BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 21.04.2022

CORAM:

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

W.P.(MD)No.12645 of 2010
and M.P.(MD)No.2 of 2010

Jawahar Raj ... Petitioner

versus

1. The District Revenue Officer,
   Tirunelveli Collectorate Office,
   Tirunelveli.

2. The Revenue Divisional Officer,
   Cheranmahadevi,
   Tirunelveli District.

3. The Tahsildar,
   Redhapuram Taluk,
   Tirunelvei District.

4. R.Michael Jerome
5. Stella ... Respondents

Writ Petition filed under Article 226 of the Constitution of India, seeking for the issuance of Writ of Certiorarified Mandamus, to call for the records relating to the proceedings of the first respondent in A2/C.M.No.14/2008 dated 27.04.2010 confirming the order of the second respondent in Na.Ka.A3.1711-2008 dated 26.05.2008 and to quash the same and direct the third respondent to delete the names of Respondents 4 and 5 from the patta in respect of land in S.No.1414/1 (3.51 acres), Panagudi Village, Radhapuram Taluk, Tirunelveli District and to restore and register the name of Rajamani Nadar in the Patta in respect of land in S.No.1414/1 (3.51 acres), Panagudi Village, Radhapuram Taluk, Tirunelveli District.

For Petitioner	:	Mr.PM.Vishnuvarthanan
For R1 to R3	:	Mr.S.P.Karthick, Government Advocate

ORDER

This writ petition is filed as against the order dated 27.04.2010, in and by which, the first respondent, who is the revisional authority under Section 13 of the Tamil Nadu Patta Pass Book Act, 1983, dismissed the revision petition filed by the petitioner, by confirming the order of the second respondent dated 26.05.2008.

2. The properties in survey No.1414/1, having an extent of 3.61 acres, survey No.1464 having an extent of 3.80 acres and a terraced

house situated in Survey No.1/2A at Panagudi Village, Radhapuram Taluk, Tirunelveli District, belong to one Rajamani Nadar, who is the father of the petitioner and 4th respondent, under a registered partition deed dated 27.11.1978. The property in S.No.1463/2 having an extent of 2.41 acres of land at panagudi village, also belongs to the said Rajamani Nadar, under a registered sale deed dated 20.03.1970. The said Rajamani Nadar died on 13.04.1986 leaving behind his legal heirs, namely, his wife, three sons and three daughters. Thereafter, the 4th respondent, on the strength of unregistered partition deed, presented a petition before the third respondent/the Tahsildar, Radhapuram Taluk, Tirunelvei District, for registering his name in the patta, as if the property in S.No.1414/1 (3.51 acres), Panagudi Village, Radhapuram Taluk, Tirunelveli District was allotted to his share. The 3rd respondent, by his proceedings dated 31.01.2003, registered the name of the 4th respondent in the patta by deleting the name of the said Rajamani Nadar. Subsequently, the name of the 5th respondent, who is the wife of the 4th respondent, was also included as joint pattadar, on the strength of the settlement deed dated 27.12.2003, by proceedings of the 3rd respondent dated 28.02.2003. In the meanwhile, the petitioner filed a suit in O.S.No.107 of 2003 before the learned District Munsif, Valliyoor for partition and separate possession of the property and the same is pending.

3. Aggrieved against the order of the third respondent, the petitioner preferred an appeal before the second respondent stating that the unregistered partition deed dated 07.09.1992 is a forged one and seeking to restore the patta in the name of Rajamani Nadar. After the enquiry, the 2nd respondent, by his proceedings dated 26.05.2008, dismissed the appeal. Aggrieved over the same, the petitioner preferred a revision petition before the first respondent. But, the first respondent, by order dated 27.04.2010, dismissed the revision petition, by confirming the order of the second respondent. Challenging the same, the present writ petition has been filed.

4. The learned counsel for the petitioner submits that the 3rd respondent, without issuing any notice, registered the name of the 4th respondent, based on the unregistered partition deed dated 07.09.1992, which is a forged one and subsequently, the name of the 5th respondent was also included as joint pattadar on the strength of the settlement deed dated 27.12.2003, which was executed based on the unregistered partition deed. The unregistered partition deed dated 07.09.1992 cannot be looked into, as it is hit by Section 17 of the Registration Act and Section 33 of the Indian Stamp Act. The learned counsel for the petitioner further submits that when the competent Civil Court has seized of the issue, the respondents 1 to 3 have no authority or jurisdiction to adjudicate the issue. Therefore, he prayed for allowing this writ petition.

5. The learned Additional Government Pleader appearing for the respondents 1 to 3 submits that the suit filed by the petitioner in O.S.No.107 of 2005 was dismissed on 08.08.2005 itself. The petitioner

has not preferred any appeal against the dismissal of the original suit. But, on the contrary, he filed a petition before the second respondent seeking to delete the name of the respondents 4 and 5 from the patta in respect of the land in S.No.1414/1 (3.51 acres). After enquiry, the second respondent rejected the petition, which was also confirmed by the first respondent.

