IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 16.04.2021

CORAM:

THE HON'BLE MR. JUSTICE R.SURESH KUMAR

W.P.No.7771 of 2018

1.M.Sadhuram
2.M.Devdas ... Petitioners

Vs.

1.The District Revenue Officer,
Thiruvallur District
Chennai Thiruthani Road
Thiruvallur - 602 001.

2.The Revenue Divisional Officer,
Revenue Divisional Office
Ambattur, Chennai 600 053.

3.The Tahsildar
Madhavaram
32/4, State Highway, 111 West Garden
Natesan Nagar, Madhavaram
Chennai 600 060

4.Pon Bhaskaran ... Respondents

Prayer: Petition filed under Article 226 of Constitution of India praying for issuance of a Writ of Certiorari calling for the records of the first respondent culminating in his order vide proceedings Rc.20936/2016/B3 dated 14.2.2018 confirming the order passed by the second respondent in his proceedings Na.Ka.2071/2014/A2 dated 22.8.2016 and quash the same.

For Petitioners : Mr.R.Kumar

For Respondents 1 to 3 : Mr.N.Inbanathan
Additional Government Pleader

For 4th Respondent : Mrs.AL.Gandhimathi

ORDER

The prayer sought for herein is for a writ of certiorari calling for the records of the first respondent culminating in his order vide proceedings Rc.20936/2016/B3 dated 14.2.2018 confirming the order passed by the second respondent in his proceedings Na.Ka.2071/2014/A2 dated 22.8.2016 and quash the same.

2.In respect of the land at S.No.202A/4 to the extent of 25/26 cents at Surapet Village, Madhavaram Taluk, Thiruvallur District, there has been a dispute between the petitioners and the fourth respondent with regard to the patta granted in favour of the fourth respondent.

3.Challenging the said patta granted in favour of the fourth respondent in respect of the subject land, the petitioner has moved the Revenue Authorities by filing petition, to cancel the patta, to the second respondent Revenue Divisional Officer, who, after hearing the petitioners as well as the fourth respondent i.e. rival parties, has rejected the request made by the petitioners to cancel the patta by order dated 22.08.2016. As against the said order passed by the second respondent Revenue Divisional Officer, the petitioner preferred Revision to the first respondent, who also, after having gone through the order passed by the second respondent Revenue Divisional Officer and after hearing both sides, has declined to interfere with the order passed by the second respondent, by thus, the revision filed by the petitioners was also dismissed by the first respondent by order dated 14.02.2018.

4.Challenging both the orders i.e., the order of the second respondent dated 22.08.2016 as well as the first respondent dated 14.02.2018, the present writ petition has been filed with the aforesaid prayer.

5.Heard Mr.R.Kumar, learned counsel appearing for the petitioners who would submit that, the very patta in question which was under challenge originally before the Revenue Authorities was the patta obtained by the fourth respondent by fraudulent manner as the petitioners were the original owners of the property. In this regard, the action on the part of the Revenue Authorities to give patta in favour of the fourth respondent was a highhanded act without any basis. Therefore, the said patta should have been cancelled, however, the second respondent even though had given some findings in respect of said patta which was issued in favour of the fourth respondent and the said finding was in favour of the petitioner, the Revenue Authorities concurrently had not interfered with the patta issued by the Tahsildar in favour of the fourth respondent on the ground that, in the meanwhile, since the fourth respondent had already approached the Civil Court by filing a civil suit for bare injunction in respect of the subject land in O.S.No.29 of 2014 on the file of the District Munsif Court, Thiruvallur, where, a decree and judgment was passed by the Civil Court on 20th April 2015. Therefore only on that ground, both the Revenue Authorities i.e. the second respondent as well as the first respondent have not interfered with the claim made by the petitioners to cancel the patta issued in favour of the fourth respondent and accordingly, the impugned orders were passed.

6.Therefore, the learned counsel appearing for the petitioners would submit that, though as against the Civil Court decree passed by the trial Court, appeal was filed in A.S.No.32 of 2015 on the file of the Sub Court, Ponneri and the said appeal is still pending.

