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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.01.2022

CORAM

THE HONOURABLE Mr. JUSTICE G.K.ILANTHIRAIYAN

WP.No.20281 of 2021 and  
WMP.No.21533 of 2021

R.Manikandan

... Petitioner

Vs

1. The Revenue Divisional Officer,  
South Chennai Division,  
Guindy,  
Chennai - 600 032

2. B.Sekar

... Respondents

Prayer :- Writ Petition is filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus calling for the records relating to the impugned proceedings in Na.Ka.No.A1/419/2020 dated 13.09.2020 (signed on 13.09.2021) passed by the first respondent, quash the same and consequently forbear the respondents from proceeding further, in view of the law laid down in Vishwas footwear Co., case [(2011 (5) CTC 94 (DB)]

For Petitioner : Mr.N.Manokaran

For Respondents

R1 : Mr.A.M.Ayyadurai,  
Government Advocate

R2 : Mr.J.R.K.Bhavanantham

ORDER

This writ petition is filed to issue a Writ of Certiorarified Mandamus calling for the records relating to the impugned proceedings in Na.Ka.No.A1/419/2020 dated 13.09.2020 (signed on 13.09.2021) passed by the first respondent, quash the same and consequently forbear the respondents from proceeding further, in view of the law laid down in Vishwas footwear Co., case [(2011 (5) CTC 94 (DB)]

2. The property comprised in survey Nos.184/1 and 185/1 admeasuring 60 cents situated at Madananthapuram Village,



Alandur Taluk, Chennai owned by Nagabhoosnam. She executed unregistered sale deed dated 09.04.1984 in favour of the petitioner's mother. The said Nagabhoosnam died on 10.02.2011. The second respondent is being the son of the said Nagabhoosnam lodged complaint as against the petitioner's mother before the first respondent with regards to the cancellation of patta issue in her favour.

3. Mr.N.Manokaran, the learned counsel for the petitioner would submit that the petitioner's mother had executed settlement deed in his favour on 26.06.2015 vide document No.10259 of 2015. On the strength of the unregistered sale deed, patta was obtained on 13.06.2015. Thereafter, the petitioner executed power of attorney on 16.09.2015 in favuor of one, Kavitha Rani for applying layout plan approval before the CMDA. The petitioner also executed a gift deed on 19.09.2016 in favour of Corporation of Chennai for formation of roads and other public utilities. He further submitted that on receipt of the impugned notice from the first respondent, the petitioner went to the Office of the first respondent on 17.09.2021 and informed about the suit filed by him in OS.No.114 of 2020 on the file of the District Munsif Court, Sriperumbudur in respect of the subject property. When the said suit is very much pending between the petitioner and the second respondent, the first respondent has no power to entertain the complaint lodged by the second respondent for cancellation of patta issued in favour of the petitioner. The first respondent cannot decide the title and as such he has no jurisdiction to entertain the application for cancellation of patta.

3.1 He further submitted that on the false complaint lodged by the second respondent, the Inspector of Police, Central Crime Branch, ALGSC-II, Greater Chennai registered FIR in crime No.71 of 2020 for the offences under Sections 419, 465, 467, 468, 471 and 120(b) IPC as against the petitioner and his mother. FIR is under challenge before this Court in quash petition in CrI.OP.No.1563 of 2021 and this Court granted interim stay of all further proceedings and it is pending. In fact, the petitioner also lodged complaint before the Commissioner of Police and before the Inspector of Police, T14 Mangadu Police Station, and both are pending for enquiry. Therefore, when there is a dispute with regards to title, the first respondent has no jurisdiction to entertain any application for cancellation of patta. In support of his contention, he relied upon the following judgments:

(i) Bondar Singh & Others Vs. Nihal Singh & Others  
reported in 2003 (4) SCC 161

(ii) Vishwas Footwear Company Ltd., Vs. The District



Collector & others reported in 2011 (5) CTC 94

(iii) Syed Dhasthakeer Vs. Navab John reported in  
2012 (6) CTC 892

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4. Per contra, the second respondent filed counter and Mr.J.R.K.Bhavanantham, the learned counsel for the second respondent submitted that the subject property was never conveyed to the petitioner's mother by the alleged sale deed dated 09.04.1984. During her lifetime, till her death on 10.02.2011, she was paying kist for the said land under patta No.126. After her lifetime, the second respondent was paying kist for the subject land till the year 2019. The petitioner is a stranger to the property and forged the signature of his mother and fabricated unregistered sale deed as if his mother executed the alleged sale deed in favour of the petitioner's mother. The alleged sale deed was executed on 09.04.1984, whereas the petitioner's mother obtained patta in her name only on 13.06.2015. Immediately after obtaining patta on the strength of the unregistered sale deed, on 26.06.2015 settlement deed was registered in favour of the petitioner. Immediately after came to understand, the second respondent lodged complaint and the same has been registered in Cr.No.71 of 2020 for so many offences as against the petitioner and his mother. The second respondent is in possession and enjoyment of the subject property. Therefore, the second respondent filed application before the first respondent to cancel the patta issued in favour of the petitioner's mother and retansferrred in favour of the petitioner under patta Nos.3389 and 3450 respectively.

