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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment Reserved on : 16.03.2021

Judgment Pronounced on : 16.07.2021

CORAM : JUSTICE N.SESHASAYEE

W.P.No.4713 of 2019
and WMP.Nos.5345 & 5347 of 2019

1.N.Mohan
2.N.Kandasamy

...Petitioners

Vs

1. The District Collector
Kancheepuram District.
2. The District Revenue Officer
Kancheepuram District
Kancheepuram.
3. The Revenue Divisional Officer
Chengalpattu Taluk
Kancheepuram District.
4. The Tahsildar
Thiruporur Taluk
Kancheepuram District.
5. K.Anitha
W/o.Mohan Ranganathan
Power Agent of Legal Heirs of Late C.A.Kabeer

...Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus to call for the records and to quash the impugned order dated 07.01.2019 passed by the third respondent in Pa.-Mu.No.2042/2018/Aa3 by confirming the endorsement order dated 18.04.2018, passed by the fourth respondent in Na.Ka.No.533/2011-Aa2 and direct the respondents 1 to 4 to consider the representation dated 17.04.2018 and to direct the respondents 1 to 4 to restore the Patta No.346 in respect of the agricultural lands comprised in Survey Nos.219/1, 219/2, 219/4, 219/5, 219/6 and 217/3, totally an extent of 1 acre 57 cents situated at No.43, Padur Village, Thiruporur Taluk, Kancheepuram District, which was cancelled by the fourth respondent (the



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then Tahsildar, Chengalpattu) on 26.07.2011 in his proceedings in Na.Ka.No.1533/11-Aa1 in pursuant to the order dated 19.07.2016 made in W.A.No.798 of 2016.

For Petitioners : Mr.K.Mahalingam

For Respondents : Mr.S.N.Parthasarathy
Government Advocate [R1 to R4]

Mr.V.Lakshminarayanan
for Mr.A.E.Ravichandran [R5]

ORDER

| The dispute involved in this case pertains to the sustainability of the proceedings of the Tahsildar granting patta to the 5th respondent, after cancelling the patta granted to the petitioners, as related to the properties in Survey Nos.219/1, 219/2, 219/4, 219/5, 219/6 and 217/3 in Padur Village, Kelambakkam, Chengalpattu Taluk, now in Tiruporur, Kanchipuram District. It has a total extent of 1.57 acres.

2. According to the petitioners, this property originally belonged to a certain Mehrunissa Bi and her son Sadiq Basha. While so, the petitioners had purchased the same under a sale deed dated 25.11.1986. It is also their contention that on 04.02.1999, necessary mutation in the revenue records was also made and patta was issued to them. It is the grievance of the petitioners that while things stood thus, the Tahsildar has cancelled the said patta issued to them and granted it to the 5th respondent.

3.1 The facts as outlined though is seen presented in a straight line equation, yet if the outer layer is peeled to understand its real character, it discloses a slightly convoluted set of facts which includes multiple suits between Mehrunissa Bi and Sadiq Basha, under who the petitioners claim title, and certain C.A.Malick, his brother C.A.Kabeer and a certain Hussain Basha on the other. This may now be detailed :

- Malick, Kabeer and Hussain Basha joined to institute a suit in O.S.No.8667/1985 before the VI Assistant City Civil Court, Chennai, against the aforesaid Sadiq Basha and Mehrunissa Bi who were arrayed as the first and the second defendants. It is initially laid for a bare injunction. It was dismissed for default on 28.01.1998. According to the contesting 5th respondent, this suit was restored later and post its restoration, the plaintiffs had amended the prayer to one of declaration of their title to the properties comprised in S.Nos.219/1, 242/6 and 217/3, (to which the petitioners now assert title) and other ancillary reliefs, and was stated to have been decreed exparte. (The



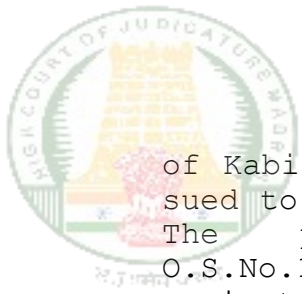
affidavit of Petitioner, however, does not indicate anything about the restoration of the suit and the exparte decree passed).

