



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 12.04.2022

CORAM:

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

W.P. (MD)No.7863 of 2016

WEB COPY

1. K.Naganathan
2. Nagakanni
3. Bhavani
4. Dhivya
5. Viji
6. Ramya
7. Sethu Lakshmi
8. Thangarajan
9. Muthukumar
10. Gobi
11. Mareeswaran
12. Nambukumar
13. Maheswari

... Petitioners

versus

1. The District Revenue Officer,
Ramanathapuram District,
Ramanathapuram.
2. K.Muniyandi Servai
3. Sathaiah Servai
4. Ganesan
5. Chandran
6. Rathinam
7. Radha
8. Karunakaran
9. Baskaran
10. Sivaji
11. Dhasarathan

... Respondents

Writ Petition filed under Article 226 of the Constitution of India, seeking for the issuance of Writ of Certiorarified Mandamus, to call for the records pertaining to the impugned order of the first respondent in U/P/(16)-99394-2013 dated 26.02.2016 and quash the same and consequently direct the first respondent to grant patta to the petitioners in S.No.566/2 at Rameswaram Village & Taluk, Ramanathapuram District to the extent of 2 acres out of 3 acres and 80 cents, by cancelling the patta issued to the respondents 2 to 11 in patta Nos.1568, 1664 and 5949.

For Petitioners : Mr.R.Gowrishankar

For R1 : Mr.A.Baskaran

Additional Government Pleader

For R2 to R7 : Mr.A.Rajaram

For R8 to R10 : No appearance



ORDER

This writ petition is filed as against the order of the first respondent dated 26.02.2016, dismissing the petition filed by the petitioners seeking to cancel the patta granted in favour of the private respondents, in respect of the excess land to an extent of 2 acres and 5 cents in S.No.566/2.

2. The petitioners 1, 11 and 12 are brothers and 13th petitioner is their younger sister. The second petitioner is the wife of one of the deceased younger brother and petitioners 3 to 6 are her daughters. The 7th petitioner is the wife of another deceased younger brother and petitioners 8 to 10 are her sons.

3. The case of the petitioners is that a punja land in old patta No.5 old Bimas No.566/1, Old S.No.566/1, New S.No.566/2 at Rameswaram Village and Taluk, Ramanathapuram District to the extent of 13 acres and 78 cents originally belonged to one Kanniah Thevar, who is the forefather of the petitioners. He executed a Will dated 16.07.1924 in favour of his grandson one Thangarasu Thevar. After the death of Kannaiah Thevar, Thangarasu Thevar was in possession and enjoyment of the property. After his demise, his son, one Kannusamy Thevar, who is the father of the petitioners 1, 11 to 13, inherited the said property and he was in possession and enjoyment of the property. Out of 13 acres and 78 cents, in the year 1956, he sold two acres of land to one Sethurakkan, S/o.Subbaiah Servai. In the meanwhile, one Marimuthu Thevar occupied 1 acre and 80 cents of land at the eastern side of two acres of the sold land. Since the said Marimuthu Thevar's name has been recorded in the four boundaries, the petitioners had not disputed the claim of the said Marimuthu over the land to an extent of 1 acre and 80 cents. Further, at the eastern side to the land occupied by the said Marimuthu, the first petitioner's father executed a gift deed in Doc.No.261/1979, dated 28.05.1979 in favour of the first petitioner in respect of 9 acres and 98 cents. Later, he sold out 41 cents to one Murugan through a registered deed dated 12.08.2013. The petitioners claims that they are having title, possession and enjoyment of 9 acres and 71 cents in the abovesaid survey numbers.

4. The said Marimuthu Thevar leased the land to one Krishnan Servai and Ramalingam Servai, who are the fathers of respondents 2 to 10, to an extent of 3 acres and 15 cents, which was excess to what he was in possession of land to an extent of 1 acre and 80 cents. Thereafter, the said Marimuthu Thevar sold the land to them, by virtue of sale deed dated 11.02.1959. Earlier to UDR entry, the first petitioner's father name was found in the SLR revenue entries in respect of the said land. But, at UDR stage, the private respondents got patta to the extent of 3 acres and 80 cents which is excess of 2.5 acres what their vendor had in possession of the land.

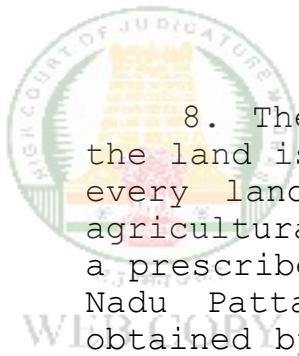


Aggrieved over the same, the petitioners submitted a petition dated 29.11.2013 before the first respondent seeking to cancel the patta granted in respect of the excess land to an extent of 2 acres and 5 cents in S.No.566/2 and grant patta in favour of them. But, the first respondent rejected the claim made by the petitioners, by his order dated 26.02.2016. Challenging the same, the present writ petition has been filed.

5. The private respondents filed a counter affidavit stating that the petitioners are having no legal right to question the entries made in the revenue records and the patta stands in the name of the respondents as they are in possession and enjoyment of the said properties. Further, the possession and enjoyment of the said property by the respondents were also not disputed by the forefathers of the petitioners during their life time. Therefore, the petitioners have no legal right to question to same. The property measuring with an extent of 3.80 acres in old S.No.566/2 was taken over by Ramalingam Servai and Krishnan Servai through the registered Lease Deed No.175/1953 from one Marimuthu Thevar. The said lease was further extended under another registered Lease Deed No.342/1995 dated 13.09.1955 for higher lease amount. In continuation of the same, the said Marimuthu Thevar and his sons executed a sale deed in favour of Ramalingam Servai and Krishnan Servai on 11.02.1959. From 11.02.1959 onwards, the said Ramalingam Servai and Krishnan Servai were in possession and enjoyment of the property. Thereafter, oral partition was effected between them. After the death of Ramalingam Servai and Krishnan Servai, their legal heirs, namely, respondents 2 to 10 took possession of their respective share. Since the possession and enjoyment of the property are proved, at the time of UDR settlement, the land occupied by them was surveyed properly and patta was also granted to them during the year 1986. It is further stated that at the time of survey and settlement, the first petitioner, who was then VAO of Rameswaram Village, was present in person while measuring their shares as per the partition and helped to get patta in their names. Therefore, the first petitioner is well known about the UDR settlement.

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. In this case, the first respondent/the District Revenue Officer, Ramanathapuram, by the order impugned in this writ petition, has rightly rejected the request of the petitioner seeking to cancel the patta granted in favour of the private respondents in respect of the excess land to an extent of 2 acres and 5 cents in S.No.566/2 and directed the parties to work out their remedies before the appropriate Civil Court. Therefore, this Court is not inclined to interfere with the order passed by the first respondent. Accordingly, the writ petition is dismissed. No costs.

Sd/-

Assistant Registrar (CS I)

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/ /2022

Sub Assistant Registrar(CS)

To
The District Revenue Officer,
Ramanathapuram District,
Ramanathapuram.

+1 CC to M/s.A. RAJARAM, Advocate (SR-18056[F] dated 12/04/2022)

+1 CC to M/s.SPL.GP. (SR-18619[F] dated 13/04/2022)

+1 CC to M/s.R. GOWRISHANKAR, Advocate (SR-18726[F] dated 13/04/2022)

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