IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : **07.11.2022**

CORAM :
THE HONOURABLE MR. JUSTICE M.DHANDAPANI

Writ Petition No.30318 of 2019
and W.M.P.No.30308 of 2019

R.Palanisamy ... Petitioner

Vs.

1.The Revenue Divisional Officer (South),
Office of the Revenue Divisional Officer,
Coimbatore.

2.The Tahsildar,
Office of the Tahsildar,
Perur.

3.The Village Administrative Officer,
Vadavalli Village,
Perur Taluk,
Coimbatore.

4.S.Annapoorani

5.S.Vijayalakshmi

6.G.Saraswathi … Respondents

PRAYER: Writ Petition filed under Article 226 of Constitution of India, praying for issuance of Writ of Certiorari calling for the records relating to the order bearing Ne.Mu.No.4207/2018/Aa2 dated 03.10.2019 on the file of the first respondent and quash the same.

For Petitioner : Mr.R.Nandhakumar

For Respondents 1 to 3 : Mr.U.Bharanidharan, Additional Government Pleader

For Respondents 4 to 6 : Mr.I.Abrar Mohamed Abdullah

ORDER

This writ petition has been filed for seeking issuance of Writ of Certiorari calling for the records relating to the order bearing Ne.Mu.No.4207/2018/Aa2 dated 03.10.2019 on the file of the first respondent and quash the same.

2. The case of the petitioners is that the petitioner and the private respondents are brother and sisters. Originally, the property comprised in S.F.No.607 measuring to an extent of 6.16 acres, situated at Vadavalli Village, Perur Taluk was owned by one Rayappa Gowder, who is the grand father of the petitioner as well as the private respondents. After disposing of 2.05 acres of land to his brother, the said Rayappa Gowder retained 1.11

acres and partitioned the remaining extent of 3 acres between his two sons, viz., R.Rayappa Gowder (Petitioner's father) and Nanjappa Gowder through a registered partition deed dated 17.11.1966.

2.1. Further the case of the petitioner is that in the year 1967, petitioner's grand father has gifted his property measuring to an extent of 1.11 acres to his daughter Marammal by registered Gift (Sridana) Deed dated 28.04.1967. In turn, through registered sale deed dated 15.09.1971, the said Marammal have sold the entire extent of 1.11 acres in favour of petitioner's father. Thereafter, in the year 1968, Nanjappa Gowder viz., the petitioner's paternal uncle have sold a portion of his property i.e., 0.50 cents out of 1.50 cents to petitioner's father by way of registered sale deed dated 05.02.1968. Being retained with 1.50 acres in S.F.No.607 through partition and subsequently, by purchase of properties measuring 0.50 acres and 1.11 acres in S.F.No.607 through Sale Deeds dated 05.02.1968 and 15.09.1971 respectively, the petitioner's father has become absolute owner and possessor of the lands measuring 3.11 acres in S.F.No.607. Based on the above, patta has also been issued in the name of petitioner's father R.Rayappa Gowder.

2.2. This being so, in the year 1995, the petitioner's father executed a registered will dated 02.11.1995 bequeathing the properties measuring 3.11 acres in S.F.No.607 and also a house property in favour of the petitioner. Thereafter, the petitioner's father died on 16.06.1996 and accordingly, the will came into force and from then, the petitioner has become absolute owner of the property. Pursuant to which, the petitioner has also obtained a separate patta from the second respondent. Subsequently, the fourth respondent (petitioner's sister) has given a grievance petition before the first respondent/Revenue Divisional Officer, seeking to cancel the patta issued in favour of the petitioner and claiming to include her name and the names of the fifth and sixth respondents viz., the legal heirs of late. Rajammal, one of the two sisters of the petitioner.

2.3. Further the case of the petitioner is that the first respondent, without conducting any propery enquiry, passed an order dated 03.10.2019 in Ne.Mu.No.4207/2018/Aa2 by directing the second respondent to cancel the patta stands in the name of the petitioner and to include the name of respondents 4 to 6. Challenging the said order dated 03.10.2019, the petitioner has filed this writ petition with the aforesaid prayer.

3. Learned counsel for the petitioner would submit that the law is settled under the Patta Pass Book Act, 1983 (hereinafter referred as Act), once the patta has been issued in terms of Section 3 of the Act, the power of modification and rectification of entries in the patta can be made only by the jurisdictional Tahsildar under Section 10 of the Act. Contrary to the said provisions, the fourth respondent made an application before the Revenue Divisional Officer/Appellate Authority in terms of Section 12 of the Act is not sustainable one. Accordingly, he prayed for allowing this writ petition.

4. Learned counsel appearing for the private respondents would submit that as against the order passed by the Appellate Authority/Revenue Divisional Officer, there is a Revision available under Section 13 of the Act, before the District Revenue Officer. Instead of availing remedy before the District Revenue Officer, filing this writ petition is not sustainable one. Accordingly, he prayed for dismissal of this writ petition.

5. Heard the learned counsel on either side and perused the materials available on record.

6. The facts in the present case and the relationship between the petitioner and the private respondents are not in dispute. The private respondents claimed that R.Rayappan, who is the father of the petitioner as well as the private respondents is the absolute owner of the subject property. Being the legal heir of R.Rayappa Gowder, the private respondents are also entitled to get a share on par with the petitioner. The private respondents further claimed that an unregistered will was executed in favour of the petitioner by their father is not valid one, whereas, the petitioner claimed that based on the registered will dated 02.11.1995, the revenue records were mutated on his favour and the same will not be cancelled without invoking the provision of Section 10 of the Patta Pass Book Act, 1983, however, in the present case on hand, instead of filing application under Section 10 of the Act, the private respondents made an application before the Appellate Authority under Section 12 of the Act is not sustainable one.

7. On perusal of the impugned order, it reveals that the Revenue Divisional Officer/first respondent, who directly entertained the application of the fourth respondent, which is contrary to Section 10 of Patta Pass Book Act, for cancellation of patta in favour of the petitioner.

8. In the above facts and circumstances, this Court set aside the impugned order in Ne.Mu.No.4207/2018/Aa2 dated 03.10.2019 passed by the first respondent and the matter is remanded back to the second respondent/Tahsildar. Accordingly, the first respondent/Revenue Divisional Officer is directed to forward the entire papers to the second respondent/Tahsildar within a period of four weeks from the date of receipt of a copy of this order. On receipt of the documents, the second respondent/Tahsildar is directed to conduct an enquiry after providing opportunity to all the parties concerned and pass orders on merits and in accordance with law within a period of twelve weeks thereafter. However, it is made clear that the second respondent/Tahsildar shall pass orders without being influenced by any of the observations made by this Court in this order.

9. With the aforesaid directions, this writ petition is allowed. No costs. Consequently, connected miscellaneous petition is closed.

07.11.2022

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Index : Yes/No
Speaking Order : Yes/No

M.DHANDAPANI,J.

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