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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 14.08.2019

CORAM:

THE HONOURABLE Mr.JUSTICE R.SURESH KUMAR

W.P. (MD) No.17836 of 2019

and

W.M.P. (MD) No.14300 of 2019

Rosammal

... Petitioner

Vs.

1.The Revenue Divisional Officer,
Ramanthapuram.

2.The Tahsildar,
Thiruvadanai,
Ramanathapuram District.

3.Stella

... Respondents

Prayer: The petition is filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus, forbearing the first respondent from conducting the enquiry in proceedings in Na.Ka.No.A5/787/2018 dated 23.06.2018 in respect of the land bearing S.No.224/44, Vattanam Village, Thiruvadanai Taluk, Ramnad District.

For Petitioner : Mr.PT.S.Narendravasan

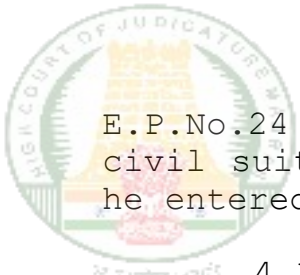
For Respondents : Mr.M.Rajarajan, G.A. For R1 & R2

O R D E R

The prayer in the Writ petition is for a Writ of Mandamus, forbearing the first respondent from conducting the enquiry in proceedings in Na.Ka.No.A5/787/2018 dated 23.06.2018 in respect of the land bearing S.No.224/44 at Vattanam Village, Thiruvadanai Taluk, Ramnad District.

2.Heard Mr.PT.S.Narendravasan, learned counsel for the petitioner and Mr.M.Rajarajan, learned Government Advocate appearing for the respondents 1 and 2.

3.In respect of the above said land, patta has already been given in favour of the petitioner. In this regard, a civil suit has already been filed by the petitioner in O.S.No.21 of 2016 on the file of the District Munsif Court, Thiruvadanai, where the civil court passed a judgment and decree on 25.07.2016 in favour of the petitioner. Pursuant to which, an execution petition in



E.P.No.24 of 2016 also had been filed, which is pending. In the civil suit, the husband of the 3rd respondent also was a party and he entered appearance in execution petition also.

4. In the mean while, it seems that the third respondent had given an appeal before the first respondent as against the patta already issued by the 2nd respondent in favour of the petitioner. Therefore, in order to decide the said appeal, the first respondent already issued notice on 23.06.2018 to both the petitioner as well as the third respondent. On receipt of the said notice, the petitioner appeared before the first respondent and filed a counter statement stating that the civil court has already passed a judgment and decree in favour of the petitioner, where execution petition is also pending and in that execution petition, the third respondent also entered appearance.

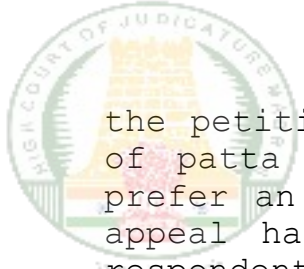
5. Despite the fact having been brought to the notice of the first respondent, the first respondent recently issued yet another notice dated 15.05.2019, fixing a hearing date on 06.08.2019 whereby, the first respondent directed both the petitioner as well as the third respondent to appear on 06.08.2019, towards conducting an enquiry.

6. Aggrieved over the said action on the part of the first respondent in compelling the petitioner to appear before the first respondent again and again and to proceed an enquiry independently, unmindful of the civil court decree having been passed in this regard, though the same has been brought to the notice of the first respondent, the petitioner has approached this Court with the aforesaid prayer in this Writ petition.

7. Heard the learned counsel for the petitioner, who would submit that, a civil court passed a decree where the third respondent's husband is also a party and the said decree having become final as admittedly no appeal has been filed and in order to execute the said civil court decree execution petition had also been filed by the petitioner where the third respondent entered appearance in execution petition and filed an execution application for some other relief and the same is also pending consideration before the concerned civil Court.

8. When these developments have already been brought to the notice of the first respondent, unmindful of the same, the first respondent again and again issued notice to proceed the enquiry on its own merit independently on the appeal filed by the 3rd respondent. Therefore, the first respondent has to be restrained by way of issuance of mandamus by this Court.

9. I have heard the learned Government Advocate appearing for the respondents 1 and 2, who would submit that, no doubt a civil court decree could have been passed in favour of the petitioner, where an Execution Petition also could have been pending between



the petitioner and the third respondent. However, since any order of patta issued by the Tahsildar concerned, aggrieved party can prefer an appeal under Patta Pass Book Act. Therefore, when such appeal has been filed before the first respondent by the third respondent, the same would come to an end after conducting an enquiry and only in order to complete the enquiry and to pass orders on merits on the said appeal filed by the third respondent, the first respondent issued a notice to both the petitioner as well as the third respondent to appear before him and to put forward their case. Therefore, the said move on the part of the first respondent, which is the statutorily duty under the provisions of the Patta Pass Book Act, cannot be curtailed or restrained. Therefore, the prayer sought for by the petitioner to issue a mandamus, prohibiting the first respondent from enquiring the appeal filed by the third respondent, cannot be entertained.

10.I have heard the learned counsel appearing for both sides and perused the materials placed before this Court.

11.As has been pointed out by the learned counsel for the petitioner that there has been a civil court decree and that has become final, admittedly as no appeal has been filed and in the civil court decree, the husband of the third respondent is also a party. Therefore, stepping into the shoes of the husband only, the third respondent seems to have filed an appeal against the order passed by the Tahsildar issuing patta in favour of the petitioner on the subject land and therefore, the aforesaid development taken place in the civil court where the petitioner already obtained a civil court decree in his favour, can very well be taken into account by the first respondent.

12.In that view of the matter, this Court is inclined to dispose of this Writ petition with the following direction. That the first respondent pursuant to the said notice dated 15.05.2019, can complete the enquiry, after hearing both the petitioner as well as the third respondent, and in this regard, the first respondent shall take into account the civil court decree passed by the competent civil court ie., District Munsif Court, Thiruvadanai in O.S.No.21 of 2016 dated 25.07.2016 and in view of the said civil Court decree, the first respondent shall pass necessary orders on the appeal filed by the third respondent strictly in accordance with the civil Court decree as the civil Court decree is binding both the parties, beyond which, no orders can be passed. Therefore, having the same in mind, the first respondent can dispose of the appeal filed by the third respondent of course after hearing both parties.



13. With these observations and directions, this Writ petition is disposed of. No costs. Consequently, connected W.M.P. is closed.

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Sd/-

Assistant Registrar

// True Copy //

Sub Assistant Registrar (CS)

nbj

To

1. The Revenue Divisional Officer,
Ramanthapuram.

2. The Tahsildar,
Thiruvadanai,
Ramanathapuram District.

+1CC TO MR. PT. S. NARENDRA VASAN, Advocate Sr. No. 81597

+1CC TO THE SPECIAL GOVERNMENT PLEADER SR. No. 81925

W.P. (MD) No. 17836 of 2019
14.08.2019

TR (19.08.2019) 4P 5C