

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated:15.03.2021

CORAM

THE HONOURABLE MR. JUSTICE S.S.SUNDAR

W.P.No.20040 of 2016

and

W.M.P Nos.17272, 17273 & 21226 of 2016

S.C.Venkatesh

... Petitioner

Vs.

1. The Revenue Divisional Officer
Collectorate
Coimbatore.

2. The Tahsildar,
Coimbatore North
Tahsildhar Office
Coimbatore.

3. The Town Sub Inspector of Survey
Land Survey, West Zone
Coimbatore Corporation
Coimbatore.

4. Palaniammal

5. C.Mathiyarasan

...Respondents

Prayer: Petition filed Under Article 226 of the Constitution of India praying to issue a Writ of Certiorari, to call for the records and quash the impugned order dated 20.02.2016 made in proceeding bearing Ni.Mu.No.7035/15/Aa 2, passed by the first respondent.

For Petitioner : No Appearance

For Respondents: Ms.A.Madhumathi for R1 to R3
Special Government Pleader
Mr.K.Venkatasubban for R4 & R5
For M/s.Sarvabhauman Associates

ORDER

The writ petition has been filed for issuance of a Writ of Certiorari, to call for the records and quash the impugned order dated 20.02.2016 made in proceeding bearing Ni.Mu.No.7035/15/Aa 2, passed by the first respondent.

2. The learned counsel appearing for the contesting respondents submitted that this writ petition can be disposed of without actually deciding any issue touching the rights of parties. From the facts, it is seen that the writ petition is filed challenging the order passed by the Revenue District Officer holding against the petitioner in relation to issuance of patta. The learned counsel appearing for the respondents further states that a suit which was originally filed by the petitioner to establish title and for permanent injunction against the fourth and fifth respondents restraining was dismissed. It is further stated that the petitioner herein has filed another suit, without an appeal as against the judgment and decree of the trial Court in the previous suit O.S No.30 of 2015. Under Section 14 of Patta Passbook Act, the modification of entries made in the revenue records has to be altered in accordance with the decree of the civil court declaring one's title in the property. Having regard to the statutory protection which is available to the petitioner and the fact that the earlier suit filed by the petitioner was already dismissed, this Court is of the view that pendency of the writ petition will cause great prejudice to the other side, namely respondents 4 and 5. Hence the present writ petition is liable to be dismissed.

3. Accordingly, the Writ Petition is dismissed. However, liberty is given to the petitioner to agitate his rights before the competent civil court either in the pending suit or in the appeal that may be filed by the petitioner as against the judgment and decree in the subsequent suit. No Costs. Consequently, connected Miscellaneous Petitions are closed.

For Being Mentioned

This Writ Petition having been listed under the caption "for Being Mentioned" and compliance on 29/03/2021 (Monday, the Twenty Ninth day of March, Two Thousand and Twenty One) pursuant to the order of this Court dated 15.03.2021 and made herein in the presence of the aforesaid Counsels on the either side of the Court, this Court made the following order:

This matter is listed today under the caption "For being mentioned". This Court by its earlier order dated 15.03.2021, disposed of this Writ Petition on the basis of submission of the learned counsel appearing for the fifth respondent. Today, learned counsel appearing for the petitioner mentioned before this Court that the suit filed by the petitioner though dismissed for default earlier, a petition is filed for restoration of the suit and therefore, the submission of the learned counsel for the fifth respondent about the dismissal of

the suit is misleading. Since the earlier order was on the basis of the representation of the learned counsel for the fifth respondent, this Court finds that the crux of the information furnished by the learned counsel for the fifth respondent was incorrect and misleading. Hence, the order dated 15.03.2021 is recalled and modified which reads as follows:

" This Writ Petition has been filed for issuance of a Writ of Ceritorari, to call for the records and quash the impugned order dated 20.02.2016 made in proceeding bearing Ni.Mu.No.7036/15/Aa 2, passed by the first respondent.

The petitioner in this Writ Petition states that he has purchased an extent of 0.75 ½ acres out of 1.37 Acres of agricultural land and his wife purchased another extent of 0.62 Acres out of 1.37 Acres from the fourth respondent Tmt. Palaniammal, who is the original owner of the property and executed two sale deeds dated 21.04.2009, through her Power of Attorney agent. It is the case of the petitioner that the petitioner is in possession and enjoyment of the property pursuant to the sale deeds. It is not in dispute that the said Palaniammal got the property in a suit for partition in O.S. No.766 of 1981, pending on the file of Principal Sub-Court, Coimbatore. Though the petitioner's vendor by name Tmt. Palaniammal sold the entire extent of 1.37 Acres comprised in S.F. No.411/1A1 Part, to the petitioner it is stated that the fourth respondent executed another sale deed in respect of an extent of 36 Cents 75 Sq.ft. in the same survey field namely S.F. No.411/1 part. The subsequent sale deed was executed by Tmt. Palaniammal on 05.02.2014. It is the specific case of the petitioner that the fourth respondent was allotted only an extent of 1.37 Acres as per the compromise decree that was passed in the suit earlier and that she has no further right to deal with the property.