7.Merely because, the fourth respondent has filed a suit for bare injunction and the same was decreed, as against which, appeal was filed and was pending before the concerned Appellate Court, those developments taken place in the Civil Court may not preclude the Revenue Authorities to exercise their powers to cancel the patta if it is wrongly issued to any third party. Therefore, the learned counsel for the petitioners would vehemently contend that, the reason given by both the second respondent as well as the first respondent for not interfering with the patta already granted in favour of the fourth respondent by merely stating the reason that the Civil Court has passed a decree cannot be countenanced, because, the proceedings to be initiated and concluded by the Revenue Authorities is a separate issue which can be dealt with only by the Revenue Authorities where they only have got the power to issue patta.

8.Assuming that the Civil Court has seized of the matter and passed a decree that was only in respect of a bare injunction which shows prima facie that, the fourth respondent had been in possession and enjoyment of the suit property, according to the Civil Court decree, during the relevant point of time, therefore that alone made him entitled to seek injunction and accordingly a decree was passed. Therefore, the said decree passed by the Civil Court for bare injunction cannot be treated as a decree to declare the title of the property in question in favour of the fourth respondent, he contended.

9.Therefore, the learned counsel for the petitioners would submit that, the impugned order passed by both the Revenue Authorities i.e. second respondent and the first respondent can be set aside and the matter can be remanded back to the second respondent for reconsideration and while reconsidering the same, the documents to be filed or already been filed by both parties can be gone into and the issue can independently be decided unmindful of the Civil Court decree.

10.Per contra, Mrs.AL.Gandhimathi, learned counsel appearing for the fourth respondent would submit that, no doubt a suit was filed by the fourth respondent only for bare injunction, as there was no need for the fourth respondent to seek a declaratory relief to declare the property in question, because, the title is already in favour of the fourth respondent.

11.In this regard, according to the learned counsel appearing for the fourth respondent, the necessary documents to establish the title of the fourth respondent including the patta in question have already been filed before the Civil Court and those documents having been marked and accepted by the Civil Court, in regard to title in favour of the fourth respondent, the permanent injunction by way of judgment and decree was granted by the Civil Court, thereby the right of the fourth respondent to have an absolute enjoyment of the property, since the fourth respondent is having the title over the property in question, has been confirmed by the Civil Court decree. Therefore, as against which, though appeal has been filed by the petitioners, the operation of the decree is intact, therefore, while the decree passed by the Civil Court / trial Court is in operation, merely because an appeal has been filed by the petitioners before the Appellate Court that will not create any new right to decide the issue with regard to the patta as claimed by the petitioners. Therefore, till a finality is reached in the appeal filed by the petitioners, which is admittedly pending before the Sub Court concerned, the petitioners cannot seek any indulgence to interfere with the order passed by the Revenue Authorities which are impugned herein, therefore, the learned counsel appearing for the fourth respondent seeks dismissal of this writ petition.

12.Mr.N.Inbanathan, learned Additional Government Pleader appearing for the official respondents would submit that, since admittedly there has been a Civil Court decree, whether it is for a declaratory decree of title or mere decree for permanent injunction to protect the possession of the fourth respondent in the suit property that is material for the Revenue Authorities to be gone into because the appeal filed against the Civil Court decree by the petitioners is still pending before the concerned Appellate Court, unless and until, that is decided in one way or other, the findings given by the Civil Court cannot be erased by the Revenue Authorities. Therefore, if at all the Revenue Authorities want to interfere with the patta already given in favour of the fourth respondent, that will go contra or will go against the decree passed by the Civil Court, therefore, that kind of indulgence cannot be shown by the Revenue Authorities as they have been precluded from giving any such findings overriding the findings given by the Civil Court. Therefore, on that reason alone, the Revenue Authorities have laid off their hands from interfering with the patta already given in favour of the fourth respondent. Therefore, at this juncture, it is for the petitioners to pursue the appeal already filed before the Appellate Court and in one way or other if the appeal is decided, both the petitioners as well as the fourth respondent can work out their remedies in the manner known to law. Therefore, the orders passed by the Revenue Authorities both by the second respondent and the first respondent which are impugned herein are sustainable and they do not require any interference from this Court, he contended.

13.I have heard the rival submissions made by the learned counsel appearing for the parties and have perused the materials placed before this Court.

14.As has been rightly pointed out by the learned counsel appearing for the fourth respondent as well as the learned Additional Government Pleader appearing for the official respondents, there has been a Civil Court decree in favour of the fourth respondent. In the said Civil Court decree, though it has been given a permanent injunction in favour of the fourth respondent, of course against the petitioners, the argument advanced by the learned counsel appearing for the petitioners that, it is only a decree for bare injunction and not a declaratory decree to declare the title over the property in question in favour of the fourth respondent, cannot be accepted at this juncture, because, that risk has already been taken by the fourth respondent to approach the Civil Court to get a decree only for protecting his possession on the ground that insofar as the title is concerned, he is having the clear title.

