IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 10.08.2021

Pronounced on : 19.08.2021

CORAM

THE HONOURABLE MR. JUSTICE C.V.KARTHIKEYAN

W.P.No.30597 of 2019
and
W.M.P.No.30660 of 2019
and
W.M.P.No.3590 of 2020

V.Perumal .. Petitioner

..Vs..

1. The District Revenue Officer
   Kancheepuram District.

2. The Revenue Divisional Officer
   Chengalpet,
   Kancheepuram District.

3. The Tahsildar
   Taluk Office,
   Thiruporur,
   Kancheepuram District.

4.Nazeem Sharif .. Respondents

PRAYER : Petition filed Under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, calling for the records pertaining to the order passed by the 1st respondent in his proceedings in Na.Ka.No.10657/2019/En.4 dated 03.10.2019 and quash the portion of the order rendered in page No.17 of the impugned order and consequently, direct the 1st respondent to bring into effect the order of the 2nd respondent dated 05.03.2019 made in Pa.Mu.No.105/2019/A3 insofar as the land comprised in Survey No.65/8A.

For Petitioner : Ms.G.Thilakavathi, Senior Counsel
For D.Kanagasundaram

For RR1 to R3 : Mr.K.M.D.Muhilan
Government Advocate.

For R4 : Mr.K.S.Karthik Raja

ORDER

This Writ Petition has been filed in the nature of Certiorarified Mandamus to call for the records pertaining to the order of the 1st respondent, the District Revenue Officer, Kancheepuram District in proceedings in Na.Ka.No.10657/2019/En.4 dated 03.10.2019 and quash a portion of the order and direct the first respondent to put into effect the order of the 2nd respondent / the Revenue Divisional Officer, Chengalpet, Kancheepuram District dated 05.03.2019 in Pa.Mu.No.105/2019/A3 with respect to the lands comprised in S.No.65/8A in Pudupakkam Village, Thiruporur Taluk, Kancheepuram District.

2.The petitioner claims that the property measuring an extent of 29 cents of punjai lands in S.No.65/8, Pudupakkam Village, Thiruporur Taluk, Kancheepuram District was originally owned by his grandfather, K.Mari. After the survey and settlement of land by the Government in 1961, a joint patta bearing No.94 was issued in the name of his grandfather K.Mari and another person Ayyavoo as per the settlement register. It had been stated that after the death of Ayyavoo his legal representatives along with K.Mari, and his son Vendavarasi and the petitioner who was a minor had sold the lands measuring about 12 cents by Sale Deed dated 27.07.1971 and registered as Document No.849 of 1971 in the office of the Sub-Registrar, Thiruporur.

3.It had been stated that by proceedings dated 25.01.1973 in No.84/2025/1382, the survey numbers were sub divided by the authorities who issued Patta No.94 to the lands on northern side for the extent of 16 cents in S.No.65/8A in the name of K.Mari. The lands in the southern side which was sold measuring 12 cents was subdivided as S.No.65/8B. The petitioner claims that an error occurred in the patta with respect to the lands in S.No.65/8A measuring 16 cents. It had been claimed that he made a representation and the corrections was made. He however stated that the lands in S.No.65/8A was brought into the fold of the 4th respondent and was taken up for joint development by the 4th respondent along with M/s.Isha Homes (India) Private Limited. The said land was shown in the Planning Permission obtained during joint development as Open Space Reservation and gifted to the authorities towards laying of road and park. The remainder portion of the land along with the larger extent had been developed and Deeds of Conveyance has been executed to various third parties.

4.The petitioner then filed W.P.No.7745 of 2019 seeking a mandamus directing the Planning Authority to cancel the layout approval No.18 of 2016 granted by Letter No.1220/2015 dated 28.07.2016 for joint development of the property bearing

S.Nos.64/10B, 64/12, 64/13 and 65/1, 65/2, 65/6, 65/8A, 65/8B, 65/9B in Pudupakkam Village, Tiruporur Panchayat Union, Tiruporur Taluk, Kancheepuram District and also to cancel the Gift Deed registered as Doc.No.4070/2016 registered at Sub-Registrar Office, Tiruporur. In the counter the respondents and also the 4th respondent herein had stated that an error had crept in while documents of conveyance were obtained by the 4th respondent namely, Sale Deed dated 27.07.1971 registered as Doc.No.849/1971 in the office of the Sub-Registrar Thiruporur. In all the documents the details of the property and boundaries pertaining to S.No.65/8B had been given, but the survey number was wrongly mentioned as S.No.65/8A. It had been contended that the conveyances related to S.No.65/8B on the southern side. It had been contended that the land in northern side bearing S.No.65/8A was never sold. It was claimed that this was confirmed by the revenue authorities and admitted by the 4th respondent and also the developers, Isha Homes India Private Limited.