3. Learned counsel appearing for the respondent however submits that the petitioner's case that Tmt. Palaniammal was allotted only an extent of 1.37 Acres in the survey field is incorrect and that the compromise decree relied upon by the petitioner was subsequently set aside and the said Palaniammal got more properties in Survey No.411/1 and that the property that was sold to the petitioner is a different property which has now been sub-divided as a separate field. It is admitted that the property belonged to Tmt.Palaniammal. The fifth respondent did not challenge the sale deed that was executed by Palaniammal in favour of the petitioner. Therefore, the petitioner's right to 1.37 Acres cannot be objected.

4. Based on the subsequent sale deed, the fifth respondent approached the Tahsildar for mutation of names and the same was

dismissed by the Tahsildar on the ground that the fourth respondent after selling the property measuring an extent of 1.37 Acres to the petitioner has no further right to deal with the property and that therefore the fifth respondent cannot claim any title. The order of Tahsildar was challenged before the Revenue Divisional Officer namely the first respondent herein. The first respondent allowed the appeal and set aside the order of Tahsildar on the ground that an extent of 1.76 Acre was allotted to Palaniammal and that the remaining property was subsequently sold to the fifth respondent.

5. The land in Survey No.411/1A2 is not the subject matter of the Power of Attorney deed and that therefore the order of Tahsildar is unsustainable. The sub-division was pursuant to the sale deed and it was nobody's case that the property was subdivided even when the property was sold to the petitioner or the fifth respondent. Since the petitioner has purchased an extent of 1.37 Acres by earlier sale deed, the document is binding on the fourth respondent and the fourth respondent cannot deal with the property. If it is the case of the fifth respondent that dehors the sale deed executed in favour of the petitioner, the fourth respondent has some more property in the same survey field it has to be dealt with appropriately. However, the order of Revenue Divisional Officer is to the effect that the name of the fifth respondent is also to be included as 'Joint Pattadhar' in Survey No.411/1A2. The first respondent has now passed an order without considering the nature of case pleaded before him and the order passed by the Tahsildar. In the said circumstances, the impugned order of first respondent cannot be sustained.

6. However, the case of the petitioner and fifth respondent has to be now examined by the first respondent with reference to whole survey records and documents of title apart from the decree that was granted in favour of the fourth respondent in the suit for partition. Unless the holding of the fourth respondent is confirmed on the basis of prior documents of title deed and prior revenue records, it is not possible for the first respondent to assume that the fourth respondent is the owner of 1.37 Acres or 1.76 Acres. If the property purchased by the fifth respondent is different from the property purchased by the petitioner, it is not necessary that the name of the fifth respondent should be included in the patta that was granted to the petitioner. The first respondent should also consider that the petitioner has purchased the property in the year 2009 and therefore the sale deed obtained by the petitioner should be given preference. Only if there is any remaining extent after the sale in favour of the petitioner, the fifth respondent can be considered for grant of patta. The first respondent shall pass fresh orders after giving opportunity to the petitioner and

respondents 4 and 5, on the basis of documents that may be filed. In the meanwhile, if the suit filed by the petitioner is decided finally resolving the issues, the first respondent may also pass appropriate orders in tune with the decree that may be granted by the Civil Court. Since it is stated that the suit filed by the petitioner was dismissed for default and that a petition is filed for restoration of suit, learned counsel for petitioner further contended that the fifth respondent has again sold the property in favour of third party. This Court is of the view that the first respondent shall also hear the subsequent purchaser as the right of fifth respondent is now devolved on the subsequent purchaser.

7. Accordingly, the Writ Petition is allowed with directions and the order of the first respondent dated 20.02.2016 passed in Ni.Mu.No.7035/15/Aa2 is set aside. No costs. Consequently, connected miscellaneous petitions are closed."

s/d-
Assistant Registrar(CO)

True Copy

Sub-Assistant Registrar

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To

1. The Revenue Divisional Officer
Collectorate
Coimbatore.

To be substituted to the
order already despatched
On 26.03.2021

2. The Tahsildar,
Coimbatore North
Tahsildhar Office
Coimbatore.

3. The Town Sub Inspector of Survey
Land Survey, West Zone
Coimbatore Corporation
Coimbatore.

+1cc to Mr.Sarvabhauman Associates, Advocate, S.R.No.20420
+2cc to Mr.P.Mathivanan, Advocate, S.R.No. 20116
+1cc to the Government Pleader, S.R.No. 20544

W.P.No.20040 of 2016
W.M.P Nos.17272, 17273 & 21226 of 2016

PMK (CO)
GN(24/03/2021)
SP(25/05/2021)