BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED :**12.08.2020**
CORAM
THE HONOURABLE MR.JUSTICE **D.KRISHNAKUMAR**
W.P.(MD) No.9106 of 2020
and
W.M.P.(MD) Nos.8339 & 8340 of 2020

C.L.John ...Petitioner

Vs

1.The District Revenue Officer,
Kanyakumari District,
Nagercoil.

2.The Revenue Divisional Officer,
Padmanabhapuram Revenue Divisional Office,
Thuckalay,
Kanyakumari District.

3.N.Simson ...Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, to quash the order passed in Na.Ka.No.AA3/1775/2019 dated 03.06.2019 by the 2nd respondent, as confirmed in Na.Ka.No.M4/22862/2019 dated 16.07.2020 of the 1st respondent and to to direct the respondents 1 and 2 to grand patta to the petitioner in respect of the property in R.SY.Nos.272/22 and 273/13, measuring to an extent of 4 cents situated in Ezhudesom Village, Vilavancode Taluk, Kanyakumari District.

For Petitioner : Mr.V.M.Balamohan Thampi
For R1 & R2 : Mr.C.M.Marichelliah Prabhu
Additional Government Pleader

ORDER

Challenging the order passed in Na.Ka.No.M4/22862/2019 dated 16.07.2020 by the 1st respondent and to direct the respondents 1 and 2 to grand patta in favour of the petitioner in respect of the property in R.SY.Nos.272/22 and 273/13, measuring to an extent of 4 cents situated in Ezhudesom Village, Vilavancode Taluk, Kanyakumari District, the present writ petition has been filed.

2.According to the petitioner, the property in O.SY.Nos.1675, 1676 and 1677 was correlated in R.SY.No.272/22, 273/13 and 272/20 situated in Ezhudesom Village and for the aforesaid property, patta also stood in the name of the petitioner's ancestors. After the death of the petitioner's father, patta was granted to the petitioner for the said property.

3.At this juncture, the 3rd respondent made an attempt to construct a compound wall in R.SY.No.273/13, by encroaching the petitioner's property, measuring to an extent of 2 cents. After knowing the same, the petitioner herein has filed a suit in O.S.No.17 of 2019 on the file of the Sub Court, Kuzhithurai, for declaration of title and for recovery of possession. In the meantime, the 3rd respondent filed a petition before the 2nd respondent to remove the name of the petitioner from the patta granted in favour of the petitioner in respect of the property in R.SY.No.272/22 and 273/13.

4.Without considering the documents produced by the petitioner and the pendency of the aforesaid suit, the 2nd respondent, by proceedings dated 03.06.2019, removed the name of the petitioner in the said patta, against which, the petitioner has filed a revision before the 1st respondent on 09.07.2019. The 1st respondent, by proceedings dated 16.07.2020, had also confirmed the order of the 2nd respondent dated 03.06.2019. Challenging the same, the petitioner is before this Court.

5.The learned Additional Government Pleader appearing for the respondents 1 and 2 would submit that the petitioner has to approach the civil Court in the light of the decision made by the Hon'ble Supreme Court in ***Suraj Bhan and others Vs. Financial Commissioner and others*** reported in ***(2007) 6 SCC 186***, in which, the Hon'ble High Court has held as follows:-

> 9. ....*It is well settled that an entry in Revenue Records does not confer title on a person whose name appears in Record of Rights. It is settled law that entries in the Revenue Records or Jamabandi have only 'fiscal purpose' i.e. payment of land-revenue, and no ownership is conferred on the basis of such entries. So far as title to the property is concerned, it can only be decided by a competent Civil Court (vide Jattu Ram v. Hakam Singh and Ors., AIR 1994 SC 1653). As already noted earlier, Civil Proceedings in regard to genuineness of Will are pending with High Court of Delhi. In the circumstances, we see no reason to interfere with the order passed by the High Court in the writ petition.*
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> *10. For the foregoing reasons, the appeal deserves to be dismissed and is accordingly dismissed. We may, however, clarify that we may not be understood to have expressed any opinion on correctness on genuineness of the Will said to have been executed by deceased Ratni Devi in favour of respondent No. 5. It was stated at the Bar that against dismissal of the suit by the trial Court on the ground of limitation, an appeal is filed by the appellants which is pending before the High Court of Delhi. As and when the said appeal will be taken up for hearing, it will be decided on its own*

> *merits without being influenced by observations made by us in this judgment. We may also make it clear that we are not expressing any opinion on the entitlement of compensation said to have been awarded in land acquisition proceedings. All contentions of all parties are kept open and all questions will be decided in appropriate proceedings by Competent Authorities or Courts without being inhibited by the present decision. The appeal is accordingly disposed of. In the facts and circumstances of the case, however, there shall be no order as to costs.*

6.In support of his contention, the learned Additional Government Pleader would rely another judgment of this Court in the case of ***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.*
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> *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."

7.In view of the above submissions made by the learned Additional Government Pleader and the legal principles of law laid down by the Hon'ble Supreme Court as well as 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.

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

Sd/-

Assistant Registrar (AD II)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

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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 District Revenue Officer,
Kanyakumari District,
Nagercoil.

2.The Revenue Divisional Officer,
Padmanabhapuram Revenue Divisional Office,
Thuckalay,
Kanyakumari District.

+1 CC to M/s.V.M. BALA MOHAN THAMPI, Advocate (SR-13920[F] dated 12/08/2020)

+1 CC to M/s.GP (SR-13967[F] dated 13/08/2020)

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12.08.2020

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