BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
Dated : 25.03.2019
CORAM
THE HONOURABLE MR.JUSTICE **K.KALYANASUNDARAM**
AND
THE HONOURABLE MRS.JUSTICE **R.THARANI**

W.A.(MD)No.1150 of 2014
and
W.P(MD)Nos.16982, 17209 and 17806 of 2015 and 14352 of 2018
and
W.M.P.(MD).Nos.1 of 2014, 1 to 3 of 2015, 2 to 4 of 2015, 2 and 3 of 2015 and 13002 of 2018

W.A.(MD)No.1150 of 2014

M.Balasubramanian .. Appellant/Petitioner

Vs.

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

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

3.The Thasildar,
Ram Nagar, Devakottai,
Sivagangai District.

4.S.Venkatachalam
5.Mariyammal
6.Mariyappan
7.Muthu
8.M.Thangavelu

9.R.Baskaran
10.R.Natarajan
11.R.Sathaiya
12.Muthaiya
13.K.R.Radhakrishnan
14.K.R.Manickam
15.K.R.Ganesan
16.A.Kannan
17.P.Murugesan
18.S.Rajendran
19.Karthikeyan

20.Manoharan
21.Pandian

22.R.Shanmuganathan
23.Sathasivam
24.Manickam
25.B.Sakthi
26.Pitchipillai
27.P.Panchavaranam ..Respondents

PRAYER: Appeal filed under Clause 15 of Letter Patent, against the order dated 04.09.2014 passed by this Court in W.P.No.11421 of 2014.

Prayer in WP(MD). 11421/ 2014 :
This Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, calling for records pursuant to the order passed by the 1st respondent in Pa. Mu.P1 - 10567 – 2013, dated 10.06.2014, quash the same.

For Appellant : Mr.M.Subash Babu

For Respondents : Mr.VR.Shanmuganathan
Special Government Pleader
(for R1 to R3)

: Mr.RM.Arun Swaminathan
(for R4)

: Mr.N.Sivakumar
(forRR9, 10,12 to 16, 18, 19, 22 to 24)

: Mr.D.Rameshkumar (for R27)

W.P.(MD) No.16982 of 2015

A.Kannan .. Petitioner

Vs.

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

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

3.The Thasildar,
Devakottai, Sivagangai District.

4.The Village Administrative Officer Iravuseri Group,
Iravuseri Village, Devakottai,
Sivagangai District.

5.Venkatachalam ..Respondents

PRAYER: Petitioner filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus to call for the records in Pa.Mu.P1 10567/2013, dated 10.06.2014, on the file of the first respondent and to quash the same and direct the first respondent to dispose of the petitioner's review dated 23.06.2015.

For Petitioner : Mr.N.Sivakumar

For Respondents : Mr.VR.Shanmuganathan
Special Government Pleader
(for R1 to R4)

: Mr.B.Vinoth Balan
(for R5)

W.P.(MD) No.17209 of 2015

1.N.Ekambaram
2.N.Karthik .. Petitioners

Vs.

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

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

3.The Thasildar,
Devakottai, Sivagangai District.

4.The Village Administrative Officer Iravuseri Group,
Iravuseri Village, Devakottai,
Sivagangai District.

5.Venkatachalam ..Respondents

PRAYER: Petitioner filed under Article 226 of the Constitution of India to issue a Writ of Certiorarified Mandamus to call for the records in Pa.Mu.P1 10567/2013, dated 10.06.2014, on the file of the first respondent and to quash the same and direct the first respondent to dispose of the petitioner's review dated 17.06.2015.

For Petitioners : Mr.N.Sivakumar

For Respondents : Mr.VR.Shanmuganathan
Special Government Pleader
(for R1 to R4)

: Mr.RM.Arun Swaminathan
(for R5)

W.P.(MD) No.17806 of 2015

1.K.Murugesan
2.M.Vasantha .. Petitioners

Vs.

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

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

3.The Thasildar,
Devakottai, Sivagangai District.

4.The Village Administrative Officer (Iravuseri Group),
Iravuseri Village, Devakottai,
Sivagangai District.

5.Venkatachalam ..Respondents

PRAYER: Petitioner filed under Article 226 of the Constitution of India to issue a Writ of Mandamus, to dispose petitioner review dated 01.07.2015 pending before the first respondent against ordered passed by him in Pa.Mu.P1 10567/2013, dated 10.06.2014, passed by the first respondent.

For Petitioners : Mr.N.Sivakumar

For Respondents : Mr.VR.Shanmuganathan
Special Government Pleader
(for R1 to R4)

: Mr.B.Vinoth Balan
(for R5)

W.P.(MD) No.14352 of 2018

S.Venkatachalam .. Petitioner

Vs.

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

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

3.The Thasildar,
Devakottai, Sivagangai District.

4.The Sub Registrar, Devakottai.

5.M.Balasubramanian ..Respondents

PRAYER: Petitioner filed under Article 226 of the Constitution of India to issue a Writ of Mandamus, to direct the third respondent to transfer the patta in the petitioner's name by implementing the proceedings of the first respondent in Pa.Mu.B1/10567-2013, dated 10.06.2014.

