



W.A.Nos.2242 and 2675 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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JUDGMENT RESERVED ON	JUDGMENT PRONOUNCED ON
12.01.2023	31.01.2023

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI
and

THE HONOURABLE MRS. JUSTICE R.HEMALATHA

W.A.Nos.2242 and 2675 of 2018
and C.M.P.Nos.21794, 21795 of 2018 and 494 of 2019

W.A.No.2242 of 2018

R.Mallika

.. Appellant

Vs.

1.M.Padmini

2.The District Revenue Officer
Kancheepuram
Kancheepuram District.

3.The Revenue Divisional Officer
Kancheepuram
Kancheepuram District.

4.The Tahsildar
Pallavaram Taluk
Kancheepuram District.

5.Rajkumar

.. Respondents



W.A.Nos.2242 and 2675 of 2018

W.A.No.2675 of 2018

M.Padmini

.. Appellant

Vs.

1.The District Revenue Officer
Kancheepuram
Kancheepuram District.

2.The Revenue Divisional Officer
Kancheepuram
Kancheepuram District.

3.The Tahsildar
Pallavaram Taluk
Kancheepuram District.

4.Rajkumar

5.R.Mallika

.. Respondents

Common Prayer: Writ Appeals are filed under Clause 15 of Letters Patent against the order dated 11.07.2018 passed in W.P.No.11516 of 2017.

In W.A.No.2242 of 2018

For Petitioner : Mrs.A.L.Ganthimathi

For R1 : Mr.M.S.Krishnan, Senior Counsel
for Mr.K.Elango

For R2 to R4 : Ms.R.L.Karthika, Govt. Advocate

For R5 : Mr.T.R.Rajagopalan, Senior Counsel
for Mr.C.Prakasam



W.A.Nos.2242 and 2675 of 2018

In W.A.No.2675 of 2018

For Petitioner : Mr.M.S.Krishnan, Senior Counsel
for Mr.K.Elango

For R1 to R3 : Ms.R.L.Karthika, Govt. Advocate

For R4 : Mr.T.R.Rajagopalan, Senior Counsel
for Mr.C.Prakasam

For R5 : Mrs.A.L.Ganthimathi

COMMON JUDGMENT

(Judgment of the Court was delivered by V.M.VELUMANI,J.)

Both the writ appeals are filed against the order dated 11.07.2018 made in W.P.No.11516 of 2017 and hence disposed of by this common judgment.

2. The petitioner in W.P.No.11516 of 2017 filed W.A.No.2675 of 2018 and the 5th respondent in the said writ petition filed W.A.No.2242 of 2018. Parties are referred to as per their respective ranks in the writ petition.

3. The case of the petitioner is as follows -

3(a). One Khader Beevi, P.M.Shaik Dawood, Abdul Hameed,



W.A.Nos.2242 and 2675 of 2018

Shaik Mohamed, Dhameena Beevi & Mohamed Ibrahim Sahib owned land measuring 15600 sq.ft., equivalent to 6.5 grounds in Survey No.46/1, in Pammal Village. They appointed one Pitchaiah Pillai as their power agent to deal with the suit property. The power agent Pitchaiah Pillai sold 9795 sq.ft. equivalent to 4 grounds 195 sq.ft., 0.09.0 ares to one Prakash Chand by deed of sale dated 07.06.1968 bearing Doc.No.1079 of 1968 on the file of Sub Registrar Office, Pallavaram.

3(b). Khader Beevi & others filed O.S.No.31 of 1973 on the file of Sub Court, Chengalpet, against Pitchaiah Pillai and three others, for recovery of Rs.21,477/-, for delivery of possession of 'B' schedule property from Pitchaiah Pillai and to set aside and cancel the Power of Attorney dated 12.05.1968 executed by Khader Beevi and others in favour of Pitchaiah Pillai. Subsequently, Prakash Chand was impleaded as 5th defendant in the said suit. The said suit was settled and Khader Beevi and others accepted sale in favour of Prakash Chand and filed a memo of compromise. Based on that, a compromise decree was passed on 25.06.1977.



