BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

ORDER RESERVED ON : 01.11.2022

ORDER PRONOUNCED ON : 04.11.2022

CORAM:

THE HONOURABLE MR.JUSTICE R.VIJAYAKUMAR

W.P.(MD).No.15306 of 2013
and MP(MD).Nos.2 & 3 of 2013 and 1 & 3 of 2014

1.A.Jaganathan

2.Muthuramalingam

3.Mariammal ....Petitioners

Vs

1.The District Collector
Virudhunagar
Viruthunagar District

2.The District Revenue Officer
Virudhunagar
Virudhunagar District

3.The Revenue Divisional Officer
Sivakasi Taluk
Virudhunagar District

4.The Tahsildhar
Sivakasi Taluk
Virudhunagar District

5.K.Veerakutti Thevar (died)

6.Y.S.Rengan
The Revenue Divisional Officer
Sivakasi Taluk
Virudhunagar District

7.V.Gurugopalsamy

8.V.Ramanujam

9.V.Muthukrishnaveni

10.V.Umayalmuthu

(Respondents 7 to 10 are brought on record as legal heirs of the deceased fifth respondent vide Court order dated 10.04.2014)

Prayer: This Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, to call for the records relating to the impugned order made by the third respondent in his proceedings in Na.Ka.A1/4322/2012 dated 28.03.2013 and quash the same as illegal.

For Petitioners	: Mr.M.Ajmalkhan Senior Counsel For M/s.Ajmal Associates
For R1 to R4	: Mr.B.Saravanan Additional Government Pleader
R5	: Died
For R6 to R10	: Mr.A.V.Arun

ORDER

The present writ petition has been filed challenging an order passed by the third respondent herein under which he has cancelled the patta standing in the name of the writ petitioners and restored the patta in the name of the fifth respondent herein.

2.According to the learned Senior Counsel appearing for the writ petitioners, the survey number in dispute was originally owned by one Karuppayeeammal. She had mortgaged the said property in favour of one A.Veerakutti Thevar. Since the said Karuppayeeammal could not redeem the property, she has executed a registered sale deed in favour Gurusamy Thevar, S/o.A.Veerakutti Thevar who is the father of the fifth respondent herein. The learned Senior Counsel had further contended that the sale deed dated 31.07.1934 would clearly disclose that the mortgage money paid by the father of the fifth respondent has been adjusted and the balance amount alone had been paid by the father of the fifth respondent herein.

3.The writ petitioners are the legal heirs of one Annamalai Thevar who is none other than the brother of Gurusamy Thevar.

4.According to the learned Senior Counsel, when the property was purchased in the name of Gurusamy Thevar on 31.07.1934, the petitioners' father Annamalai Thevar was a minor. Hence, the property was purchased in the name of eldest son namely Gurusamy Thevar. Therefore, it is a joint family property. The learned Senior Counsel further contended that after the death of A.Veerakutti Thevar, the properties were orally partitioned between Gurusamy Thevar and Annamalai Thevar. In the said oral partition, 40 ares allotted to the share of Gurusamy Thevar which they have already sold out. The balance 39 acres were allotted to the share of Annamalai Thevar. He had further contended that the fifth respondent herein had filed O.S.No.27 of 2011 before the District Munsif Court, Sivakasi as against the writ petitioners herein for the relief of declaration of title and permanent injunction. The said suit was dismissed for default on 19.01.2012. Thereafter, the fifth respondent herein has approached the Revenue Divisional Officer on 30.01.2012 seeking transfer of patta in his name.

5.The learned Senior Counsel had further contended that the Tahsildhar has granted patta in favour of the writ petitioners by way of an order dated 06.07.2010. Only thereafter, a civil suit came to be filed by the fifth respondent which was dismissed for default. Hence, the order passed by the third respondent which was confirmed by the second respondent herein are clearly in violation of the Civil Court order and hence, they are liable to be set aside.