4.1 He further submitted that the first respondent has ample power to enquire the application for cancellation of patta and as such, the present writ petition challenging the notice issued for hearing is not at all maintainable under Article 226 of the Constitution of India. Mere pendency of the suit, that too for bare injunction, is not an impediment for the first respondent to enquire the application for cancellation of patta. The first respondent need not to go into the title of the property and the patta will be issued only on possession and enjoyment of the property and after gone through the documents. The petitioner's mother claimed patta under the unregistered sale deed and as such she had no title over the property and without any title, executed alleged settlement deed in favour of the petitioner. On the strength of the settlement deed, he obtained patta. In support of his contention, he relied upon the following judgments:

(i) K.B.Saha and Sons Private Limited Vs. Development  
Consultant Limited reported in 2008 (8) SCC 564



(ii) Avinash Kumar Chauhan Vs. Vijay Krishna Mishra  
reported in 2009 (2) SCC 532

(iii) Amertham Vs. Thannace and another reported in  
2020 (4) CTC 395

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5. The first respondent filed counter and Mr.A.M.Ayyadurai, Government Advocate appearing for the first respondent submitted that the issuance of notice to the petitioner is in order. After issuance of notice, the first respondent was informed the pendency of the suit in OS.No.114 of 2020 on the file of the District Munsif Court, Sriperumbudur. The appeal has been filed by the second respondent under the provisions of 31(8) of the Revenue Standing Order. Accordingly, appeal lies with the first respondent and as such the first respondent has jurisdiction to enquire the appeal submitted by the second respondent. That apart, the first respondent had no knowledge about the death of the petitioner's mother. The petitioner who was called for enquiry, must have submitted his written submission to defence together with a copy of the plaint. Only after going through the written submission of the petitioner and the copies of the documents relied upon by him, suitable orders will have been passed. Whereas instead of appearing for the enquiry, the petitioner straight away challenged the notice issued for enquiry.

6. Heard, Mr.N.Manokaran, the learned counsel for the petitioner, Mr.A.M.Ayyadurai, Government Advocate appearing for the first respondent and Mr.J.R.K.Bhavanantham, the learned counsel for the second respondent.

7. The unregistered sale deed dated 09.04.1984 was executed in favour of the petitioner's mother in respect of the property comprised in survey Nos.184/1 and 185/1 admeasuring 60 cents situated at Madananthapuram Village, Alandur Taluk, Chennai. On the strength of the unregistered sale deed, the petitioner's mother obtained patta under patta No.3389 on 13.06.2015. On the strength of the same, the petitioner's mother executed settlement deed in favour of the petitioner dated 26.06.2015 and the petitioner also obtained patta under patta No.3450. The said property originally belonged to the second respondent's mother Nagabhoosnam. She executed unregistered sale deed in favour of the petitioner's mother. After came to knowledge about the above deeds and pattas, the second respondent lodged complaint and the same has been registered in Cr.No.71 of 2020 on the file of the Inspector of Police, Central Crime Branch, ALGSC-II, Greater Chennai for the offences under Sections 419, 465, 467, 468, 471 and 120(b) IPC. The second respondent also filed appeal before the first respondent for cancellation of patta issued in favour of the petitioner's mother and the petitioner on 17.02.2020. On



receipt of the same, the first respondent issued notice to the petitioner, the petitioner's mother and the second respondent for the enquiry to be held on 23.09.2021. Immediately on receipt of the said notice, the petitioner appeared before the first respondent on 17.09.2021 and asked to stop the enquiry for the reason that he filed suit in OS.No.114 of 2020 on the file of the District Munsif Court, Sriperumbudur and it is pending.

8. On perusal of the plaint in OS.No.114 of 2020, revealed that the said suit is filed for bare injunction as against the second respondent and another in respect of the subject property and it is pending without any interim order. The said suit was filed on 02.12.2020, whereas the second respondent filed appeal on 17.02.2020 itself. Thus, it is clear that it is an afterthought by the petitioner filed suit, that too, for bare injunction as against the second respondent and another. That apart, there is no interim order in the injunction suit against the second respondent herein.