15.It is a settled proposition that, once the party has chosen to approach the Civil Court for a decree of bare injunction, he is always taking the risk of not getting a decree in respect of the title for which neither the Civil Court nor this Court can compel the party to seek for a declaratory decree.

16.If at all any defect is there in respect of the title of the property, it is for the party to bear it and therefore, with that limited risk only the party who approaches the Civil Court to seek for a decree for injunction alone will always approach the Civil Court. Therefore, merely because the fourth respondent has got a decree for bare injunction alone, it cannot give any leverage to interfere with the decision of the Civil Court, because, as has been rightly submitted by the learned counsel appearing for the fourth respondent, the findings given by the Civil Court in the decree is based on the documents filed by the fourth respondent, which includes the document of patta which is in question now. Moreover, admittedly as against the Civil Court decree, the petitioners have filed an appeal in Appeal No.32 of 2015 on the file of the Sub Court, Ponneri and the said suit is pending.

17.If at all the petitioners want to pursue the said appeal, they can very well pursue the same, where if they have confidence to establish their case to get the decree passed by the trial Court set aside, then accordingly they can very well workout the remedy, including the remedy of cancellation of patta granted in favour of the fourth respondent.

18.Instead, if the petitioners lost the appeal also, then, it is a mere confirmation of the decree passed by the trial Court thereby the fourth respondent may take an upper hand. Only at this juncture, since the situation is fluid, where there is a Civil Court decree in favour of the fourth respondent, as against which, the appeal filed by the petitioners is pending before the First Appellate Court, the Revenue Authorities have refrained themselves from interfering with the findings given by the Civil Court thereby both the second respondent as well as the first respondent have concurrently held that they cannot interfere with the findings given by the Civil Court and accordingly, they laid off of their hands to interfere with the patta issued in favour of the fourth respondent atleast for the time being. This action on the part of the Revenue Authorities, in the considered opinion of this Court, is to be sustained and this Court cannot find fault with the said approach of the Revenue Authorities in passing the impugned orders.

19.In that view of the matter, this Court feels that the impugned orders are to be sustained as they are not liable to be interfered with at this juncture.

20.However, since the Civil Court decree for bare injunction is under appeal before the Appellate Court as stated above, one way or other, if the appeal is decided at the earliest point of time, that will give a quietus to the issue raised by the petitioner and therefore, taking into account the totality of the situation, this Court feels that, a direction can be given to the Appellate Court i.e. Sub Court, Ponneri to decide the appeal on merits within a time frame, that is the best can be done by this Court at this juncture.

21.In view of the aforesaid discussion, this Court is inclined to dispose of this writ petition with the following orders.

That the impugned orders are sustained, therefore, they are not interfered with by this Court and in this regard, the writ petition is liable to be dismissed, accordingly, it is dismissed. However, by taking into account the aforesaid circumstances, this Court is inclined to give a direction to the Sub Court, Ponneri to take up the appeal suit in A.S.No.32 of 2015 and decide the same on merits within an outer time limit of six months from the date of receipt of a copy of this order. Since such a time frame has been given to the Sub Court, both parties shall give fullest cooperation to the Sub Court for deciding the appeal in time.

22.With these directions, this Writ Petition is dismissed. However, there shall be no order as to costs.

Sd/-

Assistant Registrar (CS-III)

//True Copy//

Sub Assistant Registrar

Sgl

To

1.The District Revenue Officer,
Thiruvallur District
Chennai Thiruthani Road
Thiruvallur - 602 001.

2.The Revenue Divisional Officer,
Revenue Divisional Office
Ambattur, Chennai 600 053.

3.The Tahsildar
Madhavaram
32/4, State Highway, 111 West Garden
Natesan Nagar, Madhavaram
Chennai 600 060.

4.The Subordinate Judge,
Ponneri.

+1cc to Mr.R.Kumar, Advocate, S.R.No. 23214
+1cc to Mr.A.L.Ganthimathi, Advocate, S.R.No. 23327
+1cc to the Government Pleader, S.R.No. 23401

W.P.No.7771 of 2018

NRL(CO)
GN(28/06/2021)