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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.02.2022

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.No.23546 of 2009

1.Karuppaiyan

2.Chinnathambi

3.Ramalingam

... Petitioners

Vs.

1. Periyasamy

2. Marimutha

3. District Revenue Officer,
Ariyalur,
Ariyalur District.

4. Revenue Divisional Officer,
Ariyalur,
Ariyalur District.

... Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India to issue a Writ of Certiorari, calling for the records relating to the impugned proceedings in Na.Ka.A.2 No.988/dated 03.08.2009 passed by the 3rd respondent and quash the same in so far as the petitioners are concerned.

For Petitioner : Mr.R.Venkatesulu
for Ms.Usha Raman

For R3 & R4 : Mr.T.Chezhiyan
Additional Government Pleader

O R D E R

This Writ Petition has been filed seeking for issuance of a Writ of Certiorari to call for the records relating to the impugned order/proceedings in Na.Ka.A.2 No.988/dated 03.08.2009 passed by the third respondent and quash the same insofar as the petitioners are concerned.



2. The case of the petitioners is that, the petitioners are close relatives, inter-related to each other through their father and mother. The disputed properties are the ancestral properties of the petitioners' family and as per the family partition that took place in the year 1980, the property comprised in S.F.No.273/2C was allotted to the second petitioner, and the properties in S.F.Nos.273/2B and 273/2D were allotted in favour of the third petitioner, whereas, the first petitioner was allotted with the properties in S.F.Nos.273/2A and 273/2E. After partition, the petitioners took possession of their respective properties and they continue to be in possession of the Suit property and have also obtained Patta and paying "kist" without any default. However, the first and second respondents are disputing the title of the petitioners over the subject properties and are making multiple attempts to take illegal possession of the properties. Therefore, the petitioners filed a Suit in O.S.No.217 of 1993 on the file of the District Munsif, Ariyalur, and the Suit ended in compromise between the respondents and the petitioner. The Suit was decreed in favour of the petitioners on 29.06.1993. While so, the first and second respondents issued a notice dated 20.06.1998, stating that the decree passed against them is fraudulent decree, for which the petitioners had given suitable reply on 30.08.1998. However, the first and second respondents has not taken any steps to set aside the above said decree. Thereafter, the 1st and 2nd respondents gave a petition before the concerned Tahsildar, for mutation of the Revenue Records, for which, the petitioner had given suitable reply. Further, the petitioners have also raised objection before the Revenue Divisional Officer. However, after due enquiry, the Revenue Divisional Officer has passed an order dated 07.06.2006, vide his proceedings in Mu.Mu.2136/ 2006 (A5), thereby cancelled the patta issued in favour of the petitioners in respect of the properties in S.Nos.168, 387 and 952 and ordered for change of Patta in the name of first and second respondents in respect of the disputed properties. Challenging the same, the petitioners preferred an appeal before third respondent/District Revenue Officer, however, the District Revenue Officer confirmed the order passed by the Revenue Divisional Officer, vide order dated 03.08.2009. Aggrieved by the said order, the petitioners preferred a Revision before the Principal Secretary and Commissioner of Land Administration on 28.08.2009, however, the authorities have passed an order on citing G.O.Ms.No.409, Revenue SS-IZ dated 02.07.2008 and stated that, the Government have withdrawn the provisions of second revision of powers from the Commissioner of Land Administration on transfer of Registry cases under Revenue Standing Order No.31-8 and directed the petitioners to approach the competent Court of law for remedy. Challenging the same, the present Writ Petition is filed for the relief stated supra.



3. The learned counsel for the petitioner submitted that, though the petitioners succeeded in the Suit by way of compromise decree and subsequently, the petitioners have also filed another Suit in O.S.No.150/2006 and the same was dismissed, and as against the same, the petitioners have filed an appeal in A.S.No.7/2017, pending on the file of Subordinate Court, Ariyalur. Further, he submitted that though the first and second respondents are close relatives of the petitioners and earlier, there was a partition between them and the disputed properties were allotted in favour of the petitioners, and knowing the facts very well, the first and second respondents made a false application directly before the fourth respondent/Revenue Divisional Officer for cancellation of Patta issued in favour of the petitioners. Though the Revenue Divisional Officer has no power to entertain such petition, allowing the same in favour of the private respondents is non-est in law. Further, the same was confirmed by the Appellate Authority, which is not sustainable one. However, the Patta was issued only for recognition of the properties, since the petitioners are in possession of the property and the suit in O.S.No.150 of 2006 filed in trial Court is dismissed under the wrong premises.

4. Though very many grounds have been raised in the Writ Petition, the learned counsel for the petitioners submitted that, it would suffice, if this Court grants liberty to the petitioners to file a fresh application for issuance of Patta, after succeeding in the Appeal.

5. Facts in the present case are not in dispute. Admittedly, the Appellate Authority directly entertained the petition filed by the private respondents. However, this Court is not inclined to render any opinion on the power of the Appellate Authority. The fact remains is that the very same properties are in dispute. The petitioner filed an appeal in A.S.No.7/2017 and the same is pending.

6. In view of the above facts and circumstances of the case, this Court, without expressing any opinion on the merits of the case, grants liberty to the petitioners to canvas all their grievances before the lower appellate Court in A.S.No.7 of 2017, and if the petitioners succeed in the said appeal in the lower appellate Court, then liberty is granted to the petitioners to file fresh application before the Original Authority and if such application is filed, then the Authority shall consider the same



and pass orders on merits and in accordance with law, as expeditiously as possible.

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Sd/-
Assistant Registrar(CS-IX)

//True Copy//

Sub Assistant Registrar

jd/skt

To

1. The District Revenue Officer,
Ariyalur,
Ariyalur District.
2. The Revenue Divisional Officer,
Ariyalur,
Ariyalur District.

+1cc to M/s.Usha Ramman, Advocate, S.R.No.11791

+1cc to the Government Pleader, S.R.No.12306

W.P.No.23546 of 2009

AK(CO)
SU(26/04/2022)