For Petitioner : Mr.RM.Arun Swaminathan
For Respondents : Mr.VR.Shanmuganathan
Special Government Pleader
(for R1 to R4)

COMMON JUDGMENT

[Judgment of the Court was delivered by **K.KALYANASUNDARAM., J.**]

W.A.(MD)No.1150 of 2014 is preferred questioning the order of the learned Single Judge in W.P.(MD)No.11421 of 2014, dated 04.09.2014. The writ petitions have been filed to quash the order of the District Revenue Officer, dated 10.06.2014.

2.The facts leading to filing of these cases would run thus:-

One Mr.Swarnam, the father of the fourth respondent herein namely S.Venkatachalam preferred a petition before the Revenue Divisional Officer, Devakottai stating that the lands measuring an extent of 0.14 acre in S.No.171/4 and 1.5 acres in S.No.171/6, Iravucheri Village, Devakottai Taluk, are ancestral properties of his grandfather Muthiah Ambalam, which were registered in the settlement 'A' Register and he was issued with patta No.218. When there is no alienation of the properties, the Tahsildar, Devakottai, has issued patta in the name of Dhanapackiyam and others and also ordered sub-division of S.No.171/6. Hence, the patta issued in favour of the private parties should be cancelled.

3.One Mariammal, who was shown as 10^{th} respondent in the petition appeared before the Revenue Divisional Officer and stated that her husband purchased the property through a registered sale deed in the year 1947. As such they have been in possession of the properties for more than 50 years by constructing a house. One Mariappan, S/o. Ganapathiyapillai, who was arrayed as 2^{nd} respondent in the petition opposed the petition contending that the property was purchased by his father and subsequently, they divided the property in a family partition and also constructed a terrace house and residing therein. Balasubramaniyam, the 3^{rd} respondent in the petition stated that he purchased the property from one Panchavarnapillai in the year 1986 and thereafter, he constructed a house and he is in possession and enjoyment of the same. Baskar, the 5th respondent in the petition contended that the property in dispute belongs to one Sivakamiachi. One Vellachamy, S/o.Madasamy purchased the property and subsequently, it was partitioned on 29.08.1970. He has put up construction and he is in enjoyment of the property. Likewise, the 6th and 9th respondents in the petition appeared before the Revenue Divisional Officer by producing registered sale deeds of the year 1920, 1948 and 1979 objected stating that they are residing in the property in question.

4.During the enquiry conducted by the Revenue Divisional Officer, the copies of the sale deeds of the year 1947, 1972 and 1979 were produced. Since the said Swarnam has not produced any other document except 'A' Register, Revenue Divisional Officer directed the said Swarnam to approach the civil Court to establish his right. The matter was taken up to the District Revenue Officer/the first respondent herein, by way of revision. It seems that in the revision petition no proper address for service on the respondents was furnished and the legal heirs of the deceased respondents were not brought on record and only some of the respondents appeared before the first respondent during the enquiry.

5. A perusal of the impugned order reveals that the first respondent conducted roving enquiry and by incorporating some of the observations made by the second respondent in his order, came to the conclusion that the respondents have not produced any documents to establish their title and they should have verified the right of his vendors and eventually set aside the order of the Revenue Divisional Officer and directed the Tahsildar, Devakottai, to transfer the patta in the name of Muthiah Ambalam and to issue patta to his legal heirs.

6. Heard Mr.M.Subash Babu, learned counsel for the appellant in W.A.(MD)No.1150 of 2014, Mr.N.Sivakumar, learned counsel for the petitioner in W.P.(MD)Nos.16982, 17209 and 17806 of 2015, Mr.RM.Swamynathan, learned counsel for the petitioner in W.P.(MD) No.14352 of 2018, Mr.VR.Shanmuganathan, learned counsel for the official respondents, Mr.D.Rameshkumar and Mr.B.Vinoth Balan, learned counsel for the private respondents and perused the materials available on record.

7. The petitioner in W.P.(MD)No.16982 of 2015 would state that the house property in S.No.171/6A3 was originally owned by his grand parents, by virtue of a sale deed dated 04.05.1932 registered as Document No.559 of 1932 and it was settled in favour of his father by a registered deed of settlement, dated 14.03.2011 and after his demise, he became the absolute owner of the property and he has been in possession and enjoyment of the same.

8. N.Ekambaram, the petitioner in W.P.(MD)No.17209 of 2015 would claim that the property in S.No.171/4 and properties in

S.No.171/4 and 171/6 originally belonged to one Avudaiyappan Chervai, S/o. Swarnam Chervai and the properties were sold in Court auction and one Ramachettiar was the successful bidder and sale deed was registered in his favour on 04.01.1890 as Document No.13/1890 in the office of the SRO, Devakottai. Thereafter, it was sold to one Pethuperumal, S/o. Thanikudi Thevar by a sale deed dated 28.09.1905, registered as Document No.1593/1905. Again, the property was sold to one Srinivasa Chettiar on 10.09.1909, registered as Document No.2416/1909 and thereafter the property was sold to one Kaliammal in the year 1935. Thereafter, it was purchased by Maharajanpillai, Muthuramalingampillai, who are none other than the grandfather of the vendor. In the year 1982, he constructed a house and patta, property tax and EB connection were also obtained. After his demise, his wife Dhanapackiyam and his children obtained patta in the year 1996 and thereafter they sold the property in favour of the petitioners.

