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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED :**30.07.2020**

CORAM

THE HONOURABLE MR.JUSTICE **D.KRISHNAKUMAR**

W.P.(MD) No.15021 of 2011

A.Mariasoosai ...Petitioner

Vs

1.The District Revenue Officer,
Tirunelveli District.

2.The Revenue Divisional Officer,
Tirunelveli District.

3.The Tahsildar,
Tirunelveli District.

4.V.Gomathiammal ...Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, to quash the order passed in Na.Ka.No.B2/78086/2010 dated 01.10.2011 on the file of the 1st respondent, confirming the order passed in Na.Ka.No.A3/6927/2010 dated 27.10.2010 on the file of the 2nd respondent.

For Petitioner : Mr.G.Prabhu Rajadurai
For R1 to R3 : Mr.P.Kannidevan
Additional Government Pleader

ORDER

Challenging the order passed in Na.Ka.No.B2/7806/2010 dated 01.10.2011 by the 1st respondent, the present writ petition has been filed.

2.According to the petitioner, by a sale deed dated 04.06.1988, he purchased the property in S.No.2054/2A, measuring to an extent of 28.5 cents out of the total extent of 72 cents and simultaneously, the aforesaid property has been subdivided into three portions ie., 2054/2A1, 2054/2A2 and 2054/2A1. On such subdivision, the name of the petitioner's vendor was entered as the exclusive owner in respect of the property in S.No.2054/2A1, measuring to an extent of 29 cents and also a separate patta has been issued in his name.

3.Thereafter, through a registered sale deed dated 24.10.1962 executed by one M.K.Miyakhan, the father of the petitioner's vendor had purchased the aforesaid property. Hence, according to the petitioner, the property in S.No.2054/2A1 is in enjoyment of himself and his predecessors in title.

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4.At this juncture, the 4th respondent had preferred an appeal before the 2nd respondent to cancel the patta issued in favour of the petitioner in respect of the property in S.No.2054/2A1 and to transfer the same in her favour stating that the entire extent of aforesaid 72 cents in S.No.20524/2A belongs to her.

5.On such appeal, the 2nd respondent, by order dated 27.10.2010, stated that in respect of the property in S.No.2045/2A1 situated at Kandiapari Village, Tirunelveli District, patta to be transferred in the name of the 4th respondent and the 4th respondent has to file a civil suit for recovery of possession for the aforesaid property. Challenging the order dated 27.10.2010, the petitioner preferred a revision petition dated 29.11.2010 before the 1st respondent.

6.On such revision, the 1st respondent has passed an order dated 01.10.2011 stating that both the petitioner as well as the 4th respondent herein firstly have to approach the civil Court for recovery of possession on the disputed properties and rejected the petitioner's revision dated 29.11.2010. Challenging the same, the petitioner is before this Court.

7.The learned Additional Government Pleader appearing for the respondents 1 to 3 would submit that the petitioner has to approach the civil Court in the light of the decisions made by this Court in ***Kuppuswami Nainar Vs. The District Revenue Officer and others*** reported in ***(1995) 1 MLJ 426,*** in which, this Court has held 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 proceedings may express their views on the question of title, but such expression 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*

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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, 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."

8.In view of the above submissions made by the learned Additional Government Pleader and the legal principles of law laid down by this Court (cited supra), the parties concerned have to approach the civil Court, by adducing oral and documentary evidence and this Court under Article 226 of the Constitution of India cannot go in the same. Therefore, the only remedy available to the petitioner is to approach the civil Court to redress his grievance.

9.With the above observations, this Writ Petition is dismissed with liberty to the petitioner to approach the civil Court to redress his grievance, if he is so advised. No costs. Consequently, connected Miscellaneous Petition is closed.

Sd/-

Assistant Registrar (AS)

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Sub Assistant Registrar(CS)

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To

1.The District Revenue Officer,
Tirunelveli District.

2.The Revenue Divisional Officer,
Tirunelveli District.

3.The Tahsildar,
Tirunelveli District.

+1 CC to Mr.G. PRABHU RAJADURAI, Advocate (SR-13413[F] dated 31/07/2020)

W.P.(MD) No.15021 of 2011
30.07.2020

VB (14.08.2020) 4P 5C

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