6. The learned counsel for the respondents 4 and 5 submits that the petitioner, the fourth respondent and one Jeyaseelan are the sons of Rajamani Nadar. After the demise of Rajamani Nadar, a partition was effected among the family members on 07.09.1992 leaving the female legal heirs and allotting some portion of land to the petitioner, the fourth respondent and Jeyaseelan. The land in Survey No.1414 is having an extent of 3 acres and 60 cents, out of which, five cents each were allotted to the writ petitioner and Jeyaseelan. The remaining 3 acres 51 cents were allotted to the 4th respondent. The petitioner sold his share of five cents to one Mohammed Ali by a registered sale deed,

vide Document No.74/1999 dated 13.05.1998 in the Sub Registrar Office, Panagudi. The 4th respondent settled a portion of land to an extent of 2 acres and 46 cents in favour of his wife, namely, the fifth respondent in the Sub Registrar Office, Panagudi, vide Document No. 2417/2002 dated 27.12.2002 and applied for joint patta and the same was ordered by the Tahsildar on 28.02.2003. Thereafter, the petitioner has also filed a suit in O.S.No.107 of 2005 for partition before the District Munsif Court, Valliyoor and that was also dismissed on 08.08.2005.

7. This Court have considered the rival submissions made.

8. The Patta Pass Book Scheme was introduced in order to ensure that all the pattadars that of the land owners get a patta pass book with the details of their holdings of land. For providing legal status to the Patta Pass Book, the Tamil Nadu Patta Pass Book Act, 1983, was enacted, authorizing the patta pass book for grant of loan

from the financial institutions and credit agencies.

9. Under Section 5(1) of the Patta Pass Book Act, no document relating to transfer of any land by sale, gift, mortgage, exchange, settlement or otherwise shall be registered by the Registering Authority, unless the patta pass book relating to such land is produced before such Registering Authority.

10. The Tahsildar, having jurisdiction over the area in which the land is situated, is the authority to issue a patta pass book to every land owner in respect of his land. Every owner of the agricultural land shall apply for a patta pass book under the Act in a prescribed format under Sub Section (1) of Section 3 of the Tamil Nadu Patta Pass Book Act. The Tahsildar, on the information obtained by him, by following the procedures as contemplated in the Act and after providing reasonable opportunity to the persons having interest in the land to make their representations either orally or in writing, shall determine as to whom

the patta pass book is to be issued.

11. In the event of the Tahsildar being satisfied that a dispute concerning ownership of patta is already pending in a Court or issues are raised before him which impinge on personal laws or laws of succession and all the parties interested do not agree on the ownership in writing, he shall direct the concerned parties to obtain a ruling on ownership from a competent Civil Court having jurisdiction as per Rule 4 (4) of the Tamil Nadu Patta Pass Book Rules 1987.

12. The proviso to Section 14 reads as follows:

> "14. Bar of suits – No suit shall lie against the Government or any officer of the Government in respect of a claim to have an entry made in any patta pass book that is maintained under this Act or to have any such entry omitted or amended:
>
> Provided that if any person is aggrieved as to any right of which he is in possession, by an entry made in the patta pass book under this Act, he may institute a suit

against any person denying or interested to deny his title to such right, for a declaration of his rights under Chapter VI of the Specific Relief Act, 1963 (Central Act 47 of 1963); and the entry in the patta pass book shall be amended in accordance with any such declaration".

13. Considering the provision under Section 14 of the Patta Pass Book Act 1983 and the Tamil Nadu Patta Pass Book Rule 1987, the Hon'ble Apex Court in **M/s.*Edelweiss Asset Construction Company Limited vs. R.Perumalsamy and others***, reported in ***AIR 2020 SC 3688***, set aside an order passed by a District Revenue Officer under the Patta Pass Book Act and held as follows:

"19. Under the Tamil Nadu Patta Pass Book Act 1983 and the Tamil Nadu Patta Pass Book Rules 1987, the Tahsildar is not empowered to adjudicate upon a 'title dispute'. A combined reading of Section 14 and Rule 4(4) indicates that where there exists a dispute with respect to ownership of a land between parties with respect to a patta entry, the correct procedure to be adopted is to approach a civil Court having competent jurisdiction.

The entry records will be updated on the basis of the decree of the civil court upon adjudication.

14. As per Section 10(1) of the Patta Pass Book Act, a person can claim for a modification of patta only under three circumstances,

1. by reason of the death of any person; or

2. by reason of the transfer of interest in the land; or

3. by reason of any other subsequent change in circumstances.

15. As per Section 10(3)(a) of the Act, the Tahsildar shall provide a reasonable opportunity to the parties concerned to make their representation either orally or in writing.

