



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 27.02.2020

CORAM

THE HONOURABLE MR.JUSTICE **S.S.SUNDAR**

W.P. (MD)No.3495 of 2018

and

W.M.P. (MD)Nos.3625 and 9945 of 2018

WEB COPY

K.Muniasamy

... Petitioner

vs.

1.The District Collector,
Ramanathapuram District,
Ramanathapuram.

2.The District Revenue Officer
cum Additional District Magistrate,
Ramanathapuram,
Ramanathapuram District.

3.The Revenue Divisional Officer,
Paramakudi, Ramanathapuram District.

4.The Tahsildar,
Kamudhi, Ramanathapuram District.

5.Muthu Vijayan

6.The Sub Registrar,
Perunazhi, Kamudhi Taluk,
Ramanathapuram District.

7.The Sub Registrar,
Kayalpattinam,
Thoothukudi District.

... Respondents

(R6 and R7 are impleaded vide order of this Court, dated 10.05.2018 in W.M.P. (MD)No.9944 of 2018)

Prayer: Writ Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorari, to call for the records pertaining to the impugned order passed by the second respondent in Pa.Mu (Pi5)/67569/2014, dated 09.08.2017 and quash the same.

For Petitioner :Mr.M.Saravanan

For R1 to R4 :Mr.A.Muthu Karuppan
Additional Government Pleader

For R5 :Mr.R.Ragavendran

For R6 and R7 :Mr.M.Murugan
Government Advocate



ORDER

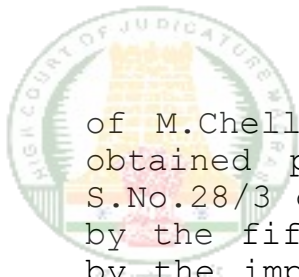
This Writ Petition is filed to quash the impugned order passed by the second respondent, dated 09.08.2017, cancelling the patta stands in the name of petitioner and transfer the same in favour of the fifth respondent.

2.The brief facts that are necessary for the disposal of this Writ Petition are as follows:

3.The property measuring to an extent of 0.99.0 Hectares situated in Perunazhi Village, originally belonged to one Vellaian Servai. The said Vellaian Servai had two sons, by name, Muthu Vijayan and Durai Raj. It is admitted by both parties that one of the sons of Vellian Servai, by name, Durai Raj died issueless. It is stated that Muthu Vijayan had three sons, by name, Periyasamy, Kottaisamy and Chellasamy. The petitioner is the grandson of Periyasamy and the fifth respondent is the son of Chellasamy. The genealogy produced before this Court is admitted by the learned Counsel appearing for the fifth respondent. Since Kottaisamy, one of the sons of Muthu Vijayan and grandson of Vellaiyan Servai also died issueless, it is stated that the property in S.No.28/3 was inherited by Periyasamy and Chellasamy as their ancestral property.

4.It is admitted that Periyasamy had a son, by name, Kottaisamy and the petitioner is the son of Kottaisamy. Similarly, the fifth respondent is the son of Chellasamy. It appears that the father of fifth respondent executed a registered mortgage deed, dated 03.10.1969 in favour of petitioner's father. The said mortgage is a usufructuary mortgage and that possession was also handed over to the mortgagee, as per the recitals in the document, in respect of an extent of one acre on the eastern side of total extent of 2 acres 40 cents. It is also admitted that the fifth respondent himself executed another usufructuary mortgage for a further sum of Rs.1,000/- on the same terms in favour of petitioner's father. It is also admitted that the said mortgage executed by the father of fifth respondent in the year 1969 and 1977 respectively, had not been redeemed so far.

5.It appears that the petitioner by misrepresentation managed to get patta for the whole extent of two acres 40 cents in S.No.28/3 in Perunazhi, on the basis of the mortgage deeds, which his father had obtained from the fifth respondent's father and fifth respondent earlier. The petitioner states that he has put up a marriage hall in the entire extent of the property in S.No.28/3 and that therefore, he was in possession of the property. Since patta had been wrongly transferred in the name of petitioner during UDR in respect of entire property in S.No.28/3, the fifth respondent had approached the District Revenue Officer, for modification of entry on account of mistake during UDR. The District Revenue Officer after considering the fact that the patta was standing in the name

