancellation of patta,

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alteration or modification and the revenue records requires modification.

22. It is open to either or both the parties to file civil suits to declare their title as contemplated under the proviso of Section 14 of the Tamil Nadu Patta Passboook Act, 1983 and get a decree and thereafter, they can submit applications before the revenue authorities for grant of patta, transfer of patta, cancellation of patta, alteration or modification in the revenue records. Once the impugned proceedings of the second respondent herein is set aside, the joint patta would get restored. Since the identification of the property itself is in question, the issuance of patta is directed to be kept under abeyance until disposal of the civil suits if any filed by any one or both the parties and the third respondent herein is directed to issue patta to the appropriate party succeeding in the civil suits after following the due process of law and adhering to the principles of natural justice.

23. The writ appeal is disposed of with the above observations. No costs. Consequently, connected miscellaneous petition is closed.

gv

Sd/-
Assistant Registrar(CS)

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Sub Assistant Registrar

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To

1. The Revenue Divisional Officer,
   Ponneri Revenue Division,
   Ponneri - 601 204.

2.The Tahsildar,
   Gummidipoondi Taluk Office,
   Tiruvallur District.

+ 1 cc to Mr.R.MUNUSWAMY, Advocate SR.No.141

+ 1 cc to Mr.T.VELUMANI, Advocate Sr 393

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W.A. No.2585 of 2018
and
CMP.No.20994 of 2018

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