IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.10.2021

CORAM:

THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN

W.P.No.36076 of 2007
and
M.P.Nos.1 and 2 of 2007

1.M.Rajendran (Died)
2.R.Valliyammal
3.R.Prema
4.R.Tamil Mani
5.R.Elangovan
6.S.Vasuki

... Petitioners

(P2 to P6 substituted as LR's of Deceased Sole Petitioner vide order dated 04.10.2021 made in W.M.P.No.21075 of 2021 in W.P.No.36076 of 2007 by GKIJ)

Vs

1. The Special Commissioner
 and Commissioner of Land Administration,
 Chepauk, Chennai - 5.

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

3. The Sub-Collector / Revenue Divisional Officer,
 Sub-Collector Office, Paramakudi,
 Ramanathapuram District.

4. The Tahsildar,
 Kadaladi Taluk,
 Kadaladi, Ramanathapuram District.

5. The Zonal Deputy Tahsildar,
 Kadaladi Taluk,
 Kadaladi, Ramanathapuram District.

6. Akilan
7. Arunan

... Respondents

Prayer : Writ Petition has been filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus to call for the entire records with regard to the impugned order vide D.Dis.K4/20409/06 dated 15.05.2007 on the file of the first respondent confirming the order in P5/60511/04 (C.R.179/04) dated 01.06.2006 passed by the second respondent, confirming the order passed by the third respondent vide Moo.Mu.3846/2003 (P) dated 21.06.2004 confirming the order in Ni.Mu (A.10) Tha.Pa.Ma.774 / 20.06.2003 passed by the fifth respondent herein and quash the same and for a direction directing the 1 to 5 respondents not to consider patta in favour of the 6 to 7 respondents without a Decree of declaration of title in favour of them.

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|---|---|
| For Petitioners 2 to 6 | : Mr.A.S.Alaguraja |
| For Respondents 1 to 5 | : Mr.M.R.Gokul Krishnan, Government Advocate |
| For Respondent 6 | : No Appearance |
| For Respondent 7 | : Notice served No Appearance |

O R D E R

This writ petition has been filed to issue a Writ of Certiorarified Mandamus to call for the entire records with regard to the impugned order vide D.Dis.K4/20409/06 dated 15.05.2007 on the file of the first respondent confirming the order in P5/60511/04 (C.R.179/04) dated 01.06.2006 passed by the second respondent, confirming the order passed by the third respondent vide Moo.Mu.3846/2003 (P) dated 21.06.2004 confirming the order in Ni.Mu (A.10) Tha.Pa.Ma.775 / 20.06.2003 passed by the fifth respondent herein and quash the same and for a direction directing the 1 to 5 respondents not to consider patta in favour of the 6 to 7 respondents without a Decree of declaration of title in favour of them.

2. The case of the petitioner is that the petitioner's grandfather had purchased lands in the year 1928 vide registered

Document Nos.485 and 1305 of 1928 and also in the year 1930 vide Document No.181 of 1930 to an extent of 5.15 acres, he died in the year 1945 leaving behind him two sons one of the son is the father of the petitioner herein. Thereafter, his two sons had partitioned the said property and from the share of his father the petitioner and his brother succeeded the properties. The Revenue Authorities have issued separate patta in the year 1980 in UDR Scheme with regard to the Survey No.340/3A and also patta bearing No.910 dated 23.10.1986 with regard to the land comprised in Survey Nos.340/3A and 349/3A situated at Keerathai Village, Kadaladi Taluk.

3. While the petitioner's father was alive, he executed two sale deeds in favour of one Muthusamy Thevar in respect of the property comprised in Survey No.349/1 to an extent of 45 cents each. Unfortunately, while executing the sale deed Survey Number was wrongly mentioned as 340/3A instead of 349/1. However, the said Muthusamy Thevar did not apply for any patta from the date of their sale deed. They were in possession and enjoyment of the property comprised in Survey No.349/1. After the demise of the said Muthusamy Thevar one of his son Kandasamy Thevar applied for issuance of patta on the strength of the sale deeds which were executed in favour of his father in the year 1964. The fourth respondent rejected the request of issuance of patta for the reason that the said Kandasamy Thevar was not in possession in respect of the land comprised in Survey No.340/3A and whereas he is in possession and enjoyment of the land comprised in Survey No.349/3.

4. Suppressing the said fact, the respondents 6 and 7, being the legal heirs of another son of the said Muthusamy Thevar applied for issuance of joint patta for the said property and they were issued joint patta dated 07.03.2003. It was challenged by the petitioner before the third respondent herein. The third respondent also confirmed the order passed by the Tahsildar and dismissed the appeal. Aggrieved by the same, again the petitioner filed revision before the second respondent and the same was also dismissed. Therefore, the petitioner filed the second revision before the first respondent and the same was also dismissed and confirmed the order passed by the respondents by the impugned order dated 15.05.2007.

5. In the meanwhile, the petitioner filed a suit in O.S.No.56 of 2004 challenging the joint patta issued in favour of the respondents 6 and 7. In view of the order passed by the second respondent and confirmed by the first respondent, the said suit become infructuous and the petitioner not pressed the same. However, on perusal of the order passed by the first

respondent it is revealed that the petitioner was directed to approach the Revenue Authorities after disposal of the suit filed by him.



