



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Dated: 31.03.2022

CORAM:

THE HONOURABLE MR.JUSTICE **B.PUGALENDHI**

W.P (MD)Nos.14142 of 2010

and 227 of 2011

and

M.P (MD)Nos.2 of 2010 & 2 and 3 of 2011

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W.P (MD)No.14142 of 2010

1.Muniammal

2.Azhagammal

... Petitioners

Vs

1.The District Revenue Officer,
Virudhunagar - 626 002.

2.The Revenue Divisional Officer,
Virudhunagar - 626 002.

3.The Tahsildar,
Virudhunagar Taluk,
Virudhunagar 626 002.

4.A.K.Rajakani (Died)
Represented by his power of Attorney Agent,
S.Ananthakumar

5.R.Rukmani

6.Veera

7.P.Gowthaman

8.R.Dhilipan

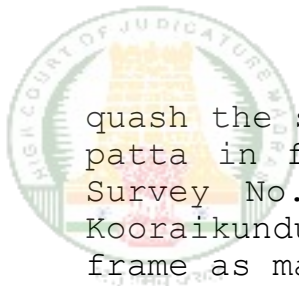
9.Sudha

[Respondents 5 to 9 were substituted Lrs
of the deceased fourth respondent vide
order dated 05.04.2013 in M.P(MD)No.1 of
2012].

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of writ of Certiorarified mandamus calling for the records relating to the proceedings in RC.No.A2/15865/2009, dated 02.10.2010 on the file of the first respondent herein and to

<https://hcservices.ecourts.gov.in/hcservices/>



quash the same and direct the respondents 1 to 3 to issue a separate patta in favour of the petitioners pertaining to the land bearing Survey No.188/1B2B to an extent of 1.34.0 hectares situated in Kooraikundu Village, Virudhunagar Taluk and District, within a time frame as may be fixed by this Court.

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For Petitioner : Mr.S.Subbiah
For Respondent : Mr.D.Gandhiraj
Nos.1 to 3 Special Government Pleader
For Respondent : Mr.K.Sekar,
Nos.5 to 9

W.P(MD)No.227 of 2011

1.A.K.Rajakani,
represented by Power Agent,
S.Anandhakumar

2.B.Geetha

3.S.Sornammal

... Petitioners

Vs

1.The District Revenue Officer,
Virudhunagar.

2.The Revenue Divisional Officer,
Arupukottai.

3.The Tahsildar
Virudhunagar Taluk

4.The District Registrar,
Registration Department,
Virudhunagar District,
Virudhunagar.

5.The Joint Sub Registrar - II,
Virudhunagar.

6.Muniammal

7.Algammal

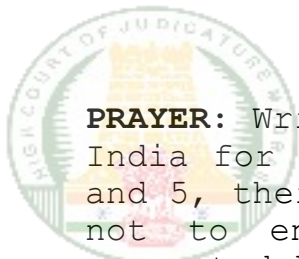
8.G.Sugumar

9.A.V.T.Ganesan

10.M.Karupasamy

11.P.Rajasekaran

... Respondents



PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of writ of Mandamus, directing the respondents 4 and 5, their men, agents, servant or anybody acting on their behalf, not to entertain / register any document presented or to be presented by the respondents 6 to 11, their men, agents, servant or any body claiming through them in respect of an extent of 1.34.9 Hectares of the lands in Survey No.188 / 1B2B of Kooraikundu Village, Virudhunagar Taluk.

For Petitioner : Mr.A.Sivaji
For Respondent : Mr.D.Gandhiraj
Nos.1 to 5 Special Government Pleader
For Respondent : Mr.R.Subramanian
Nos.6,7 and 11 to 9

COMMON ORDER

Writ petition in W.P(MD)No.14142 of 2010 is filed challenging the proceedings of the District Revenue Officer, Virudhunagar, dated 02.10.2010. The writ petition in W.P(MD)No.227 of 2011 is filed for a direction to the official respondents not to register any document in respect of the subject mentioned property.

2.The writ petition in W.P(MD)No.14142 of 2010 was filed by one Muniammal and Azhgammal as against the orders of the District Revenue Officer, Virudhunagar in proceedings in RC.No.A2/15865/2009, dated 02.10.2010. By the order impugned in this writ petition the District Revenue Officer, Virudhunagar, set aside the order passed by the Revenue Divisional Officer and the orders of the Tahsildar, for grant of joint patta in favour of these petitioners with regard to the property in survey No.188 / 1B2B in Kooraikundu Village, Virudhunagar District and by the same order, the District Revenue Officer has also passed an order to issue patta in the name of one A.K.Rajakani, 4th respondent in W.P(MD)No.14142 of 2010 and the writ petitioner in W.P(MD)No.227 of 2011.