5.A learned Single Judge of this Court by order dated 19.08.2019 in W.P.No.7745 of 2019 had stated that the right over the property can be decided by competent Civil Court. It was stated that the 9th respondent therein had excluded the portion from the layout. It was therefore stated that inclusion of S.No.65/8A in the gift deed will therefore become nonest in law.

6.It is stated that the petitioner filed a review of the order and during the course of arguments it has been informed that the review petition had also been dismissed.

7.In the meanwhile, based on the representation given, the 2nd respondent, Revenue Divisional Officer had stated that the patta with respect to S.No.65/8A measuring 0.16 cents should be corrected to the name of K.Mari. Questioning this order of the 2nd respondent dated 05.03.2019, the 4th respondent herein filed an appeal before the 1st respondent namely, District Revenue Officer, Kancheepuram District. The 1st respondent by order dated 03.10.2019 in No.10657/2019/En.4 stated that since W.P.No.9533 of 2019 was pending, the parties should take recourse to Civil Court proceedings to settle the disputes.

8.It had been stated by the petitioner that the 4th respondent while simultaneously filing an appeal before the 1st respondent against the order of the 2nd respondent dated 05.03.2019, had also filed W.P.No.9533 of 2019 for the same relief, namely, to quash the order of the 2nd respondent dated 05.03.2019. Pendency of the said writ petition was quoted by the 1st respondent in the order now impugned, who stated that owing to such pendency, the parties must be relegated to the Civil Court. It is under these circumstances, questioning that order of the 1st respondent that the present writ petition had been filed.

9.The issues surrounded a dispute between the 1st and 4th respondents. The 2nd and 3rd respondents has been pushed to be mere bystanders.

10.The 4th respondent filed a counter and claimed that she was the absolute owner of the total extent of 8.61 acres of land in S.Nos.64/10B, 64/12, 64/13, 65/1, 65/2, 65/6, 65/8A, 65/8B & 65/9B in Pudupakkam Village, Tiruporur Taluk, Kancheepuram District. She claimed that she became the owner of the land in S.No.65/8A and 65/8B measuring 29 cents pursuant to a settlement deed executed in her favour on 08.03.2007 registered as Doc.No.2445 of 2007 in the office of the Sub-Registrar, Tiruporur, which settlement deed was executed by her husband. With specific reference to S.No.65/8A, she claimed that after various transactions finally, 11 cents out of 16 cents had been conveyed to Zubaida Begum by T.Balaraman and others who were the sons of Tiruvengada Mudaliar who had purchased 12 cents from K.Mari and others by Doc.No.531 of 1987 dated 26.03.1987 and balance 5 cents from Velayutham by Doc.No.2670 of 1987 dated 17.11.1987.

11.The 4th respondent further claimed that she also purchased 13 cents in S.No.65/8B. Therefore, it had been claimed that by the subsequent settlment deed, she had become the absolute owner of the entire 29 cents in both S.Nos.65/8A and 65/8B. Thus the 4th respondent has claimed title to the property. She also stated that the last paid Kist by K.Mari, the grandfather of the petitioner was for the fasli year 1382 namely for 1971 and therefore claimed that he was never in possession after executing the sale deed in the year 1971 to Tiruvengada Mudaliar.

12.The 4th respondent also claimed that while incorporating the subdivisions in the FMB extracts the southern portion had been wrongly shown as S.No.65/8B instead of S.No.65/8A. She also questioned the bonafide of the petitioner, who had approached the Court after four decades, and taking advantage of that error, had raised a dispute that 16 cents of land in S.No.65/8A still belongs to him. In fact she claimed that he was actually questioning title of the 4th respondent. It had been stated that the said title can be tested only by instituting a suit in a Civil Court of competent jurisdiction. It was therefore stated that the writ petition should be dismissed.

13.Heard arguments advanced by Ms.G.Thilakavathi, learned Senior counsel for the petitioner and Mr.K.M.D.Muhilan, learned Government Advocate for the 1st, 2nd and 3rd respondents and

Mr.K.S.Karthick Raja, learned counsel for the 4th respondent.