- Successful though Malick, Kabeer and Hussain Basha were in having their title declared in O.S.No.8667 of 1985, yet they chose to file separate suits in different combinations against Mehrunissa Bi and Sadiq Basha before the District Munsif, Chengalpattu. These suits were filed for declaration of tile and for other ancillary reliefs. The details thereof are tabulated below :

Suit No.	Instituted by	Survey Nos.
O.S.No.159/1986	C.A.Malick & Others	219/1, 219/4, 219/6
O.S.No.160/1986	C.A.Malick, C.A.Kabeer & Others	219/5
O.S.No.161/1986	C.Hussain Basha & Others	219/2 & 217/3

- Curiously enough, on 28.02.2002, all the suits were dismissed after a full trial. What is breathtaking is that the plaintiffs who had obtained an exparte decree in O.S.No.8667/1985 had not chosen to produce it during the trial of in O.S.No.159/1986, O.S.No.160 of 1986 & O.S.No.161 of 1986. Two set of suits, for the same purpose, between the same parties at two different places, at different points of time, and both produced opposite results.
- As has been pointed out, Kabeer had filed O.S.160/1986. He was also the 8th defendant in O.S.No.159/1986, where he appeared to have preferred a counter claim. Kabeer, would now prefer A.S.No.47/2002 before the Sub Court, Chengalpet against the dismissal of his counter claim in O.S.159/1986, and A.S.No.35/2002, against the decree passed in O.S.No.160 of 1986, which he had filed. Hussain Basha however, did not choose to prefer any appeal against the decree dismissing the suit in O.S.No.161/1986.
- A.S.No.47/2002 came to be dismissed on 23.07.2003, against which, Kabir, the 8th defendant in the suit (O.S.159/1986), had preferred S.A.No.2279/2003. This Court, Vide its decree dated 08.11.2006 had remanded the matter back to the trial Court where it was again taken on file in O.S.No.159/1986.

3.2 While things stood thus, during the pendency of O.S.No.159/1986 (post its remand) as well as A.S.No.35/2002, on 26.07.2011, the 5th respondent herein, as the Power of Attorney



of Kabir, had moved the Tahsildar for cancellation of patta issued to the petitioner and for issuance of patta in their names. The petitioners herein, therefore, promptly filed O.S.No.195/2011 before the District Munsif Court, Chengalpattu against the revenue officials and Kabir through his Power Agent (the 5th respondent herein) for injunction to the effect that the patta in the name of the petitioners should not be transferred to Kabir.

4.1 The patta however, was transferred by the Tahasildar on 26-07-2011, and this was unsuccessfully challenged by the petitioners before the RDO and the DRO, both of who had dismissed the appeals preferred by the petitioners Vide their respective proceedings dated 10-11-2011 and 29-01-2014. The Order of the DRO came to be challenged by the petitioners in W.P.35714/2015, but this was dismissed by this Court vide its Order dated 11-03-2016 with a direction to the petitioners to work out their remedy in O.S.195/2011 which at that time was still pending.

4.2 The Order passed in W.P.35714 of 2015 was challenged by the petitioners in W.A.798/2016, rather unsuccessfully. It could be seen from the Order of the Court, that the appellants before the Court (the petitioners herein) had recorded their inclination to participate in O.S.159/1986, (which, to remind, was pending following the order of remand by this Court in a second appeal preferred by the counter-claimant, the 8th defendant in that suit) and accordingly, Vide its Order dated 19-07-2016 this Court directed the petitioners to work out their remedies in O.S.159/1986.

4.3 Meanwhile, the 5th respondent herein, who was a party to O.S.195/2011, had approached this Court in CRP. 1781/2012 to strike off the suit as against him, and this came to be allowed by this Court Vide its Order dated 06-02-2017.

5.1 The petitioners accordingly, shifted their focus to participating in O.S.159/1986. They therefore, filed I.A.1517/2015 in the said suit to implead themselves. It may have to be mentioned that apart from this suit, Kabir himself had filed A.S.35/2002 against the decree in O.S.160/1986 which he had laid.

5.2 So far as O.S.159/1986 is concerned, its plaintiff Malick died, and his sons had impleaded themselves as his legal representative, and they now opted to withdraw the suit on 17.02.2017. About a year before that, on 16.03.2016 to be precise, A.S.35/2002 came to be dismissed for default and it had become final. The withdrawal of the suit implied that the petitioners were stranded without a suit to work out their remedy as directed in W.A.798/2016.



a) First was O.S.39/2017 on the file of District Munsiff Court, Chengalpattu, inter alia for declaring that the proceedings of the DRO, dated 29-01-2014 referred to above as null and void, and for a mandatory injunction to restore patta in the name of the petitioners.