9. The only contention raised by the learned counsel for the petitioner is that when there is title dispute with regards to the subject property, the first respondent has no authority and jurisdiction to go into the title over the property. Though the sale deed executed in favour of his mother is unregistered one, the said document, even though not admissible in evidence, can be looked into for collateral purposes. In support of his contention, he relied upon the judgment in the case of Bondar Singh & Others Vs. Nihal Singh & Others reported in 2003 (4) SCC 161, wherein the Hon'ble Supreme Court of India held that under the law, a sale deed is required to be properly stamped and registered before it can convey title to the vendee. However, the legal position is clear law that a document like the sale deed in the present case, even though not admissible in evidence, can be looked into for collateral purposes.

10. He also relied upon the judgment in the case of Vishwas Footwear Company Ltd., Vs. The District Collector & others reported in 2011 (5) CTC 94, wherein the Hon'ble Division Bench of this Court held that on the strength of the title or possession, if any other person makes an application to the Revenue Divisional Officer for cancellation of that patta and in the event both the individuals claim title over the property, the Revenue Divisional officer cannot adjudicate such disputed questions and accepting the case of the other person, he cannot cancel the patta. The right course to be adopted by the Revenue Divisional Officer in such case is only to refer the applicant who has come before him seeking for cancellation of patta to Civil court, especially when his claim is disputed by the individual who is holding the patta granted by the competent authority.



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11. He also relied upon the judgment in the case of Syed Dhasthakeer Vs. Navab John reported in 2012 (6) CTC 892, wherein this Court held that when the court is seized of the matter, normally the revenue authorities should not entertain the petitions for change of patta and the party should be directed to seek their relief in the civil court.

12. In the case on hand, as stated supra, the second respondent submitted appeal for cancellation of patta as early as on 17.02.2020, whereas the suit was filed by the petitioner only on 02.12.2020, that too for bare injunction. It is also curious to note that the petitioner's mother got unregistered sale deed as early as on 09.04.1984. Whereas she obtained patta which is under challenge before the first respondent, only on 13.06.2015. i.e. just before the execution of settlement deed in favour of the petitioner. On the strength of the unregistered sale deed dated 09.04.1984 and the patta No.3389 dated 13.06.2015, the petitioner's mother executed settlement deed in favour of the petitioner on 26.06.2015. On the strength of the settlement deed, the petitioner obtained patta under patta No.3450 dated 25.09.2015. That apart, the first respondent had no knowledge about the pendency of the suit before issuance of notice dated 13.09.2020. Though the said notice dated 13.09.2020, signed only dated 13.09.2021. It was a typographical error and even then, on the date of signing the said notice, the first respondent had no knowledge about the pendency of the suit filed by the petitioner, since the first respondent is not a party to the said suit. Therefore, the judgments cited by the learned counsel for the petitioner are not helpful to the case on hand.

13. After filing the appeal, the petitioner's mother died on 20.07.2020. Therefore, the first respondent had no knowledge about the death of the petitioner's mother and the first respondent issued notice to the petitioner's mother as well as the petitioner and the second respondent for enquiry to be held on 23.09.2021. No doubt, unregistered sale deed can be used for collateral purpose. However, the document required to be registered, if unregistered is not admissible into evidence under Section 49 of the Registration Act. Such unregistered document can however be used as an evidence of collateral purpose as provided in the proviso to Section 49 of the Registration Act. A collateral transaction must be independent of, or divisible from, the transaction to effect which the law required registration. A collateral transaction must be a transaction not itself required to be effected by a registered document, that is, a transaction creating, etc. any right, title or interest, in immovable property of the value of one hundred rupees and upwards. If a document is inadmissible in evidence for want of registration, none of its terms can be admitted in



evidence and that to use a document for the purpose of proving an important clause would not be using it as a collateral purpose.

14. In view of the above, the writ petition is devoid of merits and liable to be dismissed. Accordingly, this writ petition is dismissed. However, the first respondent is directed to issue fresh notice to the petitioner and other legal heirs of his deceased mother, R.Neela, if any, and to the second respondent and, after giving them opportunity of hearing, pass orders on merits and in accordance with law in the appeal filed by the second respondent for cancellation of patta subject to the result of the suit in OS.No.114 of 2020 on the file of the District Munsif Court, Sriperumbudur within a period of sixteen weeks from the date of receipt of copy of this order. No order as to costs.

Sd/-  
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

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To

1. The Revenue Divisional Officer,  
South Chennai Division,  
Guindy,  
Chennai - 600 032

2. The District Munsif, Court, Sriperumbudur.

+1cc to Mr.N.Manokaran, Advocate, S.R.No.4090  
+1cc to Mr.J.R.K.Bhavanantham, Advocate, S.R.No.3934  
+1cc to the Government Pleader, S.R.No.4280

WP.No.20281 of 2021

RP(CO)  
CT 28/01/2022