14.It is the contention of Ms.G.Thilagavathi, learned Senior Counsel for the petitioner that originally, the grandfather of the petitioner K.Mari owned 29 cents in S.No.65/8 in Pudupakkam Village, Tiruporur Taluk. Joint patta was granted to the said K.Mari and another individual Ayyavoo, after the survey and settlement of the lands by the Government in 1961. In the year 1971, K.Mari and his sons Vendavarasi and his grand son the petitioner who was a minor and Ponnan, Velayudham both sons of Mamoothi and Kuppan son of Velayutham sold 12 cents out of 29 cents by Doc.No.849/1971 dated 27.07.1971 to Tiruvengada Mudaliar. The learned Senior Counsel stated that the remaining 17 cents was retained by K.Mari and his family members.

15.It is the contention of the learned Senior Counsel that the portion which had been sold was in the southern side and the survey number was subdivided and allotted S.No.65/8B. She contended that the balance 16 cents was retained by K.Mari and that portiion was on the northern side and the survey number was subdivided and allotted 65/8A. It is her contention that the 4th respondent, when they purchased the properties had wrongfully included S.No.65/8A in their documents. They had later entered into a joint development with Isha Homes India Private Limited and in that agreement had shown the lands in S.No.65/8A as Open Space Reservation and had gifted the same towards laying of road and park. It had been claimed that a mistake had occurred in the FMB register and that S.No.65/8A had to be interchanged with S.No.65/8B.

16.The learned Senior Counsel pointed out that this had been found out as a fact by the 2nd respondent in his order dated 05.03.2019 and he had directed correction of the said survey numbers. In the appeal, the 1st respondent namely District Revenue Officer had affirmed such a finding, but had directed the parties to go to the civil court to settle their disputes. The learned Senior Counsel assailed that portion of the order and stated that the 1st respondent had every authority to uphold the order of the 2nd respondent and need not have directed the parties to approach the civil court and could have directed corrections of the entries in the FMB register.

17.The learned Senior Counsel further stated that this Court may, therefore direct the 1st respondent to issue such directions to correct the survey numbers in the FMB register without relegating the parties to the civil court or on the other hand remit the matter back to the 1st respondent and stated that the petitioner and the 4th respondent may again argue the matter before the 1st respondent and impress upon the said official that correction in the FMB register can be undertaken without relegating the parties to the civil court.

18.The learned Senior Counsel in this connection relied on a judgment of a learned Single Judge of this Court in J.Jayaniithaa Vs. Inspector General of Registration and others reported in 2021 1 CTC 839, wherein the learned Single Judge of this Court had observed that when fraud is found in the entries of the revenue registers, then relegating the parties to the civil court would make it impossible to the real owners of the property to deal with his own property and had therefore directed that the said order itself may be registered and there need not be a direction to approach the civil court.

19.This order had been again followed by the very same learned Single Judge in W.P.(MD).No.10177 of 2021, S.R.M.Packiri Rajan V. The Inspector General of Registration and others, by order dated 17.06.2021. It is therefore, the contention of the learned Senior Counsel that this Court should interfere with that particular portion of the order of the 1st respondent by which he had directed the parties to go to the civil court to settle the issues between them.

20.Mr.KMD.Muhilan, learned Government Advocate, for the 1st, 2nd and 3rd respondents pointed out that whenever there is a dispute on title, it would be advisable that the parties settle the issues of title before the civil court since only a civil court can record evidence and decide on the title. The corrections in the FMB register can never grant title. The revenue records will necessarily have to follow title. To determine title, the civil court will have to be approached and merely changing the corrections in the FMB register would not be of any help to any of the parties.

21.Mr.K.S.Karthik Raja, learned counsel for the 4th respondent stated that the 4th respondent is the absolute owner as on date of the entire 29 cents in S.Nos.65/8A and also in S.No.65/8B having purchased the same by registered sale deeds. The learned counsel stated that in the FMB register an error had occurred and that was not owing to any act of the 4th respondent. The learned counsel stated that when there is a dispute with respect to title, then it would only be advisable to refer the parties to the civil court. In fact this was also the view of the learned Single Judge, who had adjudicated the writ petition between the very same parties in W.P.No.7745 of 2019. The learned counsel also pointed out the review filed against the said order in Review Petition No.228 of 2019 had also been dismissed. He therefore contended that the parties will necessarily have to go to the Civil Court and the petitioner will have to file a suit for declaration of title and the revenue authorities cannot decide issues on title.

22.I have perused the records and have given my careful consideration to the arguments advanced.