6.The learned Senior Counsel had further contended that the oral partition between the petitioners' father Annamalai and the fifth respondent's father Gugursamy Thevar is reflected in a mortgage deed dated 22.09.1949. Under the said document, the father of the writ petitioners namely Annamalai Thevar had executed a registered mortgage in favour of the third party with regard to his undivided ½ share in Survey No.766/2 for an extent of 2 acres and 13 cents. The said mortgage deed has been attested by the father of the fifth respondent herein. Hence, it is clear that the fifth respondent's father has admitted the oral partition between the petitioners' father and the said Gurusamy Thevar. The learned Senior Counsel had further contended that the fifth respondent's sister had initiated O.S.No.81 of 2011 on the file of the Subordinate Court, Sivakasi for the relief of partition and separate possession of her ½ share. In the said suit, the present fifth respondent is the first defendant. The fifth respondent has filed a written statement admitting the fact that there was an oral partition between Annamalai Thevar and Gurusamy Thevar.

7.According to the learned Senior Counsel, the petitioners have proved the oral partition between their father and the father of the fifth respondent. The learned Senior Counsel had further contended that in view of the said partition and an allotment of 39 ares in favour of the writ petitioners' father, the Tahsildhar has rightly granted patta in favour of the writ petitioner by his order dated 06.07.2010. However, the revenue authorities at the instance of the fifth respondent herein have reversed the order and granted patta in favour of the fifth respondent herein. He had further contended that the relationship between the parties though reflected in the counter filed by the writ petitioners, has not been taken into consideration by the revenue authorities. The patta was standing in the name of the writ petitioner's grandfather namely A.Veerakutti Thevar was erroneously considered to be standing in the name of G.Veerakutti Thevar. Merely because of the sale deed, standing in the name of the Gurusamy Thevar, it cannot be considered to be a private property of the said Gurusamy Thevar and on more than one occasion, the father of the said Gurusamy Thevar and his son namely the fifth respondent have admitted that the property is a joint family property and the same has been orally partitioned. Hence, the revenue authorities did not have any jurisdiction whatsoever to entertain the request of the fifth respondent herein to cancel the patta. Hence, he prayed for allowing the writ petition.

8.Per contra, the learned counsel appearing for the respondents 7 to 10 had contended that the property has been purchased only in the name of the fifth respondent's father namely Gurusamy Thevar by way of a registered sale deed dated 31.07.1934. In case, if the petitioner feels that it is a joint family property, it is for him to approach the competent Civil Court for getting appropriate remedy and the same cannot be considered by the revenue authority. He had further contended that even in UDR proceedings, Patta No. 1078 was standing in the name of the of the fifth respondent. 'A' register will also indicate that Patta No.1916 was standing in the name of the fifth respondent herein for Survey No.766/2I. Even in UDR proceedings, Patta No.1278 was standing in the name of the fifth respondent herein in Survey No.766/2I. However without issuing any notice to the fifth respondent herein, the fourth respondent has passed an order transferring the patta in the name of the writ petitioners in Patta No.3135 for an extent of 0.39.0 Hectare for

Survey No.766/2I2. In the said order dated 14.02.2012, Tahsildhar has granted patta for the fifth respondent for 0.40.0 Hectare in Survey No. 766/2I3. Though the fifth respondent is entitled to the entire extent of 0.86.0 Hectare, the extent was reduced by an order of the Tahsildar dated 14.02.2012 without issuing any notice to the fifth respondent in whose name patta was standing.

9.The learned counsel appearing for the respondents 7 to 10 had further contended that the dismissal of O.S.No.27 of 2011 would not confer any title upon the writ petitioners. He had further contended that the decree passed in O.S.No.81 of 2011 on the file of the Subordinate Court, Sivakasi is an exparte decree and the same has been set aside at the instance of the fifth respondent herein. Hence, as on today, the said suit is pending. The averments in the written statement are only to the effect that the properties belonging to A.Veerkutti Thevar have been partitioned. The said averments cannot be interpreted to mean that the properties have been partitioned between Gurusamy Thevar and Annamalai Thevar. At no point of time, the fifth respondent has admitted that the property in dispute is a joint family property in which the writ petitioners are having share.

