



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 03.08.2020

WEB COPY

CORAM:

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

W.P. (MD)No.13501 of 2012

and

M.P (MD)No.1 of 2012

K.Kasinathan

... Petitioner

Vs.

- 1.The State of Tamil Nadu,
Rep. By its Secretary,
Department of Revenue, Fort St. George,
Chennai - 9.
- 2.The District Collector,
Sivagangai District Campus, Sivagangai District.
- 3.The District Revenue Officer,
District Collector Campus,
Sivagangai District, Sivagangai.
- 4.The Revenue Divisional Officer,
Devakottai Division,
Devakottai, Sivagangai District.
- 5.The Thasildar,
Devakottai, Sivagangai District.
- 6.K.Subbiah
- 7.C.Nachi

... Respondents

PRAYER:- Writ Petition filed under Article 226 of the Constitution of India, praying for the issuance of a Writ of Certiorari, to call for the records pertaining to the impugned order in Pa.Mu.A1.842/2008 dated 25.08.2008 on the file of the fourth respondent and the subsequent order in Na.Ka.B1/18774/2010 dated 22.05.2010 on the file of the third respondent and quash the same.



For Petitioner : Mr.T.Lajapathi Roy

For RR 1 to 5 : Mr.R.Sethuraman
Special Government Pleader

For RR 6 & 7 : Mr.S.Muthukumar

ORDER

The petitioner has filed the present Writ Petition to issue a Writ of Certiorari, to quash the impugned order passed by the fourth respondent in Pa.Mu.A1.842/2008 dated 25.08.2008 and the subsequent order passed by the third respondent in Na.Ka.B1/18774/2010 dated 22.05.2010.

2.According to the petitioner, originally the property in Survey No.85/2 to an extent of 0.07.0 ares, Vijayapuram Village, Devakottai Taluk belonged to his father Karuppiah, which is an ancestral property. After the demise of his father, the entire family properties were partitioned and the above mentioned property was allotted to the petitioner and he is in possession and enjoyment of the same. Thereafter, the patta of the said property was wrongly transferred to his younger brother K.Chinnaih. Hence, the petitioner submitted an application before the fifth respondent seeking for change of patta in his name and subsequently patta was changed in his name with the consent of his brother K.Chinniah. In the mean time, the respondents 6 and 7 have preferred an appeal before the fourth respondent seeking cancellation of patta in favour of the petitioner on the basis that the said property was a joint family property. Subsequently, the fourth respondent, without issuing notice to the petitioner, vide dated 25.08.2008 cancelled the patta and changed it as a joint patta in the name of the petitioner and other two brothers, respondents 6 and 7. Aggrieved over the same, the petitioner preferred a revision petition before the third respondent seeking to set aside the order passed by the fourth respondent, but the third respondent, vide order dated 22.05.2010, dismissed the same. Challenging the same, the petitioner has filed the present Writ Petition.

3.The learned Special Government Pleader appearing for the respondents 1 to 5 submitted 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 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."

4. In view of the above submissions made by the learned Special 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 approach the civil Court to redress his grievance.

5. With the above observation, the 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 (CS-II)

// True Copy //

/ /2020

Sub Assistant Registrar (CS)

Note:- In view of the present lock down owing to COVID - 19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate / litigant concerned.

To

1. The Secretary,
Rep. By the State of Tamil Nadu,
Department of Revenue, Fort St. George,
Chennai - 9.
2. The District Collector,
Sivagangai District Campus, Sivagangai District.
3. The District Revenue Officer,
District Collector Campus,
Sivagangai District, Sivagangai.
4. The Revenue Divisional Officer,
Devakottai Division,
Devakottai, Sivagangai District.
5. The Thasildar,
Devakottai, Sivagangai District.

Order made in
W.P. (MD) No.13501 of 2012
Dated: 03.08.2020

ps

<https://hcservices.courts.gov.in/hcservices/> 4P-6C