23.The grandfather of the petitioner K.Mari was the owner of 29 cents of land in S.No.65/8 in Pudupakkam Village, Tiruporur Taluk, Chengalpet District. This land was divided into two halves namely, northern and southern halves. The northern half measured 16 cents. The southern half measured 12 cents. There is no indication in any of the records as to what happened to the remaining 1 cent.

24.It is the case of the petitioner that the northern half of 16 cents was allotted S.No.65/8A and was retained by K.Mari. This is the land which the petitioner today claims that he is the owner, in view of the fact that he is the grandson of K.Mari. The southern portion had been sold. The southern portion of 12 cents had been sold and the subdivision in survey number was allotted as 65/8B.

25.The records however paint a different picture. The northern half of 16 cents said to be retained by K.Mari, had also been sold. For the entire 29 cents, the following are the relevant encumbrances which had been entered into by the parties.

i).Document No.849/1971 dated 27.07.1971 for 12 cents out of 29 cents now S.No.65/8A (part).

ii).Unregistered Sale Deed dated 08.07.1975 for 4 cents of S.No.65/8A.

iii).Document No.2270/1984 dated 28.11.1984 for 13 cents now S.No.65/8B.

26.Passing at this moment, it is seen that though the petitioner claims that his grandfather retained, 16 cents on the northern side and S.No.65/8A had been allotted to the said lands, there has been execution of a registered sale deed for 12 cents and an unregistered sale deed for the balance 4 cents.

27.There had been further transactions namely,

i).Document No.2271/1984 dated 28.11.1984 for 5 cents in S.No.65/8A.

ii).Document No.531/1987 dated 26.03.1987 for 11 cents in S.No.65/8A and 13 cents in S.No.65/8B.

28.These documents effectively indicate that by 1987, the entire 29 cents had been dealt by way of sale deeds.

29.Further transactions were entered into in 1987.

i)Document No.2670/1987 dated 17.11.1987 for 5 cents in S.No.65/8A.

30.These documents further establish that the family members of K.Mari have been freely conveying the lands and dividing them into portions, conveying them to various persons. Thereby the entire lay of the land had changed. To determine whether any portion of the lands were retained by K.Mari as claimed by the petitioner or not, all the above sale deeds will have to be tested during the course of trial. That is the only option available. They will have to be proved in manner known to law. The lands conveyed under each one of the sale deed will have to be separately demarcated. This is an exercise which can be done only during trial before the competent civil court. Correcting or changing the revenue records will never confer title. It would only be an exercise in futility.

31.Thereafter, the entire property had been consolidated in the name of the 4th respondent by way of settlement deed executed by U.Nusrath Sharief by Document No.2447 of 2007 dated 08.03.2007. The 4th respondent therefore claims title to the entire 29 cents.

32.Whether that trace of title can be accepted or whether it should be interfered with is again an issue which can be decided only by a civil court after trial and on appreciation of pleadings and evidence adduced by the parties.

33.In the midst of all these complications involving rival contentions of title and possession the revenue authorities should not embark themselves on a mission to decide title. They cannot decide title. There is bar that the revenue authorities cannot and should not decide title with respect to any land. They can only carry out corrections in the revenue registers and which corrections must be done only on the basis of title determined by a decree lawfully obtained in a civil court. The parties have been already relegated to the civil court in the earlier order dated 19.08.2019 in W.P.No.7745 of 2019 which writ petition had also been filed by the present writ petitioner. He filed a review against the said order. That review has also been dismissed. The sensible course available for the writ petitioner is to approach the civil court, seek declaration of title and demarcation of the property and also possession, if possession is not with him.

34.In Kuppuswami Nainar Vs. The District Revenue Officer and another reported in (1995) 1 MLJ 426, a Division Bench of this Court headed by then Chief Justice had held as follows:-

> "3. No provision is brought to our notice in the Standing Orders of the Board of Revenue taking away the jurisdiction of the Civil Court to adjudicate upon the question of title relating to immovable property. Revenue Officers in a Patta proceeding may express

their views on the question of title, but such expression of opinion or decision is not conclusive and it is only intended to support their decision for granting Patta. Ultimately, it is the Civil Court which has to adjudicate the question as to whether the person claiming Patta is the title holder of the land. Even if the Revenue Authorities decide the question of title, that will not in any way affect the jurisdiction of the Civil Court, which has to decide the question without reference to the decision of the Revenue Authorities.

