BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 11.04.2022

CORAM:

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

W.P(MD)No.521 of 2011 and
MP(MD) No.2 of 2011

1.R.Gnanasoundari
2.R.Sekar
3.R.Anbalagan
4.Murali
5.R.Senthamil Selvi
Petitioners 1 to 5 are represented by
their power of Attorney
T.Krishnan ...Petitioners

Vs.

1.The District Revenue Officer,
Tirunelveli.

2.The Revenue Divisional Officer,
Tirunelveli.

3.The Tahsildar,
Tirunelveli.

4.Selva Gomathi Kumar
5.Tmt.Santhi Rani ...Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus, calling for the records to the impugned order dated 13.10.2010, issued by the first respondent in Revision Petition No.Ka.2/7/09 and quash the same and consequently direct the respondents to restore the order dated 06.07.2009 passed by the second respondent in Na.Ka.No.A3/Me.Moo. 8/08.

For Petitioner : Mr.T.Antony Arul Raj
For R1 to R3 : Mr.A.Baskaran
Additional Government Pleader

O R D E R

This writ petition is filed as against the order passed by the District Revenue Officer, reversing the order of the Revenue Divisional Officer in cancelling the patta granted in favour of the petitioners.

2.The case of the petitioners is that they are the legal representatives of one Raju and the said Raju has purchased the property to an extent of 11 acres and 5 cents in Survey Nos.848/1, 861 and 862, Sathiram Pudukulam Village, Tirunelveli Taluk, from one Sankaralingam, the power holder of one Bagavathiammal. The land was originally belonged to one Chidambarathammal and she executed a settlement deed in favour of her daughter Bagavathiammal. Bagavathiammal gave a power deed in favour of her brother and son-in-law Sankaralingam and through the power deed, the petitioner's father purchased the property from Sankaralingam on 23.03.1998. While so, the said Bagavathiammal created a sale agreement with the help of her brother one Arumugam and filed a collusive suit before the District Munsif Court, Tirunelveli in O.S.No.187 of 2000 and also obtained a decree. The said Arumugam has also filed another suit for specific performance in O.S.No.205 of 2000 before the Subordinate Court, Tirunelveli and obtained a decree on 08.10.2000. On knowing that, the petitioner's father, namely, Raju filed a suit before the Subordinate Court, Tirunelveli in O.S.No.281 of 2001 against Bagavathiammal and Arumugam, for the relief of declaration and permanent injunction. The suit was renumbered as O.S.No.535 of 2004, before the District Munsif Court, Tirunelveli and decreed in favour of the petitioner's father Raju, on 07.09.2004. Pending the suit in O.S.No.535 of 2004, Arumugam sold the property in favour of one Balasubramanian, the father of the respondents 4 & 5. Bagavathiammal has also filed an appeal as against the judgment and decree dated 07.09.2004 made in O.S.No.535 of 2004 before the Subordinate Court, Tirunelveli in A.S.No.322 of 2005 and the same was dismissed by judgment dated 20.03.2006. Pending the appeal, the legal heirs of Balasubramanian mutated the revenue records and therefore, the petitioner's father filed an appeal before the Revenue Divisional Officer, Tirunelveli and the Revenue Divisional Officer restored the patta in favour of the petitioner. However, on the revision filed by the respondents, the revisional authority has erroneously passed the order in favour of the respondents. Aggrieved over the same, the present writ petition is filed.

3.The learned counsel appearing for the petitioners submits that the father of the petitioners had filed O.S.No.281 of 2001, claiming right and title over the subject property and the same was decreed on 07.09.2004, after renumbered as O.S.No.281 of 2001 and the appeal in A.S.No.322 of 2005 filed as against the judgment and decree was dismissed by the judgment dated 20.03.2006. While so, during the pendency of the suit proceedings, the second defendant Arumugam sold the subject property in favour of Balasubramanian and his wife Seethalakshmi, who are the parents of the private respondents, on 05.12.2002. Since the suit was decreed in favour of the petitioners' father and appeal filed as against the judgment and decree was also dismissed, the sale effected by the said Arumugam is not valid.

4.A detailed counter affidavit has been filed by the fourth respondent, wherein, it has been stated that the land measuring 12 acres and 5 cents in Survey Nos.848/1, 861 and 862 in Sathirampudhukulam Village, Tirunelveli Taluk originally belonged to one Chidambarathammal, who is none other than the great grand mother of the fourth respondent. The said Chidambarathammal settled the same in faovur of her daughter one Bhagavathiammal, who is the paternal grand mother of the respondents 4 & 5 on 26.05.1967. According to the private respondents, no Power of Attorney has been executed by the said Bhagavathiammal in favour of Sankaralingam. The alleged Power of Attorney said to have been executed by the said Bhagavathiammal in favour of Sankaralingam is a forged one and hence, the sale effected by the said Sankaralingam in favour of the father of the petitioners, namely, Raju is not a valid one.

5.According to the fourth respondent, the said Bhagavathiammal entered into a sale agreement, in respect of the subject property in favour of one Arumugam, who is the another brother of Bhagavathiammal. After entering into the agreement, since Bhagavathiammal intended to sell the same property to some others, her brother Arumugam filed a civil suit in O.S.No.187 of 2000, before the District Munsif Court, Tirunelveli, seeking an injunction. He also filed another suit in O.S.No.205 of 2000, seeking specific performance before the Subordinate Court, Tirunelveli and the same was decreed on 08.10.2000.Thereafter, the said Arumugam sold the property to the parents of the respondents 4 & 5, vide sale deed, dated 05.12.2002 and after their death, the respondents 4 & 5 inherited the property. It is also stated that since their parents purchased the property from a lawful owner, who was having a valid title and conveyable interest, the impugned order of the District Revenue Officer, Tirunelveli is liable to be dismissed.

6.This Court considered the rival submissions made on either side and perused the materials placed on record.

7. At this juncture, this Court wants to emphasize the significance of the Patta Pass Book Scheme, which 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.

8. 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.

9.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.

10. 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.

11. 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".

12. 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.

13. 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.

14. 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.

15. 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.

16. 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."

17. 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."

18.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.

19. 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. In this case, since the petitioners obtained a decree in O.S.No.281 of 2001, which was also confirmed in A.S.No.322 of 2005, dated 20.03.2006 by the competent civil Court and as of now, no appeal has been preferred by the parties concerned, the order passed by the District Revenue Officer, dated 13.10.2010, is hereby set aside. The respondents are at liberty to work out their remedy before the appropriate civil Court.

20.Accordingly, this Writ Petition is allowed. No Costs. Consequently, connected Miscellaneous Petition is closed.

11.04.2022

Index:Yes
Internet:Yes
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To

1.The District Revenue Officer,
Tirunelveli.

2.The Revenue Divisional Officer,
Tirunelveli.

3.The Tahsildar,
Tirunelveli.

B.PUGALENDHI, J.

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ORDER MADE IN
W.P(MD)No.521 of 2011 and
MP(MD) No.2 of 2011

11.04.2022