W.A.Nos.2242 and 2675 of 2018

3(c). Prakash Chand, vendor of the petitioner, approached the 3rd respondent for issue of patta. The 3rd respondent, by proceedings dated 10.02.2005, issued patta to Prakash Chand. The said Prakash Chand sold Plot Nos.1, 2, 3 & 4 measuring 4 grounds 195 sq.ft equivalent to 9795 sq.ft. 0.09.0 ares to the petitioner by the sale deed dated 27.12.2006 bearing Doc.No.5108 of 2006.

3(d). The petitioner further stated that Khader Beevi executed sale deed in favour of one Krishnamurthy, Dhanalakshmi and 2 others by suppressing compromise decree dated 25.06.1977. The said Krishnamurthy and Dhanalakshmi in turn executed three sale deeds dated 23.10.1998, 05.06.1998 & 05.06.1998 measuring extent of 2686 sq.ft., 1366 sq.ft., 1401 sq.ft. in favour of Muthuvel, Jaganathan and S.Palanisamy. The said Muthuvel and others filed W.P.Nos.37589 to 37591 of 2007 challenging the order of the 3rd respondent dated 10.02.2005 issuing patta in favour of Prakash Chand. Pending writ petitions, Muthuvel, Jaganathan and Palanisamy sold the property in favour of one N.Srinivasan during 2007 – 2008 by three sale deeds dated 01.02.2008, 27.12.2007 & 27.12.2007. N.Srinivasan appointed his brother N.Ramesh as Power Agent to deal with the property. According



W.A.Nos.2242 and 2675 of 2018

to the petitioner, in view of the sale in favour of N.Srinivasan, Muthuvel, Jaganathan and Palanisamy have no locus standi to prosecute the writ petitions.

3(e). This Court, by the order dated 28.04.2009 directed the 3rd respondent to retain the patta issued as per the sale deed dated 07.06.1968 executed by Pitchaiah Pillai in favour of Prakash Chand, the vendor of the petitioner and as per the sale deed dated 27.12.2006 executed by Prakash Chand in the name of the petitioner. This Court also directed the 3rd respondent to cancel the patta issued either in the name of Prakash Chand or in the name of the petitioner for the remaining portions covered in the compromise decree and issue patta in the name of the person entitled to.

3(f). The said Muthuvel, Jaganathan and Palanisamy filed W.A.Nos.785 to 787 of 2009 challenging the order passed in the Writ Petition Nos.37589 to 37591 of 2007. The Division Bench of this Court set aside the order passed in Writ Petitions without considering the sale in favour of the petitioner and directed the said Muthuvel and 2 others to approach the Appellate Authority under Section 12 of Tamil Nadu Patta



W.A.Nos.2242 and 2675 of 2018

Pass Book Act. The Division Bench did not set aside the order of the 3rd

respondent. The petitioner approached the 3rd respondent for issue of patta. The 3rd respondent, by the proceedings dated 22.06.2010 issued patta to an extent of 0.09.0 ares equivalent to 9795 sq.ft.

3(g). Muthuvel and 2 others through their Power Agent N.Ramesh filed appeal to the 2nd respondent challenging the order of the 3rd respondent dated 22.06.2010. The 2nd respondent, by the order dated 20.04.2012 rejected the appeal filed by Muthuvel and 2 others. Against the said rejection, the said Muthuvel and 2 others filed revision before the 1st respondent. Pending revision, N.Srinivasan sold 5453 sq.ft. to the 4th respondent by sale deed dated 23.12.2013 bearing Doc.No.8728 of 2013 who in turn sold the same to the 5th respondent by sale deed dated 20.04.2016 bearing Doc.No.3198 of 2016.