- 6.2 Sustainability of O.S.39/2017 then became the subject matter of CRP 1245/2017 and CRP 85/2019, while that of O.S. 1740/2017 came to be tested in five Civil Revision Petitions (CRP 2741/2017, 3447/2018, 3452/2018, 3827/2018 and 4159/2018). Indeed, the heirs of the petitioners' vendors too have filed two of these CRPs. To complete the narration, it may be added that all the five CRPs filed against the institution of O.S.1740/2017 were allowed by a common order of this Court, dated 09-07-2019, and O.S.1740/2017 was struck off the file. The two other CRPs filed against O.S.39/2017 was dismissed, which implies that the said suit is still alive for consideration by the District Court, Chengalpattu.

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dent, and also moved this Court with W.P.23853/2018. This Court dismissed W.P.23853 of 2018 on the ground that the petitioners cannot prosecute the same cause when his appeal to the third respondent was pending. Subsequently, the Revenue Divisional Officer, Vide his proceeding dated 07.1.2019 confirmed the orders of the Tahsildar. Challenging it, the petitioners have come forward with this writ petition.

6.4 The petitioners now seek a certiorarified mandamus to quash the proceedings of the fourth respondent dated 26.07.2011 and the recently passed proceedings on 18.4.2018 and for restoration of patta to 1.75 acres comprised in S.No.219/1, 4 to 6 and 217/3 of Padur Village.

7. The core contention of the petitioners as reflected in their affidavit and echoed more during the submissions of their counsel Thiru. Mahalingam was founded on an allegation of clandestine moves and maneuvers of the husband of the 5th respondent in sabotaging their right to put forth their case for adjudication. Their argument was that it was by a conspiracy on the part of the heirs to Malik and the husband of the fifth respondent, that resulted in the former withdrawing O.S.159 of 1986 when the petitioners had an Order to intervene that suit in W.A.798 of 2016. Their second line of argument highlighted how the decree in O.S.8667 of 1985 was fraudulent, it having been obtained before a Court without territorial jurisdiction, (which fundamentally ignores Sec.21-A CPC, and that his attempt to have this decree set aside in O.S.1740/2017 was aborted when this Court struck the suit off the file of the Court Vide its Order dated 09-07-2019 (in a batch of CRPs. Refer: paragraph 6.2)).

8. Heard Thiru S.N. Parthasarathy, Government Advocate, for respondents respondents 1 to 4, and Thiru. Lakshminarayanan, for the 5th respondent. The extent of toil that they needed to defend the petition was largely reduced by the petitioners themselves. Thiru Lakshminarayanan's submission was only to collate the indisputable facts available on record, and how the petitioners were shown the door every time by this Court, be it W.P.35714 of 2015 (which culminated in W.A.798 of 2016, or in O.S.1740 of 2017, which ended with the Order in the batch of Civil Revision Petitions, and how their present attempt to challenge the Order of the 3rd respondent, the RDO, dated 07-01-2019 would amount to abuse of judicial process.

9. There is lot of merit in the submissions for the respondent. However, this Court could also spot a sense of helplessness and frustration on the part of the petitioners to agitate their case. Their intent is correct, but not their strategy. This can be explained:



➤ According to the petitioners, the property in question originally belonged to one Mehrunissa Bi and her son Sadiq. The petitioners claim that they purchased it under a sale deed dated 25-11-1986.

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➤ This property however, was involved in a litigation in O.S.8667 of 1985 before the City Civil Court, filed by a certain Malik, Kabeer, and Hussain Basha wherein the petitioners' vendors were arrayed as defendants. It was first dismissed for default on 28-01-1988, then restored to file by the plaintiffs, wherein after, the relief was amended to one of declaration of title, and was then decreed exparte on 11-11-1989. In the long trail of litigation which this block of property would since generate, somewhere Kabir and his Power Agent, the 5th respondent, had fallen back on the decree passed in O.S.8667 of 1985, and the petitioners found this decree obstructing their claim to retain the patta issued to them. They chose to overcome by instituting O.S.1740 of 2017 for declaring that the decree passed in O.S.8667 of 1985 was null and void on the ground that the suit was filed before a court without territorial jurisdiction. Their attempt suffered a set back when this Court struck off the suit at the instance of the defendants therein in a batch of Civil Revision Petitions. To their disappointment, even their vendors, who they had arrayed as defendants in O.S.1740/2017 have turned against them by now, and also preferred one of the CRPs in this batch.