3.Rajakani filed the writ petition in W.P(MD)No.227 of 2011 stating that even after the orders of the DRO, ordering to change the patta in the name of Rajakani, the petitioners in W.P(MD)No.14142 of 2010 Muniammal and Azhagammal are attempting to convey the documents in the strength of the orders of the Tahsildar, which was already reversed by the orders of the District Revenue Officer and therefore, Rajakani sought for a direction as as against the registering authorities.

4.The issue in both these writ petitions pertaining to the ownership of the land in Survey No.188/1B2B in Kooraikundu village, Virudhunagar District is between the petitioners Muniammal and Azhgammal, Rajakani and therefore, for better understanding the parties are referred to by their names.



5.Muniammal and Azhagammal filed a suit for partition in O.S.No.40 of 2002 on the file of the Sub Court, Virudhunagar and obtained an ex-parte preliminary decree on 20.02.2003. Based on the preliminary decree they got joint patta from the Revenue Divisional Officer, Aruppukottai by proceedings in No.1/730-2009 dated 22.03.2009. As against that order A.K.Rajakani filed an appeal before the District Revenue Officer and the DRO has passed an order, which is impugned in W.P(MD)No.14142 of 2010.

6.Muniammal and Azhagammal are co-sisters and they claim that the property in survey No.188 /1B new Survey No.188/1B 2B to an extent of 1.34.0 hectares originally belonged to their father late Perumal and two sons viz., Muthu and Subburaj and they are the lawful owners of the property. Their further contention is that Rajakani rival claimant has filed a suit in O.S.No.196 of 2004 for declaration of title and for permanent injunction as against Muniammal and Azhagammal (in O.S.No.196 of 2004) before the District Munsif, Virudhunagar District, but did not prosecute the same, the suit was dismissed for default and therefore, the orders of the District Revenue Officer without considering the same is not proper.

7.The case of Rajakani is that the suit filed by Muniammal in O.S.No.40 of 2002 before the Sub Court, Virudhunagar is a collusive suit and they have obtained an ex-parte preliminary decree on 20.02.2003 and thereafter due to pecuniary jurisdiction, the suit was transferred to the District Munsif, Virudhunagar District and at that stage the power agent Rajakani filed an impleading petition in I.A.No.1260 of 2004 to implead him as a party to the proceedings and the same was allowed by order dated 03.02.2005 and thereafter in order to prevent Muniammal and Azhagammal from creating any further documents. Rajakani has also filed another suit in O.S.No.196 of 2004 to declare the property in survey No.188/1B2B in Kooraikundu village belonging to him. Since the partition suit in O.S.No.40 of 2002 was dismissed for default subsequent to his impleadment in the proceedings. He did not prosecute the suit in O.S.No.196 of 2004.

8.Heard the learned Counsel on either side and perused the materials placed on record.

9.These writ petitions are arising out of the orders passed by the District Revenue Officer in granting patta in favour of Rajakani. 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.

<https://hcservices.courts.tn.nic.in> 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.

11. 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.

12. 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.

13. 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".

14. 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.

15.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.

16. 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.

17. 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.

18. 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.

.....

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."

19. 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.

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."

20. 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.

21. 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.

22. Muniammal and Azhagammal claiming title over the property based on the preliminary decree in O.S.No.40 of 2002 and taking advantage of the non prosecution of the suit in O.S.No.196 of 2004 by Rajakani, Muniammal and Azhagammal parties to the suit in O.S.No.40 of 2002 obtained ex-parte preliminary decree and thereafter they have not prosecuted for final decree after the impleadment of Rajakani in the said suit.

23. The case of Rajakani is that since Muniammal and Azhagammal attempted to create documents in the strength of preliminary decree, he filed a suit in O.S.No.196 of 2004. Further he did not prosecute the same since, the suit in O.S.No.40 of 2002 was dismissed for default after his impleadment.

24. Muniammal and Azhagammal taking advantage of the non prosecution by Rajakani in O.S.No.196 of 2004 claiming that Rajakani, who filed a suit for declaration and permanent injunction of the subject property did not prosecute the same and therefore, they haven't prosecuted the suit in O.S.No.40 of 2002 too.