3(h). The petitioner brought to the notice of the 1st respondent that revision petitioner already sold the property and he has no locus standi to prosecute the revision any further. According to the petitioner, the 1st respondent, by the order dated 23.04.2017, without considering the sale, allowed the revision, setting aside the order of the 3rd respondent dated



W.A.Nos.2242 and 2675 of 2018

10.02.2005 and 22.06.2010 and order of 2nd respondent dated 20.04.2012 and directed the parties to approach the Civil Court.

4. Challenging the order of the 1st respondent, the petitioner filed present Writ Petition. In the said Writ Petition, the respondents 1, 4 & 5 filed separate counter affidavits. The learned Judge, by the order dated 11.07.2018, disposed of the writ petition directing the parties to approach the Civil Court for redressal of their grievances in respect of immovable properties in question.

5. Against the said order of this Court dated 11.07.2018 made in W.P.No.11516 of 2017, the petitioner has filed W.A.No.2675 of 2018 and 5th respondent has filed W.A.No.2242 of 2018.

6. The learned Senior Counsel appearing for the petitioner/appellant in W.A.No.2675 of 2018 contended that the 1st respondent and the learned Single Judge of this Court failed to consider that title of Prakash Chand, vendor of the petitioner was confirmed by the compromise decree dated 25.06.1977 in O.S.No.31 of 1973 on the file of the Sub Court, Chengalpet. Khader Beevi and others, suppressing the compromise



W.A.Nos.2242 and 2675 of 2018

decree, sold the very same property in favour of Krishnamurthy and Dhanalakshmi, without having any title. The said Krishnamurthy and Dhanalakshmi sold the property to Muthuvel, Jaganathan and Palanisamy, who in turn sold the property to N.Srinivasan. The said N.Srinivasan sold the property to the 4th respondent and the 5th respondent purchased the property from the 4th respondent. All the above persons have purchased the property from persons who did not have any title.

6(a).The 1st respondent, while passing the impugned order did not consider all the above facts. The 1st respondent having held that Khader Beevi has right only in respect of land measuring 5805 sq.ft., failed to consider that she sold 10216 sq.ft. and ought to have held that the respondents 4 & 5 have no title as they have purchased from the persons who have no title.

6(b). The learned Judge failed to see that the respondents 2 & 3 have rightly held that the appellant is entitled for 0.09.0 ares (9795 sq.ft) in S.No.46/1B, which is in conformity with the compromise decree dated 25.06.1977. The 1st respondent has failed to see that the alienation an



W.A.Nos.2242 and 2675 of 2018

extent of 2630 sq.ft contrary to compromise decree has been given up by the petitioner/appellant and her vendor.

6(c). The learned Judge ought to have seen that 1st respondent has erred in holding that there were various sales at various stages and therefore there is some confusion in coming to the conclusion.

6(d). The learned Judge failed to see that the order of the 3rd respondent dated 10.02.2005 issuing patta to the vendor of the petitioner is unchallenged. In view of the same, the order of the 1st respondent directing the parties to approach the Civil Court for adjudicating title is not correct. The 1st respondent passed the order without furnishing the report of the Assistant Director of Survey, Kancheepuram, dated 19.04.2017. The learned Senior Counsel further submitted that the petitioner has given up her right with regard to 2670 sq.ft. and prayed for setting aside the order of the 1st respondent dated 23.04.2017 and order of this Court dated 11.07.2018 made in W.P.No.11516 of 2017.

6(e). The learned Senior Counsel appearing for the petitioner



W.A.Nos.2242 and 2675 of 2018

further submitted that the title of the vendor of the petitioner was confirmed by competent Civil Court in compromise decree in O.S.No.31 of 1973 and the same is in force and therefore direction to the petitioner to approach the Civil Court is erroneous. In support of his contentions, the learned Senior Counsel relied on the judgment of the Hon'ble Apex Court reported in **(2006) 10 SCC 782 [Tulsan vs. Pyare Lal and others]**;

“8. In the Second Appeal filed by Appellant before the High Court of Himachal Pradesh, Shimla, the following questions of law were framed:

“1. Whether the first appellate court has misread and misinterpreted the oral and documentary evidence on record, especially Ext. PW2/A, the compromise to arrive at its findings?