➤ Secondly, for reasons which even God might not be able to decode and decipher, even during the pendency of O.S.8667 of 1986, the plaintiffs therein had preferred separate suits in O.S.159/1986, 160/1986 and 161/1986 before the appropriate jurisdictional court, and lost all the suits on 28-02-2002. The logic of filing these suits by a set of decree holders against the same defendants involving the same property might be a bewildering experience even for someone in Alice in Wonderland, and its author Charles Lutwidge Dodgson, pen named Lewis Carrol, has been shown the limits of his engagement with fantasy. It appears that the plaintiffs in these suits had been simultaneously pursuing the same cause in two different courts, one, jointly in O.S.8667 of 1986 before the City Civil Court, and the other severally in the above referred to three suits before the District Munsif Court, Chengalpattu. What startles this Court is that they appeared to had been prosecuting both the set of suits in both the places simultaneously, succeeded in O.S.8667 of 1985 before the City Civil Court, but lost the same cause before the District Munsif Court, Chengalpattu. It is not known adequately whether the suits before the Chengalpattu Court was a distraction laid



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for the vendors of the petitioners since O.S.8667 of 1986 was decreed exparte, even as Mehrunissa Bi and Sadiq had been defending the triple suits laid against them before the District Munsiff Court, Chengalpattu. (This is because, O.S.8667 of 1985 came to be dismissed for default on 28-01-1988 when Mehrunissa Bi and Sadiq were busy defending the triple suits in Chengalpattu and continue to defend them even when O.S.8667 of 1985 was restored and decreed exparte on 11-11-1989, and even beyond it). This Court does not venture a speculation on this, as the facts to support a stronger inference are not adequate at the moment. However, the turn of even that unfolded showed that the decrees passed in these triple suits have yielded nothing for any of the plaintiffs therein and have become final ultimately.

- It is true that O.S.159/1986 was remanded back by this Court in S.A. 2279 of 2003. But the fact remains that it was not Malik, the plaintiff who took the matter in appeal against the decree dismissing his suit, but Kabir, the counter claimant/the 8th defendant in that suit, who had preferred successive appeals, and it was he who had obtained the order of remand. Technically, after remand, what was to be considered was Kabir's counter claim in O.S.159 of 1986, but the suit was allowed to be withdrawn at the instance of the legal representatives of the plaintiff of that suit, when there is no suit to be withdrawn at their instance, for Malik, the plaintiff had not challenged the decree, dated 28-02-2002, dismissing O.S.159/1986. And, Kabir also did not prosecute A.S.35/2002, which he had filed against the decree dismissing his suit in O.S.160 of 1986 either. In this process, the petitioners who had obtained a direction from this Court in W.A.798 of 2016 to intervene in O.S.159/1986 appeared to have felt stranded by the turn of these events.
- In the meantime, their patta was cancelled and it was issued to Kabir and the 5th respondent, perhaps based on the decree in O.S.8667 of 1985. And this was challenged successively before the RDO and the DRO by the petitioners but without success, and finally before this court in W.P.35714 of 2015, and having lost it too, had challenged that order in W.A.798 of 2016, where they managed to obtain an order to intervene in O.S.159/1986, but as indicated in the earlier paragraph they could not have their right decided since that suit was withdrawn.

10.The petitioners now appeared to have fallen into a psychological trap, and sense that the husband of the fifth respondent had been manipulating every attempt of theirs' to deny them an opportunity to establish their right to have the patta restored to them. They began spinning a conspiracy theory every time they face a set back. It appears reasonably certain to



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this Court that the petitioners are losing their plot more in their strategy to have their case heard and adjudicated. They did not realise that none could take away the right of the petitioners to institute an independent action before the civil court, and appeared to have even forgotten that they indeed had instituted O.S.39 of 2017 for the purpose. Their core contention all along has been that the patta issued to them ought not to have been cancelled in 2011, and that they are entitled to have it restored. In W.A.798/2016, this Court directed them to intervene O.S.159 of 1986, but when that suit was withdrawn, the petitioners should have shifted their focus to O.S.39 of 2017 rather wasting their time in the corridors of this Court.

11. They have approached the Tahasildar again with their representation dated 17-04-2018, for a relief similar to the one they had already attempted and failed when the Tahsildar passed an order dated 26-07-2011. A literal action re-play, and in this round, the revenue authorities had the advantage of citing the orders passed in various court proceedings. Somewhere, the petitioners contend that the Tahsildar had not considered the pendency of O.S.39 of 2017 when their prayer for restoration of patta was rejected. It cannot have any immediate consequence, for the petitioners themselves have done what they have been condemning in preferring a representation to the Tahsildar during the pendency of O.S.39 of 2017. But, Tahsildar has not disturbed the status quo ante that was there immediately prior to the filing of O.S.39 of 2017. It might be that in his proceedings, the Tahsildar might have made certain statements about possession of the property. That however, is not the last word on it, since its merit is subject to the outcome of O.S.39 of 2017.

