BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 29.03.2022

CORAM:

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

W.P.(MD)No.1474 of 2011

and

M.P.(MD)No.1 of 2011

Mohan ... Petitioner

versus

1. The District Revenue Officer,
   Theni District,
   Theni.

2. The Revenue Divisional Officer,
   Uthamapalayam,
   Theni District.

3. The Thasildar,
   Bodiynayakanoor,
   Theni District.

4. K.Subash Chandra Bose ... Respondents

Writ Petition filed under Article 226 of the Constitution of India, seeking for the issuance of Writ of Certioari, to call for the records of the first respondent in the proceedings Na.Ka.No.11425/2009/D4 dated 18.01.2011 and quash the same.

For Petitioner	:	Mr.S.Kadarkarai
For R1 to R3	:	Mr.D.Gandhiraj, Special Government Pleader
For R4	:	No appearance

ORDER

The writ petition is filed as against the order dated 18.01.2011 passed by the first respondent/the District Revenue Officer, Theni, in and by which, the first respondent directed to issue a common patta in favour of both the parties.

2. The father of the petitioner A.K.Arumugam Chettiyar and the

father of the fourth respondent A.K.Karupaiya Chettiyar are brothers. The lands in Survey No.4006/1, to an extent of 1 acre 22 cents, Survey No.4006/3 to an extent of 1 acre 10 cents and Survey No.4006/4 to an extent of 39 cents, in Boodinayakanoor Nagar Village, Boodinayakanoor Taluk, Theni District are their ancestral properties. An oral partition was effected between the brothers and the land in Survey No.4006/1 to an extent of 1.22 acre was allotted to A.K.Karuppaiya Chettiyar, the father of the 4th respondent and the lands in Survey No.4006/3 to an extent of 1 acre 10 cents and Survey No.4006/4 to an extent of 39 cents were allotted to A.K.Arumugam Cheettiyar, the father of the petitioner herein.

3. The petitioner's father A.K.Arumuga Chettiyar obtained separate patta for the lands allotted to him before 1963 in patta No.1668 and 3998 respectively. After the death of the petitioner's father, the petitioner and his brother are enjoying the said properties. The fourth respondent has also sold a piece of land in Survey No.4006/1 allotted to his father in the said partition, to an extent of 60 cents to a third party on 13.01.1998.

4. Thereafter, the fourth respondent submitted a petition before the second respondent/the Revenue Divisional Officer, Theni, requesting to grant joint patta in his name, his brother's name, petitioner's and his brothers' name. The second respondent, after conducting enquiry by giving opportunity to both the parties and after perusal of the entire records, passed a detailed order on 29.12.2005 rejecting the request of the fourth respondent, by confirming the order of the Tahsildar, who granted patta in favour of the legal heirs of late A.K.Arumugam Chettiar in RDR No.706/04-05 dated 28.02.2005. Aggrieved against the said order, the fourth respondent filed a revision petition on 16.03.2009 before the District Revenue Officer, Theni, the first respondent herein. The petitioner filed his objection stating that the revision petition has been filed after a period of three years from the date of order of the second respondent and further, a copy of the revision petition was not served on him and the copy of the said revision petition to be furnished to file his detailed counter affidavit and to give an opportunity to explain his case.

5. The first respondent, by order dated 18.01.2011, held that both the parties are having equal rights in the property and directed to issue a common patta in favour of both the parties. Aggrieved over the same, the present writ petition has been filed.

6. 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.

7. 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.

8. 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.

9. 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.

10. 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".

11. 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.

12. 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.

13. 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.

14. 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.

15. 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."

16. 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."

17. 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.

18. 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.

19. As stated above, the Revenue authorities are not competent to issue a patta in favour of the parties, when there is a dispute among two persons on the title of the property. But, in this case, according to the petitioner, the fourth respondent, after selling the property in Survey No.4006/1 to an extent of 60 cents, which was allotted to his father, to a third party, requested the first respondent for issuance of joint patta in respect of the property in Survey No.4006/4 to an extent of 39 cents, which was allotted to the petitioner's father. The first respondent/the District Revenue Officer, Theni, without giving an opportunity of hearing to the petitioner and without going into the records, came to the conclusion that both the parties are having equal rights in the property and directed to issue a common patta in favour of both the parties.

20. It is seen that at the time of partition, there was a dispute with regard to the land in Survey No.4006/4 to an extent of 39 cents between the parties and in this regard, a suit has also been filed.

21. In view of the facts and circumstances of the case and the position of law and since there is a dispute between the parties with regard to the title over the property, this Court, under Article 226 of the Constitution of India, cannot decide the issue over the title of the property. Therefore, this writ petition is

dismissed with liberty to the parties to work out their remedies before the appropriate Civil Court. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CO)

// True Copy //

/06/2022

Sub Assistant Registrar(CS)

Ogy

To

1. The District Revenue Officer,
   Theni District,
   Theni.

2. The Revenue Divisional Officer,
   Uthamapalayam,
   Theni District.

3. The Thasildar,
   Bodiynayakanoor,
   Theni District.

+1 CC to M/s.S.KADARKARAI, Advocate (SR-15288[F] dated 30/03/2022)

+1 CC to M/s.SPL GP (SR-15335[F] dated 30/03/2022)

W.P.(MD)No.1474 of 2011
29.03.2022

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