2. Whether the parties had entered into a valid compromise Ext. PW2/A, if yes, whether the suit is not maintainable in view of this compromise?”

9. It was partly allowed stating:

“The plaintiff had rightly instituted the suit. Both the substantial questions of law are answered accordingly.

Though the Addl. District Judge has dismissed the counter claim of the defendants in toto, yet this Court finds that the plaintiff had only claimed one bigha of land out of 1/3rd share of Bir Singh which was kept by him for himself. The plaintiff is not aggrieved



WEB COPY



W.A.Nos.2242 and 2675 of 2018

by the decree passed in favour of defendant no. 2 Smt. Tulsan Devi in respect of land measuring 7191.94 square metres, as defined hereinabove. Therefore, the impugned decree and judgment is modified to the extent that the counter claim of the defendants is partly allowed and defendant no. 2 Smt. Tulsan Devi is declared absolute owner in possession of above mentioned land measuring 7191.94 square metres, except one bigha of land, which was given to the plaintiff as per compromise Ext. PW2/A and the plaintiff is restrained from interfering in her possession over the said land.

In the result, the appeal RSA no. 151 of 1994 which is against the dismissal of the counter claim is partly allowed as indicated herein above whereas the other appeal RSA No. 150 of 1994 is dismissed.

There is no order as to costs".

10. A Special Leave Petition filed by Appellant was allowed to be withdrawn with liberty to file a review petition. The review petition filed by Appellant was dismissed observing :

"There is no denying that pursuant to the compromise dated 11.8.1986, only 1/3rd share in the estate was left with the deceased Bir Singh. Therefore, he could have given the property only to that extent to defendant no. 2 Smt. Tulsan Devi.

It appears that after the compromise which was arrived at between the parties on 11.8.1986, a suit was filed by Smt. Tulsan Devi claiming herself as the owner and in possession of the land measuring 7191.94 sq. mts.



WEB COPY



W.A.Nos.2242 and 2675 of 2018

In this suit, the deceased Bir Singh was impleaded as defendant no. 2. The plaintiff was not a party to that suit. The said suit was decreed in favour of defendant no. 1 Smt. Tulsan Devi on the basis of her claim having been admitted by deceased Bir Singh. Assuming that the defendant - petitioner Smt. Tulsan Devi got the land measuring 7191.94 sq. mts. from Bir Singh and proceeding on the assumption that the land to this extent had fallen to the share of Bir Singh consequent upon the compromise dated 11.8.1986, Bir Singh could not have given the entire land to defendant - petitioner Smt. Tulsan Devi since one bigha therefrom, was to go to the plaintiff in terms of the compromise dated 11.8.1986.

In view of the said fact, the learned Single Judge vide Judgment dated 27.9.2002 has rightly declared that the defendant - petitioner Smt. Tulsan Devi to be the owner and in possession of the land measuring 7191.94 sq. mts. less one bigha of land which was given to the plaintiff as per compromise dated 11.8.1986."

11. Mr. R. Sundaravaradan, learned senior counsel appearing on behalf of Appellant would submit that the impugned order cannot be sustained as the High Court failed to notice the clear mandate of law that the suit was not maintainable in view of Section 47



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W.A.Nos.2242 and 2675 of 2018

of the Code of Civil Procedure.