6. The learned counsel for the petitioner submit that when the petitioner's father executed the sale deed, he inadvertently wrongly mentioned the survey number as 340/3A instead of 349/1. Therefore, by an order dated 27.07.2000 the fourth respondent rightly rejected the request of issuance of patta claimed by one of the son of the said Muthusamy Thevar. Suppressing the said fact, the respondents 6 and 7 herein again approached the very same fourth respondent and obtained a joint patta in their name for the land comprised in Survey No.340/3A. The boundary in respect of the said property was rightly mentioned but the Survey Number wrongly mentioned in the sale deed. Therefore, learned counsel for the petitioner contended that the survey number was wrongly mentioned, the boundaries prevail over the same to prove the title.

7. In support of his contention, he relied upon the Judgment reported in 1998(1) LW 244 Roohnisha Beevi and 15 others -vs- A.M.M.Mahudu Mohamed and 29 Others, wherein this Court held that, when there are conflicts with the rest, as when the extent and survey numbers do not agree with the boundaries, usually the boundaries predominate, and the rest regarded as erroneous or inaccurate descriptions.

8. He further submitted that when there is a dispute over the title, the Revenue Authorities have no jurisdiction to decide the title over the property. Though the petitioner categorically mentioned about the survey number wrongly stated in the sale deed in favour of the said Muthusamy Thevar the Revenue Authorities concerned had gone through the document and declared the title in favour of the respondents 6 and 7 herein. The Sub-Rule 4 of the Patta Passbook Act, 1987 is more clear when a dispute concerning ownership of patta is already pending in a Court or issues are raised before him which imfringe on personal laws or succession and all the parties interested do not agree on the ownership in writing, he shall direct the concerned parties to obtain order on the ownership from a Competent Civil Court.

9. In support of his contention, he also relied upon the Judgment reported in 2011(5) CTC 241 C.Sabesan Chettiar (Deceased) and others -vs- The District Revenue Officer, Coimbatore District, Coimbatore and others. The Hon'ble Division Bench of this Court held that the Revenue Officials ought to have directed the parties to go before the Competent Civil Forum for adjudication of dispute with regard to the ownership of the subject property.

10. He also relied upon the Judgment in 2014(3) CTC 785 Amsaveni -vs- The District Revenue Officer, Madurai and others., wherein this Court referred the decision in Vishwas Footwear Co. Ltd., -vs- The District Collector and others, reported in 2011 (5) CTC 94 in which the Hon'ble Division Bench of this Court held that the Revenue Divisional Officer has no jurisdiction to go into the disputed questions of title at the time when an application for cancellation of patta is being considered. As far as this law is concerned there cannot be a second opinion as to the limited jurisdiction of the Revenue Divisional Officer only to find out prima facie as to the title and when the title is in dispute and there are rival Claimants, he should refer the parties to Civil Court for adjudication and depending upon the decree that may be passed by the Civil Court, relevant entries in patta could be effected by the Revenue Divisional Officer. This Court also held that the patta is not a document conferring title, unless the same is issued by the Government by way of assignment. When there is a dispute regarding title based on document and possession, it is only the Civil Court, which will have a jurisdiction. These Judgments are squarely applicable to the case on hand, since the dispute is with regard to survey number and it has to be dealt with only by a Competent Civil Court to decide the title.

11. In fact, the first respondent directed the petitioner to approach the Civil Court to decide the title over the property and thereafter approach the Revenue Authorities for issuance of patta. However, now the respondents 6 and 7 are creating encumbrance over the subject property on the strength of the joint patta issued in their favour in respect of the subject property. Now the petitioner also filed the suit for declaration challenging the subsequent sale deeds executed by the respondents 6 and 7 herein in O.S.No.48 of 2011 on the file of the Additional District Court cum Fast Track Court, Paramakudi, Ramanathapuram District and it is pending.

12. In view of the above, the order passed by the fourth respondent dated 07.03.2003 is quashed, thereby the issuance of joint patta in favour of the petitioner as well as the respondents 6 and 7 are directed to kept in abeyance. The respondents 6 and 7 are hereby restrained from creating any more encumbrance over the property comprised in Survey No.340/3A situated at Keerathai Village, Kadaladi Taluk, Ramanathapuram District till the disposal of the suit in O.S.No.48 of 2011 on the file of the Additional District Court cum Fast Track Court, Paramakudi, Ramanathapuram District. The petitioner and the respondents 6 and 7 are at liberty to approach the Revenue Authorities for issuance of separate patta for their respective land subject to the result of suit in O.S.No.48 of 2011.

13. With the above directions, this writ petition is disposed of. No costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS-VI)

//True Copy//

Sub Assistant Registrar

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To

1. The Special Commissioner
and Commissioner of Land Administration,
Chepauk, Chennai - 5.

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

3. The Sub-Collector / Revenue Divisional Officer,
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4. The Tahsildar,
Kadaladi Taluk,
Kadaladi, Ramanathapuram District.

5. The Zonal Deputy Tahsildar,
Kadaladi Taluk,
Kadaladi, Ramanathapuram District.

Copy to:
The Additional District cum Fast Track Court,
Paramakudi,
Ramanathapuram District.

+2ccs to Mr.S.Ponnarasi, Advocate, S.R.No.53054

W.P.No.36076 of 2007
and
M.P.Nos.1 and 2 of 2007

SV-I(CO)
SU(01/11/2021)