BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 09.02.2021

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

W.P(MD)No.13930 of 2010
and
M.P.(MD)No.1 of 2010

M/s.Standard Match Industries,
No.5-2-15, Sattur Road,
Sivakasi,
Rep. by its Director ... Petitioner

Vs.

1.The Commissioner of Land Administration,
Chepauk, Chennai – 600 005.

2.The District Revenue Officer,
Virudhunagar.

3.The Revenue Divisional Officer,
Sivakasi.

4.Selvi Nachiar ... Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, calling for the records of the 1st respondent D.Dis.K4/RP48/06(36627/2005) dated 31.03.2010 and quash the same and consequently direct the 3rd respondent to restore the patta issued in favour of the petitioner.

For Petitioner : Mr.A.Sivaji

For Respondents : Mr.M.Rajarajan,
Additional Govt. Pleader for R1 to R3.
Mr.R.Devaraj for R4.

ORDER

Heard the learned counsel for the petitioner, the learned Additional Government Pleader for the respondents 1 to 3 and the learned counsel for the fourth respondent.

2.The case of the petitioner is that they own 33 cents of land in Periyakollapatti village in Sattur Taluk. The petitioner claims title and possession over the said property by virtue of sale deed dated 23.05.1974. It is a registered document. The schedule to the sale deed contains two items. The first item measures an extent of 19 cents while the second item measures an extent of 14 cents. The petitioner's possession and enjoyment of the said lands was sought to be interfered by the father of the fourth respondent herein. That necessitated filing of O.S.No.10 of 2001 before the District Munsif Court, Sattur. Vide judgment and decree dated 05.02.2002, the permanent injunction as sought for by the petitioner was granted by the jurisdictional Civil Court.

3.Whileso, the fourth respondent filed a petition before the Revenue Divisional Officer, Sivakasi and sought cancellation of the patta in respect of S.No.295/2 that is standing in the name of the petitioner herein. The Revenue Divisional Officer, Sivakasi held an enquiry and after hearing both the parties, gave a finding that the possession of the land appears to be with the writ petitioner herein. However, taking note of the rival claims, he passed an order for classifying the lands in question as natham vacant site. This order dated 08.07.2004 passed by the Revenue Divisional Officer, Sivakasi was put to challenge before the District Revenue Officer, Virudhunagar by filing a revision. The revision petition filed by the writ petitioner herein was dismissed by the Revisional Authority vide order dated 31.08.2005. The writ petitioner filed a second revision before the Principal Secretary and Commissioner of Land Administration, Chepauk, Chennai. Vide order dated 31.03.2010, the Revising Authority held that the orders passed by the authorities below do not call for any interference and dismissed the petition as devoid of merits. Challenging the same, this writ petition came to be filed.

4.The learned counsel for the petitioner reiterated all the contentions set out in the affidavit filed in support of the writ petition and wanted this Court to set aside the impugned order.

5.The writ prayer is opposed by the fourth respondent. The fourth respondent has also filed a counter affidavit. The learned counsel for the fourth respondent pointed out that if the petitioner is aggrieved by the orders passed by the Revenue Authorities, it is always open to the writ petitioner to go before the jurisdictional Civil Court. His other point of contention is that there is really no serious dispute regarding title or possession but more on the identity of the properties. According to him, the Revenue Authority can as well compare the documents projected by both parties and based on the same, identify the properties purchased by them respectively. He would also point out that decree on which reliance is placed is only an ex parte decree and that therefore, this Court ought not to give much significance to the same. The learned counsel called upon this Court to dismiss this writ petition as devoid of merits.

6.I carefully considered the rival contentions and went through the materials on record. It is the fourth respondent, who sought to upset the original status quo. In other words, the revenue record that was standing in the name of the writ petitioner was sought to be impeached by the fourth respondent. According to the fourth respondent, she purchased an extent of 4312 Sq. Ft. (9.88 cents) by way of registered document No.2522/2002 dated 08.08.2002 in old Survey No.23 with specific boundaries. Thereafter, she came to know about the patta granted in favour of the writ petitioner. That is why, she was led to file an appeal before the Revenue Divisional Officer, Sivakasi. No doubt, the fourth respondent has a claim to make. The question that arises for my consideration is whether the third respondent could have entertained the claim of the fourth respondent. The issue is no longer *res integra*. The Hon'ble Division Bench of the Madras High Court in the decision reported ***2011 (5) CTC 94 (Viswas Footwear Company Ltd., Vs. The District Collector, Kancheepuram)*** has authoritatively laid down that the Revenue Authority ought not to go into disputed issue of title. More than anything else, in the case on hand, the writ petitioner is armed with a decree dated 05.02.2002 in O.S.No.10 of 2001 on the file of District Munsif Court, Sattur. Of course, as pointed out by the learned counsel for the fourth respondent, it is an ex parte decree. I also felt that the judgment is virtually non-speaking and does not satisfy the parameters laid in Civil Procedure Code. But on that score, it would not be open to this Court to ignore a subsisting decree. The fourth respondent has not taken any step to have the said decree vacated or set aside. Therefore, this Court is bound to give effect to the said decree. When the father of the fourth respondent had already suffered a decree and when disputed issue of title and possession have been thrown up for consideration, the revenue authorities ought to have relegated the fourth respondent to go before the jurisdictional Civil Court. Nothing stopped the fourth respondent from filing a comprehensive suit for declaration and injunction or declaration and recovery of possession, as the case may be. She has not done so. Instead the fourth respondent sought to short circuit the process by knocking the doors of the revenue authorities. The revenue authorities were wholly incompetent to decide the claim raised by the fourth respondent. Since the very competence and jurisdiction of the Revenue Authority is under question, I am justified in interfering with the orders impugned in the writ petition. Accordingly, the impugned orders are set aside. I make it clear that the order allowing the writ petition will not come in the way of the fourth respondent from establishing her claim in a duly instituted civil suit. I make it clear that I have not adjudicated the issues on merits. All the other rights of the fourth respondent are left open. If the fourth respondent files any suit, the Civil Court will decide the issues raised therein uninfluenced by the order passed by this Court.

7.With this liberty to the fourth respondent, the writ petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-III)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

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Note : In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To:

1.The Commissioner of Land Administration,
Chepauk, Chennai - 600 005.

2.The District Revenue Officer,
Virudhunagar.

3.The Revenue Divisional Officer,
Sivakasi.

+1 CC to Mr.R.DEVARAJ, Advocate (SR-4122[F] dated 09/02/2021)

+1 CC to SGP (SR-4309[F] dated 10/02/2021)

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