12. The learned counsel for Respondents, on the other hand, supported the judgment.

13. The respondents had filed a suit. It may be a suit for injunction, but therein, the parties resolved their disputes and differences. A compromise petition was filed. A decree was passed in terms thereof. The parties were bound thereby. A consent decree in terms of Order 23, Rule 3 of the Code of Civil Procedure need not be confined only to the reliefs prayed for. It may not be confined to the subject matter of the suit. Although, the consent decree was passed in a suit for injunction, for all intent and purport it was a preliminary decree passed in a suit for partition. A fresh proceeding could not be initiated for giving effect thereto, even if Respondents' contention that their right to possess under the consent decree was not found to be enforceable by the Revenue Authorities was to be accepted. A consent decree, it is trite, remains valid unless it is set aside. It would be binding on the parties. Although, the principles of res judicata stricto sensu would not apply, the principles of estoppel would. In the plaint it was accepted that a compromise decree was passed. The High Court while passing its judgment in



the second appeal also noticed the same. Thus, in the subsequent suit, the effect of the consent decree could not have been ignored.

... ..

.. .. .

16. Submission of the learned counsel for Respondents is that the suit for declaration had to be filed in view of refusal on the part of the Revenue Authorities to mutate their names may not be correct as keeping in view the provisions contained in Section 47 of the Code of Civil Procedure, a subsequent suit was clearly barred. The consent decree was also binding on the Revenue Authorities. The respondents also could initiate a proceeding for preparation of final decree. They could also have filed an appropriate application for measurement of the land and delivery of possession pursuant thereto. But, by no stretch of imagination, a second suit could be held to be maintainable.”

7. Ms.L.Karthiga, learned Government Advocate appearing for the respondents 1 to 3 made submissions in support of the order of the 1st respondent and order of this Court and prayed for dismissal of both the appeals.

8. Mr.T.R.Rajagopalan, learned Senior Counsel appearing for the



W.A.Nos.2242 and 2675 of 2018

4th respondent submitted that the vendor of the petitioner purchased 9795 sq.ft. of land in S.No.46/1 in Pammal Village. In the sale deed, it has been mentioned plot Nos.1, 2, 3, 4, but there is no approved layout available. The vendor of the petitioner having purchased 9795 sq.ft., sold 12425 sq.ft. to the petitioner by two sale deeds both dated 27.12.2006. In the sale deed in respect of 2630 sq.ft., no plot number has been mentioned. The petitioner's vendor approached the 3rd respondent and obtained patta for 12425 sq.ft. suppressing the fact that they do have title only to an extent of 9795 sq.ft. and do not have title to the extent of 12425 sq.ft. The petitioner sold Plot No.5 to the third party, but now he is claiming property of respondents 4 and 5. The 5th respondent is in possession of the property purchased by her. When the petitioner's vendor approached the 3rd respondent for issue of patta, the 3rd respondent immediately sub-divided and issued patta in the name of petitioner's vendor cancelling the patta standing in the name of Muthuvel, Jagannathan and Palanisamy and two others, vendors of respondents 4 and 5, without issuing notice to vendor's vendor of respondents 4 & 5. The same was challenged by way of writ petitions and writ appeals. In the writ proceedings, the vendor's vendor of respondents 4 and 5 was directed to file an appeal under Section 12 of the Tamil Nadu Patta Pass



W.A.Nos.2242 and 2675 of 2018

Book Act. In the mean while, the petitioner approached the 3rd respondent. The 3rd respondent issued patta in the name of the petitioner for 9795 sq.ft. The appeal filed by the vendor's vendor of 4th respondent was rejected. In revision filed by the vendor of 4th respondent, by the order dated 23.04.2017, the 1st respondent elaborately considered all the materials on record, set aside the orders dated 10.02.2005 and 22.06.2010 passed by the 3rd respondent and order of the 2nd respondent dated 20.04.2012 and directed to restore the patta in the names prior to UDR namely, 4th respondent vendor's vendor Muthuvel, Jagannathan and Palanisamy. The 1st respondent in view of various legal proceedings initiated including suit by parties and dispute with regard to title of the property has directed the parties to approach the Civil Court to establish their title. When there is a dispute with regard to title, only Civil Court has power to decide the title and Revenue Authority has no power to decide the title. The fifth respondent is in possession of only 5453 sq.ft. out of 5805 sq.ft. retained by Khader Beevi and others. The fifth respondent has purchased the property from rightful owners and she is in possession of said property. The petitioner sold Plot No.5 to the third party but claiming the property purchased by respondents 4 and 5. The petitioner admitted that the property is in possession of fifth respondent



W.A.Nos.2242 and 2675 of 2018

but she is denying the title. Hence, the petitioner has to approach the Civil Court for identifying the land.