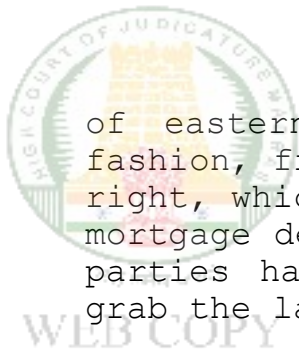


of M.Chellasamy (father of 5th respondent) and the petitioner had obtained patta in respect of the full extent of the land in S.No.28/3 on the basis of the mortgage stated to have been executed by the fifth respondent's father and the fifth respondent himself, by the impugned order cancelled the patta standing in the name of the petitioner and the mutation was directed to be in the name of fifth respondent, who is the legal heir of Chellasamy. The District Revenue Officer further directed the revenue officials to carryout necessary amendments in patta on the basis of the legal heirship certificate that may be produced by the fifth respondent, as the legal heir of Chellasamy.

6.The genealogy produced before this Court is not in dispute. The execution of the two usufructuary mortgage by the fifth respondent's father, dated 30.10.1969 for himself and on behalf of the fifth respondent and the subsequent mortgage deed dated 24.08.1977 executed by the fifth respondent in favour of petitioner's father are not disputed before this Court. The description of the property in the mortgage deed would suggest that an extent of 1 acre on the eastern side out of total extent of 2 acres 40 cents in S.No.28/3 was mortgaged by the fifth respondent's father in favour of the petitioner's father. The second mortgage deed executed by the fifth respondent himself in 1977 was in favour of his paternal uncle's son. The admission in the documents relating to boundary assumes more important. While creating the mortgage in respect of an extent of 1 acre on the eastern side of the total extent, the mortgagor admits the title of mortgagee on the western portion of the property, which is the subject matter of the mortgage. The 5th respondent's father and the fifth respondent described the property, which is the subject matter of mortgage, as their ancestral property admitting the character of property.

7.The conclusion of District Revenue Officer that the property originally stood in the name of Chellasamy must be incorrect, when the character of the property and its ownership in favour of Vellaian Servai is not in dispute. When no other document between the parties is produced by anyone, the rights of properties, as borne out from the records would indicate that the petitioner as well as the fifth respondent or their predecessor-in-interest had divided the property into two parts. Even though there is no partition deed, which is pleaded or projected before the revenue officials, this Court at least without reference to the extent, can make out that eastern one acre was allotted to the fifth respondent's father and fifth respondent and the western portion was allotted to the petitioner's predecessor-in-interest.

8.The petitioner has earlier fraudulently applied for patta in respect of the whole property on the basis of the mortgage, which does not confer title in favour of the petitioner. The petitioner also, in fact, acknowledged the fifth respondent's right in respect



of eastern extent. Later, the fifth respondent in a similar fashion, fraudulently claimed patta for the entire land ignoring the right, which was acknowledged by the fifth respondent himself in the mortgage deed in respect of the property on the western side. Both parties have committed fraud and their intention appear to be to grab the land of another by fraudulently giving false statements.

9. Therefore, this Court is of the view that the Writ Petition is liable to be allowed, however, subject to terms requiring both petitioner as well as the fifth respondent to pay a sum of Rs.10,000/- each to the Legal Services Authority attached to this Bench within a period of two weeks from the date of receipt of a copy of this order. Though this Court suggested that cost would be waived, if the parties agree to put an end to the litigation by entering into a compromise, both the Counsels have not responded. The impugned order, dated 09.08.2017 passed by the second respondent is quashed. The patta shall be restored in the name of petitioner and fifth respondent, by the second respondent within a period of four weeks from the date of receipt of a copy of this order. The parties are given liberty to work out their remedy in relation to the mortgage as per law. The Writ Petition is disposed of accordingly. Consequently, connected miscellaneous petitions are closed.

10. Post the matter after six weeks for reporting compliance.

Sd/-

Assistant Registrar (CS II)

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/ /2020

Sub Assistant Registrar (CS)

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To

1. The District Collector,
Ramanathapuram District,
Ramanathapuram.
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cum Additional District Magistrate,
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3. The Revenue Divisional Officer,
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4.The Tahsildar,
Kamudhi, Ramanathapuram District.

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Ramanathapuram District.

6.The Sub Registrar,
Kayalpattinam,
Thoothukudi District.

+1 CC to M/s.R.RAGAVEDNDRAN, Advocate (SR-9690[F] dated
02/03/2020)

W.P. (MD) No. 3495 of 2018
27.02.2020

KK/09.03.2020/5P-8C

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