4. Now the question for consideration is, having regard to the fact that the District Revenue Officer has expressed his opinion on the question of title, whether the order under question should be interfered with. It may be pointed out here that in a Petition under Article 226 of the Constitution, the question of title regarding immovable property cannot properly be gone into, because a mass of evidence may be required for adjudicating the question of title. Even if we are to interfere with the order under Appeal, it is the other party, who has to go to a Civil Court and establish title. As far as the exercise of jurisdiction under Article 226 of the Constitution is concerned, it does not matter to it whether "A" party goes to Civil Court or "B" party. Therefore, we are of the view that the question of title has to be decided by the Civil Court without reference to the order under question. Hence, we decline to interfere with the order challenged in the Writ Petition. However, we make it clear that in the event a Suit for declaration of title and for appropriate consequential relief is filed, the Civil Court shall decide such a Suit, without reference to the findings recorded by Respondents 1 and 2 in the impugned orders, but only on the basis of the pleadings of the parties and evidence adduced by them before it. We also make it clear that any opinion expressed by the learned Single Judge, contrary to what we have stated above, shall also stand modified accordingly. With these observations, the Writ Appeal is dismissed. Consequently, C.M.P. No. 15872 of 1994 filed along with the Appeal is also dismissed."

35.A perusal of the dictum laid down shows that it is only the Civil Court which can adjudicate upon the question of title relating to immovable properties. It had been further held that revenue officers may express their views on the question of title but such expression of opinion is not conclusive. Ultimately it the civil court which has to adjudicate the question as to whether the person claiming patta is the title holder of the land. Even if the revenue officials were to decide about the title, that decision will not in anyway effect, the jurisdiction of the civil court which has to decide the question without reference to the decision of the revenue authorities. This judgment had been subsequently followed by a learned Single Judge of this Court in Chockkappan and 2 others Vs. The State of Tamil Nadu rep.by the Special Commissioner and Commissioner Land Administration, Chepauk, Chennai - 5 and 2 others reported in 2004 (1) CTC 136, wherein in paragraph 5, the learned Judge had held as follows:

> "5. .....Though the Revenue Officials are empowered to consider the prima facie consideration of the right of the parties for the grant of patta, when the patta stands in the name of a particular person, inclusion of others in the patta is impermissible, that too, on consideration of title by the Revenue Officials. In all fairness, the Zonal Tahsildar, Aruppukottai ought to have directed the 3rd respondent to first establish her title before the Civil Court before any inclusion is made in the patta, as it is not the case of fresh patta but inclusion of 3rd respondent in the patta which already stand in the name of the petitioners. In this context, the impugned order cannot be sustained as the 3rd respondent's name has been included only after the decision rendered by the Revenue Officials regarding the title of the 3rd respondent. Hence, the impugned order is set aside. However, liberty is given to the 3rd respondent to work out her remedy in Civil Court as to her title over the land in question and in the event, the 3rd respondent has obtained a decree in her favour she can make her application for inclusion of her name in the patta. ......"

36.Again the said dictum had been upheld and followed by a Division Bench of this Court in Vishwas Footwear Company Ltd., A-2 Third Phase, Guindy Industrial Estate, Chennai - 600 032, rep. by Director, V.Ravi Vs. The District Collector and others reported in 2011 (5) CTC 94. The Division Bench again extracted paragraphs 3 and 4 referred supra in Kuppuswami Nainar Vs. The District Revenue Officer and another reported in (1995) 1 MLJ 426 and also the statement of law as affirmed in Chockkappan (referred supra) and held as follows:

> "15. ....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 the Patta could be effected by the Revenue Divisional Officer."

37.The position of law is therefore very clear. The 1st respondent had correctly referred the parties to approach the civil court to decide the issues between them. The petitioner will not gain any advantage by correcting the entries in the revenue register. The 4th respondent asserts title to the entire 29 cents in S.Nos.65/8A and 65/8B. The writ petitioner, will therefore, necessarily have to assert and establish his title and the only forum available for that assertion is the civil court.

38.The Writ Petition will necessarily have to fail and the direction of the 1st respondent directing the parties to approach the civil court is upheld, I shall not interfere with the same.

39.The Writ Petition is dismissed. No order as to costs. Consequently, the connected Writ Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

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To

1. The District Revenue Officer
   Kancheepuram District.

2. The Revenue Divisional Officer
   Chengalpet,
   Kancheepuram District.

3. The Tahsildar
   Taluk Office,
   Thiruporur,
   Kancheepuram District.

+1cc to Mr.K.S.Karthik Raja, Advocate, S.R.No.41872
+1cc to Mr.D.Kanagasundaram, Advocate, S.R.No.41701

W.P.No.30597 of 2019and
W.M.P.Nos.30660 of 2019and
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PMK(CO)
CT/06/09/2021