8(a). The learned Senior Counsel appearing for the 4th respondent in support of his contentions relied on the following judgments:

(i) (2021) 11 SCC 98 [Edelweiss Asset Construction Company Limited vs. R.Perumalswamy and others];

“18.The Tamil Nadu Patta Pass Book Rules 1987 provide for the procedure to be adopted to deal with enquiries with respect to the entries made in the patta pass book. Rule 4 provides for the procedure on receipt of an application or information with respect to an entry in the patta pass book. The relevant portion of Rule 4 provides thus:

“4. Procedure on receipt of application or information. - (1) On receipt of the application or information, the Tahsildar shall make an entry in the "Register of Applications Received" in the order of receipt in Form III. The Register shall be maintained village-wise.

(2) On the basis of the information furnished in the application and as available in the existing land records or obtained otherwise, the Tahsildar shall cause to be served or despatched, under certificate of posting, to the persons having interest on the land a notice in Form IV calling upon them to make representation either orally, or in writing at a



specific place on a specified date which shall be not less than fifteen days and forty days later than the date of receipt of the application or information.

(3) On the prescribed date, the Tahsildar shall conduct a summary enquiry. At the enquiry, on consideration of age, literacy and occupation, the Tahsildar may permit an authorised agent of the owner to appear on his behalf to supplement whatever the owner has to state orally or in writing. No legal practitioner in his professional capacity shall be allowed to represent any party at such an enquiry. There shall not be adjournment of the enquiry not more than twice and that adjournment shall be granted only on application made by the parties requesting for adjournment. Reasons for granting or refusing the adjournment shall be recorded by the Tahsildar in writing.

(4) 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 order on the ownership from a competent Civil Court having jurisdiction before changing the entries as already recorded and existing in the various revenue records.” (Emphasis supplied)

In terms of Rule 4(4), the Tahsildar upon being satisfied that a dispute concerning the ownership of patta is already pending in a court or any issue that is raised before him impinges on personal or laws of



W.A.Nos.2242 and 2675 of 2018

succession shall direct the concerned parties to obtain an “order of ownership” from a competent civil court having jurisdiction and accordingly change the entries recorded in various revenue records.

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.”

(ii) 2011 (5) CTC 94 (Vishwas Footwear Company Limited, A-2, Third Phase, Guindy Industrial Estate, Chennai-600 032, represented by Director, V.Ravi vs. The District Collector, Kancheepuram and four others];

“18. As far as the power of this Court to entertain a writ petition on disputed questions, we may refer to the following decisions of the Supreme Court in *Arya Vysya Sabha and others v. The Commissioner of Hindu Charitable and Religious Institutions & Endowments* ,



W.A.Nos.2242 and 2675 of 2018

Hyderabad and others, (1976) 1 SCC 292, Rourkela Shramik Sangh v. Steel Authority of India Ltd., and another, (2003) 4 SCC 317 and Himmat Singh v. State of Haryana and others, (2006) 9 SCC 256. Therefore, when disputed questions are involved, this Court will not entertain the writ petition and adjudicate upon such dispute, as it is for the parties to approach the civil Court to decide the issue. However, in the event the order challenged in the writ petition is questioned on the ground of want of jurisdiction, certainly this Court would entertain the writ petition and particularly when such an order was passed when effective remedy is available before a civil Court for a person or persons who seek for cancellation of patta. As already pointed out, though the fourth respondent has filed appeal to the Revenue Divisional Officer seeking for cancellation of patta, in view of the fact that the Revenue Divisional Officer cannot go into the civil dispute, his order cancelling the patta by deciding the disputed question of title is without jurisdiction. In this context, we may refer to the proviso to section 14 of the Act which bars the suit. The proviso reads 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 of declaration of