12. To reiterate, the petitioners title to their property is indirectly threatened by Tahsildar choosing to grant patta to Kabir and the fifth respondent Vide his proceedings dated 26-07-2011. No matter that petitioners' efforts to have the patta restored in their name had been a failure thus far, the fact remains that the issue has not been conclusively decided by any of the Courts till date.

13.1 It appears (or perhaps a possible inference that could be drawn is) that, one of the contributory factors, if not the only one, is Kabir's choice to fall back on the exparte decree passed in O.S.8667 of 1986, long after he had given up his own counter-claim in O.S.159 of 1986, and his claim in O.S.160 of 1986 in both of which decrees had come to be passed on contest. It is not adequately known whether his cause for seeking the counter-claim in O.S.159 of 1986 and a decree in O.S.160 of 1986 were the same. Did he (Kabir) not wager on litigation, and didn't his attitude show that he appeared to have considered



Courts are casinos. He won a suit, then lost a suit, and then he would elect a decree which he had won. What kind of an election is this? There surely is a case to hold that his conduct has been gross abuse of judicial process.

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13.2 In between it could be seen that Kabir had filed O.S.1076 of 1999 against the revenue officials for a declaration that the decree in O.S.8667/1985 was binding on the defendants. On 28-07-2005 This suit was dismissed, and the successive appeals that he had filed in A.S.555 of 2005 and S.A.21 of 2008 too came to be dismissed respectively on 30-08-2006, and 17-09-2009. These facts were obtained from the common Order of this Court in W.P.21450 of 2008 and W.P.15851 of 2009, dated 21-02-2009, a copy of which is seen in the typed-set of papers produced by the petitioner. Now, O.S.1076/1999 does not concern with any of the properties involved in this petition, but with another property Sy.No:223/2. Still it brings to light that Kabir's attempt to bind the revenue officials with the decree passed in O.S.8667 of 1985 had been unsuccessful. This necessarily brings the conduct of both Kabir and of those who lend their face as his agent, under the forensic scanner, but facts are incomplete for this Court to draw any conclusive inference. But his conduct still has to be investigated and it needs to be ascertained if he has been manipulating judicial process unfairly to gain an undeserving advantage. This aspect is not seen to have been decided by any of the Courts so far.

14.1 Having stated thus, the petitioners are not without a remedy. Their suit, O.S.39/2017 is still pending before District Munsif Court, Chengalpattu, and the petitioners are well advised to challenge all proceedings that is now impugned in this petition in the pending O.S.39/ 2017. This time around they are in a safer zone, for this suit cannot be withdrawn unless the petitioners themselves choose to do it.

14.2 But the petitioners are cautioned that they will not approach this court with any action founded on the same cause with a cosmetic coat to present it as a fresh cause of action. Technically, the present petition itself merits a finding as one feeding abuse of judicial processes of this Court, as the petitioners requires this Court to inter alia the proceedings of the fourth respondent dated 26-07-2011, which, to reiterate has already been challenged before this Court and found its culmination in the Order in W.A.798 of 2016. But, what tilts the scale against it is the prima facie view of this Court that Kabir might not, after all be an angel, and that the issue which the petitioner raises has not been decided by any court thus far.

15. The petitioners now need to work their way only in the pending O.S.39 of 2017. More so because the case which the peti-



tioners project involves complex question of law and facts which cannot be conveniently decided in a writ proceeding. It may be that there is some re-alignment of equations with petitioners' vendors or their legal heirs, as the case may be, and opting to move to the opposite camp. Still its impact has to be evaluated only in O.S.39/2017. Petitioners would be at liberty to implead their vendors, or their legal representatives, as the case may be in O.S.39 of 2017, if they are desirous to give quietus to the controversy.

16. In conclusion, this petition is dismissed, and the petitioners are granted leave to raise the issue involved in this writ petition in the pending O.S.39/2017 pending on the file of District Munsif Court, Chengalpattu. The learned District Munsif will decide the issue uninfluenced by any observation as to possession in the proceedings of the Tahsildar, the fourth respondent herein, dated 18.04.2018. No costs. Consequently, the connected miscellaneous petitions are closed.

-s/d-
Assistant Registrar

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Sub-Assistant Registrar

ds/Tsg

To

1. The District Collector
Kancheepuram District.
2. The District Revenue Officer
Kancheepuram District
Kancheepuram.
3. The District Munsif Court,
Chengalpattu.
4. The Revenue Divisional Officer
Chengalpattu Taluk
Kancheepuram District.
5. The Tahsildar
Thiruporur Taluk
Kancheepuram District.

+1 CC to The Government Pleader, Sr 34331.

W.P.No.4713 of 2019

GSM(CO)
LS(23/08/2021)