

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.03.2020

CORAM

THE HONOURABLE MR. JUSTICE N. ANAND VENKATESH

W.P.No.7603 of 2019
and
W.M.P.No.8239 of 2019

M. Pradeepan

... Petitioner

Vs.

1.The District Collector,
Krishnagiri District,
Krishnagiri.

2.The Tahsildar,
Bargur Taluk.
Krishnagiri District.

3.Bharath
4.Vanitha

... Respondents

Prayer: Writ petition filed under Article 226 of the Constitution of India, praying for the issuance of writ of certiorarified mandamus, calling for the records of the second respondent pertaining to his entry in computerized patta No.529 dated 26.02.2019 and quash the same and direct the second respondent to dispose of the petitioner's appeal dated 14.03.2018 in Appln.No.2018/0103/31/057471 in a manner known to law.

For Petitioner: Mr. C. Umashankar
for M/S. R.Gopinath

For Respondents: Mr. E. Balamurugan, for R1 & R2
Special Government Pleader
M/s. T. Dharani, for R3

O R D E R

This writ petition has been filed challenging the entry made in the computerized patta dated 26.02.2019 and for a consequential direction to the second respondent to dispose of the representation/objection made by the petitioner on 14.03.2018.

2. The case of the petitioner is that one T.S.Balu @ Balachandran had inherited a property on the demise of his father T.N.Nagappa Chetty. A patta was also issued in his favour by the second respondent in patta No.529. The said

T.A.Balu died on 25.11.2012 leaving behind the fourth respondent. The third respondent also claimed himself to be the adopted son of the said Balu. That apart, the third respondent has also filed a suit in O.S.No.144/18 on the file of the District Court, Krishnagiri seeking for the relief of declaration to declare him as adopted son of Balu and declaration of title over the entire property and for other consequential reliefs. In the said suit, the third respondent has also sought for declaring the sale deed executed by the fourth respondent in favour of the petitioner as null and void. Incidentally, the petitioner had purchased the property from the fourth respondent by a registered sale deed dated 22.01.2018.

3. The third respondent had approached the second respondent and sought for mutation of the revenue records in his name, based on a registered will. The second respondent acted upon the said registered will and the patta was transferred in the name of the third respondent. The petitioner made an application seeking for patta on 14.03.2018. Since the same was not considered, the present writ petition has been filed before this Court.

4. The learned counsel for the petitioner submitted that the petitioner became the owner of the property by virtue of the registered sale deed dated 22.01.2018, executed by the fourth respondent. The learned counsel submitted that the very status of the third respondent is in question before a Competent Civil Court in O.S.No.144/18. The learned counsel further submitted that the second respondent ought to have waited for the final result in the suit before transferring the patta in the name of the third respondent. The learned counsel in order to substantiate his submissions relied upon BSO 31 which deals with rules for the Transfer of Registry of Holdings.

5. The second respondent has filed a counter affidavit in this case. The specific stand that has been taken by the second respondent is that there was a registered will executed in favour of the third respondent and based on the same, the patta has been transferred in the name of the third respondent. The further stand taken in the counter affidavit is that the second respondent will abide by the final decision taken in O.S.No.144/18 filed by the third respondent.

6. The learned Special Government Pleader appearing on behalf of the second respondent apart from reiterating the stand taken in the counter affidavit, submitted that the third respondent is the adopted son of one Balu who had registered and executed will in favour of the third respondent. Therefore, the second respondent had to necessarily take into consideration the registered will. The learned counsel further submitted that the mere issues of patta in favour of the third respondent does not confer any title on him and

ultimately mutation that takes place in the revenue records will depend upon the final result in the Civil Suit between the parties. Therefore, the learned counsel requested for the dismissal of the writ petition.

7. The learned counsel appearing on behalf of the third respondent submitted that the pendency of the suit in O.S.No.144/18, does not have any bearing on the entitlement of the third respondent to get the patta transferred in his name. The learned counsel further submitted that the issue involved in O.S.No.144/18 pertains to the status of the third respondent as the adopted son of deceased Balan and it also pertains to a large extent of property for which the third respondent is seeking for declaration of title. The learned counsel further submitted that the very sale deed that was executed by the fourth respondent in favour of the petitioner is put to challenge in the pending suit. Therefore, the learned counsel submitted that there are absolutely no grounds to interfere with the decision taken by the second respondent to transfer the patta in the name of the third respondent.

8. This Court has carefully considered the submissions made on either side and perused the materials available on record.

9. The issue on hand is covered by BSO 31 which deals with rules for the Transfer of Register of Holdings. The rule contemplates three classes of transfers. The first class of transfer is by virtue of voluntary action of the owner of the property. The second class of transfer happens by virtue of decree of Court or revenue sale etc. The third class of transfer happens by succession, this can be either by testamentary succession or intestate succession.

10. In the present case, the petitioner is claiming for patta by virtue of a sale deed executed by the fourth respondent who is none other than the wife of late Balu. Therefore, the petitioner is bringing the case under the class of voluntary action of the owner. The third respondent is tracing the title through a registered will executed by the deceased Balu. This right is traced to the third class of transfer which deals with right accrued by succession. The present case will fall within the intestate succession.

11. The second respondent while considering the request made by the third respondent was faced with two documents. One document was the sale deed that was executed in favour of the petitioner by the fourth respondent and the other document was a registered will executed by the deceased Balu in favour of the third respondent. Even, while the second respondent took a decision, the substantial suit in O.S.No.144/18 was pending before the District Court, Krishnagiri. Therefore, the second respondent ought to have waited for the final

decision in the said suit since the suit involved the determination of the interse right, title and interest over the properties as between the petitioner and the third respondent. The second respondent ought to have retained the patta in the name of the original owner and should have taken the decision based on the final judgment and decree in O.S.No.144/18. However, the second respondent has proceeded to grant the patta in favour of the third respondent.

12. In view of the above, there shall be a direction to the second respondent to restore the patta in the name of the original owner namely Balu @ Balachandran and await for a final decision in O.S.No.144/18 which is now pending before the District Court, Krishnagiri. Depending upon the final judgment and decree in O.S.No.144/18, the second respondent can proceed further to effect changes in the patta and grant the patta in favour of the party who succeeds before the competent civil Court. Appropriate orders shall be passed by the second respondent in this regard, within a period of four weeks from the date of receipt of copy of this order.

13. This writ petition is disposed of with the above direction. No costs. Consequently, connected miscellaneous petition is closed.

s/d-

Assistant Registrar(CS VI)

True Copy

Sub-Assistant Registrar

AT

To

1.The District Collector,
Krishnagiri District,
Krishnagiri.

2.The Tahsildar,
Bargur Taluk.
Krishnagiri District.

+1cc to Mr.T.Pappiah, Advocate, S.R.No.21094

+1cc to the Government Advocate, S.R.No.21672

PP(CO)

rli(20/05/2020)

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