9. K.Murugesan, the petitioner in W.P.(MD)No.17806 of 2015 would claim that he along with his wife purchased the property in S.No.171/6 by way of sale deed, dated 2.07.2007, registered as Document No.2517/2007 on the file of SRO, Devakottai. According to him, the property was originally owned by one Mariyayi, W/o. Subbaiya Pillai and it was inherited by Chidambaram, S/o. Periyasamy and he sold the said property to one Manickkam in the year 1973 and thereafter the said property was sold to one M.Sundari in the year 2002 in Document No.587/2002 and he purchased the same in the year 2007.

10. In the affidavits filed in support of the above writ petitions, it has been stated that the fifth respondent Mr.Venkatachalam was never and ever in possession of the property in question. The name of one Muthiah Ambalam was found in the 'A' Register and Adangal and Ryotwari patta as per 1948 settlement. According to them, the fifth respondent by misusing this wrong entry initiated proceedings before the second respondent. Pursuant to the order of the second respondent, the fifth respondent has instituted a suit in O.S.No.99 of 2013 before the Sub Court, Devakottai.

11. The said Venkitachalam filed W.P(MD)No.14352 of 2018 for issuance of writ of Mandamus directing the third respondent to transfer the patta in his name by implementing the proceedings of the first respondent dated 10.06.2014.

12. The appellant in W.A(MD)No.1150 of 2014 would state that he became the owner of the property in S.No.171/6E3 to an extent of 0.01.30 sq.ft in the year 1986, through a registered sale deed and he has been in possession and enjoyment of the property.

13. From the perusal of the materials, it is evident that there is a rival claim over the property in S.Nos.171/4 and 171/6. The writ petitioners except S.Venkatachalam, lay their claim on the

basis of their registered sale deeds from the year 1932. It is not in dispute that the Tahsildar, Devakottai issued patta in favour of the appellant in W.A(MD)No.1150 of 2014. In the appeal filed before the Revenue Divisional Officer, Devokkottai, after considering the facts and materials produced before him, he rightly relegated the parties to the competent civil Court to establish their claim. However, the first respondent/District Revenue Officer having found that proper address was not given for service of notice on the respondents, started scrutinizing the documents produced before him, gave a finding that without verifying the rights of their vendor, they purchased the properties and the respondents have not appeared before him to establish their rights and directed the Tahsildar to transfer the patta in favour of Muthiah Ambalam and thereafter, issued patta in favour of his legal heirs.

14. A similar issue came up for consideration before the Division Bench of this Court in **2011(5) CTC 94** [Vishwas Footwear Company Limited Vs. The District Collector, Kancheepuram and others], wherein it has been observed as follows:

> "...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 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. <u>The Revenue Divisional Officer, having gone</u>

> 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..."

15. The Division Bench in the above said judgment has held that the Revenue authorities have no jurisdiction to decide the title of the property. In the case on hand also, the District Revenue Officer meticulously gone into the merits of the matter and held that the properties are an ancestral property of the said Venkatachalam and there is no proof to show that they sold the property to the third parties, hence, the vendors had no salable right in the properties. It is the specific case of the petitioners that they purchased small extent of lands long back by way of registered sale deeds and they have been in possession and enjoyment of the same by putting up construction. There is a rival claim over the immovable property. Keeping in view the principles laid down in the decisions referred and the facts of this case, in the considered opinion of this Court, the order impugned in these cases are liable to be set aside. Accordingly, they are set aside. Since Venkatachalam had already instituted a suit before the civil Court, the parties are directed to establish their claim before the civil Court.

16.In the result, the order passed in W.P.(MD) No.11421 of 2014 is set aside. W.P.(MD) Nos.16982, 17209 and 17806 of 2015 and the writ appeal in W.A.(MD) No.1150 of 2014 are allowed.

17. In view of the above order, the petitioner in W.P.(MD) No.14352 of 2018 is not entitled for the relief sought for in his writ petition. In that view W.P.(MD) No.14352 of 2018 is dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar()

// True Copy //

Sub Assistant Registrar(CS)

skn

To

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

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

3.The Thasildar,
Ram Nagar, Devakottai,
Sivagangai District.

4.The Village Administrative Officer Iravuseri Group,
Iravuseri Village, Devakottai,
Sivagangai District.

5.The Sub Registrar, Devakottai.

+1CC TO MR.RM.ARUN SWAMINATHAN, Advocate Sr. No.56757
+1CC TO MR.N.SIVAKUMAR, Advocate Sr. No.56470
+1CC TO MR.SUBASH BABU, Advocate Sr. No.57071
+1CC TO THE SPECIAL GOVERNMENT PLEADER SR.No.56924

W.A.(MD)No.1150 of 2014
and
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and
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DB(CO)
TR (17.06.2019) 14P 10C