his right under Chapter VI of the Specific Relief Act and the entry in the patta pass book shall be amended in accordance with any such declaration. By that proviso, in the event any grievance is made by the fourth respondent over the patta granted to the appellant, he should have approached the civil Court for necessary orders. In the event the Revenue Divisional Officer had no jurisdiction to go into the disputed question of title and in spite of that fact if he decides the same, on the very same yardstick, the further remedy is only a revision under section 13 of the Act which is limited to calling for and examining the records of either the Tahsildar or the appellate authority by the District Revenue Officer and such revisional power cannot be equated to appellate power. Hence, the contention of the fourth respondent that the appellant has got an effective remedy of appeal and without availing such remedy cannot file the writ petition, has no merit. Accordingly, the said contention is rejected.

19. Nevertheless, the core question involved in the writ petition is as to whether in the given facts and circumstances of the case, it could be entertained in the event patta has been granted in favour of a particular individual. On the strength of the title or possession, if any other person makes an application to the Revenue



W.A.Nos.2242 and 2675 of 2018

Divisional Officer for cancellation of that patta and in the event both the individuals claim title over the property, the Revenue Divisional Officer cannot adjudicate such disputed questions and accepting the case of the other person, he cannot cancel the patta. The right course to be adopted by the Revenue Divisional Officer in such case is only to refer the applicant who has come before him seeking for cancellation of patta to civil Court, especially when his claim is disputed by the individual who is holding the patta granted by the competent authority. In the event the Revenue Divisional Officer by exceeding his jurisdiction decides the question of title and cancels the patta, certainly the aggrieved person can approach this Court by way of a writ petition on the ground that the Revenue Divisional Officer was not competent to go into the title. The question of alternative remedy is not available to the aggrieved person as for the very same reason the District Collector also cannot go into the disputed question regarding the title or possession, as the case may be, in the event an appeal is filed.

20. . . .

21. In the light of the judgments in Kuppuswami Nainers case and Chockkappans case, the person who has applied to the Revenue Divisional Officer for



W.A.Nos.2242 and 2675 of 2018

cancellation of patta should be directed to approach the civil Court to establish the title and for seeking the grant of patta after cancelling the patta granted in favour of the appellant company. On this ground, the appellant is entitled to succeed. Accordingly, the order of the learned single Judge is set aside. The order impugned in the writ petition is set aside and the patta granted in favour of the appellant company is restored. However, we make it clear that this order shall not stand in the way of the said Alamelu Ammal to approach the civil Court to establish the title and to consequently seek for cancellation of patta granted in favour of the appellant company and for further direction for grant of patta in favour of the said Alamelu Ammal. With these observations and directions, the writ appeal is allowed. No costs.”

9. Mrs.A.L.Gandhimathi, the learned counsel appearing for the 5th respondent re-iterating the same averments as that of the learned Senior Counsel appearing for the 4th respondent and further submitted that the suit in O.S.No.105 of 1993 filed by petitioner's vendor Prakash Chand against Khader Beevi, Dhameena Beevi, Sheik Mohamed, Krishnamurthy, Dhanalakshmi & N.Srinivasan, vendors of respondents 4 & 5 was dismissed for default on 03.04.1996. The suit filed by the



W.A.Nos.2242 and 2675 of 2018

petitioner in O.S.No.291 of 2007 on the file of Sub Court, Chengalpet, against Krishnamurthy, Muthuvel and Prakash Chand to set aside the sale deed executed by Krishnamurthy in favour of Muthuvel and injunction restraining not to sell, was dismissed on 13.06.2008. Subsequently, the said suit was restored to file, transferred to the Sub Court, Tambaram and re-numbered as O.S.No.539 of 2009. The said suit also was dismissed by the judgment dated 05.08.2011 and has become final. In view of the same, it is for the petitioner to establish her title and identify the property by approaching the Civil Court.