25. The Revenue Divisional Officer has passed an order in favour of Rajakani that in the earlier proceedings, the issue was settled by the orders of the Commissioner of Land Administration dated 22.10.2005. One Pasunkli filed a revision against the orders of the District Revenue Officer, Virudhunagar District dated 02.10.2000 and by which, the District Revenue Officer cancelled the order of the RDO, Aruppukottai cancelling the



sub division effected by the Tahsildar, Virudhunagar in favour of the revision petitioner Pasunkili and the relevant portion of the orders of the Special Commissioner is extracted hereunder:

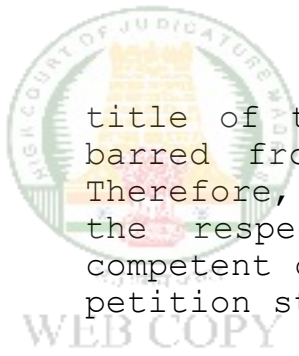
2.Gist of the case:

the lands involved in this revision petition are S.No.188/1A, S.No.188/1B of Kooraikundu Village, virudhunagar Taluk. According to the Settlement 'A' Register of the year 1956 an extent of 14.55 acre in S.No.188 was registered in the names of Perumal, Sanya Botham, Karuppaiah Nadar, Sankarapandia Nadar under Patta No.136. At the time of UDR Scheme, the S.No.188 was subdivided and registered as follows:

S.No.	Extent (Hectares)	Patta No.	Pattadar
188/1A	1.52.0 (3.76 Acres)	213	Chellagursamy
188/1B	2.08.0 (5.13 acre)	428	Rajakani Nadar
188/2	2.26.5 (5.64Acres)	603	Sankarapandian and two others

3.The respondent purchased the land in S.No.188/1A from Thiru. Chella Gurusamy and S.No.188/1B from Thiru Rajakani Nadar. In 1997, Thiru T.Pasunkili filed a petition to the Tahsildar stating that he has hereditary right in S.No.188/1A and 188/1B which may be sub divided and registered in his name. The Tahsildar by his K.Dis.T.P.T.138/97-98 and T.P.T.288/97-98 dated 15.11.1997 and 08/01/1999 respectively sub divided the S.No.188/1A and 188/1B registered the S.No.188/1A1(0.92 acres) and S.No.188/1B (0.41.5 hectare/1.00 acre) in the name of the petitioner. Aggrieved by the Tahsildar's order, Thiru A.K.A.Selvarajan (respondent) appealed to the Revenue Divisional Officer who by his orders dated 15.11.1999 set aside the Tahsildar's order on the grounds that the petitioner did not furnish any documentary evidence to prove his hereditary rights over the suit land. Against the order of Revenue Divisional Officer, the petitioner filed a revision petition to the District Revenue Officer, who by his order dated 20.10.2000 has confirmed the orders of the Revenue Divisional Officer on the same grounds.

26.In view of the above discussion, this Court under Article 226 of Constitution of India, cannot pass any further orders on the



title of the property and the Revenue Divisional Officer is also barred from passing any order in view of Rule 4 (4) of CPC. Therefore, both these writ petitions are disposed of with liberty to the respective parties to workout their remedies before the competent civil forum. No cost. Consequently connected miscellaneous petition stands closed.

Sd/-

Assistant Registrar (P&A)

// True Copy //

/06/2022

Sub Assistant Registrar(CS)

dsk

To

- 1.The District Revenue Officer,
Virudhunagar - 626 002.
- 2.The Revenue Divisional Officer,
Virudhunagar - 626 002.
- 3.The Tahsildar,
Virudhunagar Taluk,
Virudhunagar 626 002.
- 4.The District Registrar,
Registration Department,
Virudhunagar District,
Virudhunagar.
- 5.The Joint Sub Registrar - II,
Virudhunagar.

+1 CC to M/s.K.SEKAR, Advocate (SR-16117[F] dated 01/04/2022)

+1 CC to M/s.A.SIVAJI, Advocate (SR-15845[F] dated 31/03/2022)

+1 CC to M/s.R.SUBRAMANIAN, Advocate (SR-16221[F] dated 01/04/2022)

+1 CC to M/s.SPL GP (SR-16115[F] dated 01/04/2022)

**W.P(MD)Nos.14142 of 2010 and 227 of 2011
31.03.2022**