BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 08.12.2022

CORAM:

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN
and
THE HONOURABLE MR.JUSTICE SUNDER MOHAN

W.A.(MD)No.1234 of 2011
and
M.P.(MD)No.1 of 2011

T.John Anbalagan ... Appellant

vs.

1.The District Revenue Officer,
Virudhunagar,
Virudhunagar District.

2.The Revenue Divisional Officer,
Sivakasi,
Virudhunagar District.

3.The Tahsildar,
Sattur,
Virdhunagar District.

4.T.John Yabase ... Respondents

PRAYER : Writ Appeal filed under Clause 15 of the Letters Patent, against the dismissal order dated 03.08.2011, passed in W.P.(MD)No.8625 of 2011.

For Appellant : Mr.K.P.Narayana Kumar
For Respondents 1 to 3 : Mr.D.Sasikumar
Additional Government Pleader

JUDGMENT

DR.G.JAYACHANDRAN, J.
and
SUNDER MOHAN, J.

The Writ Petition seeking issuance of a Writ of Certiorarified Mandamus, to quash the order passed by the first respondent, dated 09.02.2011, dismissed by the learned Single Judge on the ground of alternate remedy. The appellant being aggrieved by the order of the learned Single Judge is before this Court by way of intra court appeal.

2. The short facts of the case is that under UDR Scheme, patta was issued in the name of the appellant herein, for a piece of land, bearing S.No.225/9, measuring an extent of 2315 sq.mt. situated at Elayirampannai Village, Sattur Taluk, Virudhunagar District. However, his brother, namely, the fourth respondent herein gave a representation to the third respondent Tahsildar stating that the said land belongs to his father namely, Thomas Nadar and during his lifetime, his father Thomas Nadar has gifted the property to him and his wife namely, Ponmalar, by an unregistered gift deed, dated 08.11.1989. In the said place, he is running a Match Industry in the name and style of Tamil Nadu Match

Industries. While so, by taking advantage of the erroneous entry in the UDR and the Patta issued in his name, the appellant herein is trying to interfere with his possession.

2.1. The Tahsildar after causing notice to both the parties, had conducted an enquiry and held that except the UDR Patta issued in the name of the appellant, he has not produced any other document prior to issuance of UDR Patta, to show that he is the owner of the property while the tax receipts are in the name of his father Thomas Nadar, which indicate that the Natham property has been in occupation and enjoyment of Thomas Nadar. The patta given exclusively to the appellant is incorrect and given without proper enquiry. Therefore, in the light of the unregistered gift deed, the fourth respondent is entitled to get patta. Accordingly, patta was transferred in the name of the fourth respondent.

2.2. This order of granting patta to the fourth respondent was challenged before the second respondent/Revenue Divisional Officer, Sivakasi, by way of Statutory Appeal. In the Appeal, the Appellate Authority considered the order passed by the Tahsildar, dated 26.06.2009, and taking note of the criminal complaint pending, confirmed the order of the Tahsildar, since the appellant is not able to substantiate his right and title over the property to sustain the issuance of patta in his name.

2.3. The Revision Petition filed before the first respondent/District Revenue Officer also negatived, vide impugned order, dated 09.02.2011, wherein the Revisional Authority has held that the title dispute to be settled through the competent Civil Court. The appellant was advised to resort the remedy before the competent Civil Court.

2.4. This order was challenged by the appellant by way of Writ Petition. The learned Single Judge after considering the dispute between the brothers over a piece of land, where the right and title of the property is attempted to be established through patta, he referring Section 14 of the Tamil Nadu Patta Pass Book Act, 1983, directed the appellant to work out his remedy before the Civil Court.

3. Not being satisfied with the said direction, the present Writ Appeal is filed.

4. The learned counsel for the appellant would submit that while the appellant has been holding the patta for more than 20 years, the cancellation of the patta by the Tahsildar, which has been confirmed by the Appellate Authority Revenue Divisional Officer and the Revisional Authority District Revenue Officer, is erroneous and beyond the power and scope of the authorities.

5. The respondents 1 to 3 being carried away by the unregistered document called gift deed, unmindful of the provisions of the Indian Stamp Act, 1899, and the Registration Act, 1908, which requires any transfer of immovable property more than Rs.100/- registration and duly stamped in accordance to the value. Therefore, when the patta which stands in the name of the appellant being arbitrarily cancelled and issued in the name of the fourth respondent, requires interference and Article 226 of the Constitution can be invoked for efficacious remedmy.

6. The learned Additional Government Pleader appearing for the respondents 1 to 3 would submit that undoubtedly, the property belongs to Thomas Nadar and his two sons are under loggerheads claiming right over it. The

appellant took advantage of the patta issued exclusively in his name during the UDR survey and the fourth respondent has projected the gift deed as unregistered gift deed, alleged to have been executed by Thomas Nadar. Pointing out the fact that the Tax Receipts for the land being assessed in the name of Thomas Nadar and the taxes were paid by the fourth respondent and also the spot inspection by the Tahsildar revealed that the property is in occupation of the fourth respondent, it is contended that if there is any dispute regarding the title as pointed out by the learned Single Judge and any dispute over the title and grievance regarding issuance of patta as rightly pointed out by the learned Single Judge under Section 14 of the Tamil Nadu Patta Pass Book Act, 1983, the parties concerned after exploring the statutory remedy available under the Act, has to approach the competent Civil Court to prove their possession as well as the title and seek for appropriate declaration. The Writ proceedings is not an efficacious or proper remedy.

7. This Court, after considering the submissions made by the learned counsel for the appellant as well as the learned Additional Government Pleader appearing for the respondents 1 to 3 and on perusing the records, finds that when

there is no evidence laid before the Revenue Authority by the appellant to show that he had title and was in possession even prior to the UDR survey and issuance of patta in his name during the UDR survey. Hence, the Revenue Authority has rightly directed the appellant to approach the competent Civil Court to establish his title over the property. Insofar as the title is concerned, it is a disputed fact and the spot inspection made by the Revenue Authorities is in favour of the fourth respondent and this is a matter to be tested by a competent Civil Court. High Court by exercising the power under Article 226 of the Constitution of India cannot decide the matter without recording and appreciating the evidence.

8. Hence, the appellant is directed to approach the Civil Court to work out his remedy as directed by the learned Single Judge. This Court finds no error in the judgment of the learned Single Judge passed in the Writ Petition. Hence, this Writ Appeal is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

9. The learned counsel appearing for the appellant states that the appellant is in possession of the property and his possession should not be disturbed taking advantage of dismissal of the Writ Appeal.

10. If the possession of the property is with the appellant, then the status quo as on today shall be maintained till the appellant resort to Civil Court. In any event, such an exercise shall be undertaken by the appellant within a period of 90 days from today. It is made clear that the status quo as on today shall be in force only for a period of 90 days from today.

Index : Yes / No
Internet : Yes
smn2

[G.J., J.] [S.M., J.]
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