16. For obtaining such patta, an Applicant has to prima facie satisfy with the documents for any other information relating to the land to the Tahsildar for his determination and on such determination, the Tahsildar not only makes necessary entries in respect of the land

concerned in the Register of Patta Pass Book maintained in the office of the Tahsildar, but also for the purpose of issuing Patta Pass Book to the owner or the person concerned. The entries in the Patta Pass Book shall be presumed to be true and correct until the contrary is proved or a new entry is lawfully substituted.

17. A Division Bench of this Court, in ***T.R.Dinakaran vs. the Revenue Divisional Officer, Aruppukottai and others*** reported in ***2001 (3) CTC 823*** held as follows:

> "19. In view of the proviso to Section 14, if any person is aggrieved over the entry made in the patta pass book in respect of any property over which he claims title and also possession, he can only file a suit for declaration of his right and thereafter, the entry in the patta pass book can be amended in accordance with any such declaration made by the competent civil court. ....
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> ....
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> By Section 5, in the event any modification is

required on an application by any person, it can be made either by reason of the death of any person or by reason of transfer of interest in the land or by reason of any subsequent change in the circumstances. This section also does not empower the Tahsildar to cancel the patta already granted, as the power of the Tahsildar to modify the entries in the patta pass book is limited only in case of death of the person who was holding the patta pass book or by reason of the transfer of interest in the land or by reason of any other subsequent change in the circumstances. In the event an application is made that the patta pass book has been wrongly issued in favour of any person and consequently, claiming title over the land entitling such person to grant of patta, that person can only file a suit for declaration that the entries made in the patta pass book should be cancelled and consequently for a mandatory injunction for grant of patta."

18. Another Division Bench of this Court in ***Kuppuswami Nainar vs. the District Revenue Officer and others***, reported in ***1995***

(1) MLJ 426 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 proceedings 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.
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> 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."

19. The Patta Pass Book Act provides a right of appeal under Section 12 of the Act before the Revenue Divisional Officer and a revision under Section 13 of the Act before the District Revenue Officer.

20. This Court under Article 226 of the Constitution of India, cannot go into the title of the parties and the same can be decided only by adducing evidence before the appropriate Civil Court and any opinion by this Court on the documents relied on by the parties would prejudice the interest of the parties before the Civil Court.

21. In this case, the impugned order is the order passed by the District Revenue Officer under the Patta Pass Book Act. The District

Revenue Officer has confirmed the orders of the Tahsildar, Radhapuram and the Revenue Divisional Officer, Cheranmadevi. The authorities have taken the decision based on the unregistered partition deed dated 07.09.1992. The fourth respondent approached the Tahsildar, Radhapuram on 11.12.2002 and the Tashildar transferred the patta in favour of the fourth respondent on 31.01.2003. Thereafter, the fourth respondent settled a portion of land in favour of his wife, by a registered document dated 17.02.2003 and thereafter, applied for a joint patta and accordingly, the Tahsildar has also passed an order for issuing joint patta in patta No.115 on 28.02.2003. However, neither the petitioner nor the fourth and fifth respondents placed the orders of the Tahsildar.

22. As discussed above, the role of the Tahsildar for grant of patta arises only on three circumstances as stipulated under Section 10(i) of the Patta Pass Book Act, such as, by a reason of death of any person, by a reason of transfer of interest in land and by a reason of any

other subsequent change in the circumstances. The transfer of patta was made in the year 2002 based on the unregistered partition deed of the year 1992. The male heirs of Rajamani Nadar have entered into a partition leaving the female heirs. The partition deed is also doubtful. It is not proportionately partitioned. The said Rajamani Nadar owned 3 acres 60 cents of land in Survey No.1414, out of which, five cents each were allotted to the writ petitioner and another brother Jeyaseelan and a major portion of land having an extent of 3 acres 51 cents was retained by the fourth respondent. The fourth and fifth respondents, though claimed their title on the unregistered partition deed, did not take any step for nearly 10 years and approached the Tahsildar only on 11.12.2002. The Tahsildar has also passed the order in favour of the fourth respondent. It is not known as to whether any notice was issued to the writ petitioner. The District Revenue Officer, based on the unregistered partition deed, confirmed the orders of the Tahsildar and Revenue Divisional Officer on the grounds that the land allotted to the petitioner was sold by him by a registered document and the suit for partition filed by the petitioner in O.S.No.107 of 2003 was dismissed for default. The learned counsel for the petitioner denied the same and claims that the same is pending.

23. In view of the above facts and the position of law, this writ petition is disposed of. The petitioner shall work out his remedy in the civil suit filed by him for partition. Till such time, all the proceedings issued by the Revenue Officials under Patta Pass Book Act in favour of 4th and 5th respondents shall be kept in abeyance. Based on the civil Court order, a fresh application for grant of patta or cancellation of patta shall be filed before the competent authority. No costs. Consequently, connected miscellaneous petition is closed.

21.04.2022

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Index : Yes / No.
Internet : Yes / No.

B.PUGALENDHI, J.

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To

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   Tirunelveli Collectorate Office,
   Tirunelveli.

2. The Revenue Divisional Officer,
   Cheranmahadevi,
   Tirunelveli District.

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