10.The learned counsel for the respondents 7 to 10 had further contended that Patta standing in the name of the fifth respondent was cancelled and it was issued in the name of the writ petitioners by the

Tahsidlar without issuing any notice to the fifth respondent. Hence, the respondents 2 and 3 were right in cancelling the said patta and restoring the patta in the name of the fifth respondent. Hence, he prayed for dismissal of the writ petition.

11.I have considered the submissions made on either side and perused the materials available on record.

12.The writ petitioners claim that the property in dispute is the joint family property of Gurusamy Thevar and his brother Annamalai Thevar. The petitioners are the legal heirs of Annamalai. The petitioners mainly rely upon certain recital in the sale deed dated 31.07.1934 and attestation of the fifth respondent's father in the mortgage deed dated 22.09.1949 to contend that the said property is a joint family property. On the other hand, the fifth respondent claims that the property has been purchased in the name of his father Gurusamy Thevar and the same is the absolute property of the said Gurusamy Thevar and therefore, his brother Annamalai Thevar or his legal heirs are not entitled to any share.

13.A narration of the above said facts will clearly indicate that there is a serious title dispute between the parties and the same cannot be resolved by the revenue authorities or by this Court under Article 226 of the Constitution of India. A perusal of the impugned order indicates that the patta was standing in the name of the fifth respondent in Patta No.1078 even before

UDR proceedings as per the SLR register. Even as per 'A' register, patta was standing in the name of the fifth respondent for Survey No.766/2I. During UDR proceedings also patta was granted only in favour of the fifth respondent in Patta No.1278 for an extent of 0.86.0 ares in Survey No.766/2I.

14.The writ petitioners have approached the fourth respondent herein for grant of patta for an extent of 0.39.0 ares in Survey No.766/2I. The said fourth respondent has passed an order on 14.02.2012 acceding to the said request. Under the said order, Patta was granted to the writ petitioners for an extent of 0.36.0 ares by sub-dividing Survey No.766/2I into 766/2I2 in favour of the Writ petitioners and Survey No.766/2I3 for an extent of 0.40.0 ares in favour of the fifth respondent herein.

15.A perusal of the records indicate that the fourth respondent has passed the order dated 14.02.2012 without issuing notice to the fifth respondent herein in whose name patta was standing on the date of application made by the writ petitioners. The fifth respondent challenging the said order has rightly approached the third respondent herein who has considered in detail about the document submitted on either side. The third respondent has also considered the status of the patta during the relevant point of time. After considering all aspects, the third respondent has arrived at a finding that the patta was standing only in the name of the fifth respondent prior to UDR proceedings and after UDR proceedings. He has also relied upon the sale deed in favour of the fifth respondent's father dated 31.07.1934 and thereafter, proceeded to cancel the patta granted in favour of the writ petitioners and restored the patta in the name of the fifth respondent herein.

16.A perusal of the impugned order will clearly indicate that the petitioners were granted patta by an order of the fourth respondent herein dated 14.02.2012 without issuing notice to the fifth respondent in whose name patta was standing at the relevant point of time. Since patta transfer order of the Tahsildhar was against the provision of the statute, the third respondent has rightly interfered and cancelled the said order. Thereafter, he has passed the order restoring the patta in the name of the fifth respondent in whose name it was standing prior to the order of the Tahsildhar dated 14.02.2012.

17.I do not find any illegality or infirmity in the procedure adopted by the third respondent herein in passing the impugned order. The submissions made by the learned Senior Counsel for the petitioners with regard to the character of the property, oral partition and allotment of the disputed property in favour of Annamalai Thevar have to be established only before the competent Civil Court. From the impugned order, it could be seen that the patta was standing in the name of the fifth respondent even before UDR proceedings. Unless there is a procedural irregularity or it is against the statutory provisions or it is against the order of the Civil Court, this Court cannot interfere under Article 226 of Constitution of India to disturb the said order. The writ petition is devoid of any merits and the same is dismissed with liberty to the writ petitioners to approach the competent Civil Court to establish their rights over the disputed survey numbers. No costs. Consequently, connected miscellaneous petitioners are closed.

04.11.2022

Internet : Yes/No
Index : Yes/No
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R.VIJAYAKUMAR, J.

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Pre-delivery order made in

W.P.(MD).No.15306 of 2013
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