9(a). The learned counsel appearing for the 5th respondent further submitted that it is for the petitioner to establish her title for obtaining patta and the learned Judge erred in directing the 5th respondent also to approach the Civil Court for title and restraining the Revenue Authorities from entertaining application for grant of patta and passing orders that till such time, the orders passed by the revenue authorities shall be kept in abeyance. She prayed for setting aside the above said portion and dismissal of the appeal in W.A.No.2675 of 2018 filed by the petitioner and allowing W.A.No.2242 of 2018 filed by the 5th respondent.



W.A.Nos.2242 and 2675 of 2018

10. Heard the learned Senior Counsel appearing for the petitioner as well as the learned Government Advocate appearing for the respondents 1 to 3, learned Senior Counsel appearing for the 4th respondent and learned counsel appearing for the 5th respondent and perused the entire materials on record.

11. From the materials on record, especially from the order of the 1st respondent dated 23.04.2017, the following facts emerge:

(i) Originally Khader Beevi and others owned 15600 sq.ft. equivalent to 6.5 grounds in S.No.46/1 in Pammal village.

(ii) They appointed Pitchaiah Pillai as their Power Agent to deal with the property. The said Pitchaiah Pillai by sale deed dated 07.06.1968 sold 9795 sq.ft. to Prakash Chand, vendor of the petitioner.

(iii) Khader Beevi and others filed O.S.No.31 of 1973 on the file of the Sub Court, Chengalpet, against Pitchaiah Pillai and others and subsequently the said Prakash Chand was impleaded as 5th defendant in the said suit.

(iv) A settlement was arrived in the suit and memo of compromise was filed accepting the sale in favour of Prakash Chand. As per the memo



W.A.Nos.2242 and 2675 of 2018

of compromise, a compromise decree dated 25.06.1977 was passed. In the compromise decree, suit was dismissed against Prakash Chand.

(v) Khader Beevi and others took possession of remaining portions 5805 sq.ft. of land from Pitchaiah Pillai. Prakash Chand sold 2 extent of land by two sale deeds both dated 27.12.2006 measuring 9795 sq.ft. and 2630 sq.ft. Khader Beevi and others sold 10216 sq.ft. by four sale deeds. Both Prakash Chand and Khader Beevi totally sold 22641 sq.ft. But the petitioner and 5th respondent are in possession of only 12378 sq.ft. or 0.11.5 ares.

12. From the order of the 1st respondent, it is seen that both the petitioner and 5th respondent claim title over the same property. The dispute between the petitioner and 5th respondent is that according to the petitioner, having sold 9795 sq.ft. in S.No.46/1, Khader Beevi and others sold the very same property to predecessor in title of the 5th respondent. On the other hand, it is the case of the respondents 4 & 5 that their predecessor in title purchased from Khader Beevi only 5453 sq.ft. from and out of 5805 sq.ft. retained by Khader Beevi and others, by three sale deeds, each measuring 2686 sq.ft., 1401 sq.ft., 1366 sq.ft. respectively.

The petitioner also constructed apartments in the name and style of



W.A.Nos.2242 and 2675 of 2018

“Mahalakshmi Apartments” and sold to third parties. The petitioner is erroneously claiming property validly purchased by predecessor of respondents 4 & 5 in title and respondents 4 & 5 purchased the property from the owners and had acquired title. It is further seen that 3rd respondent by order dated 10.02.2005 issued patta in favour of Prakash Chand after cancelling the patta in the name of J.Lejo Prakash, Muthuvel, Jagannathan, Palanisamy and Khader Beevi. Muthuvel, Jagannathan and Palanisamy filed W.P Nos.37589 to 37591 of 2007 before this Court challenging the order of the 3rd respondent dated 10.02.2005 issuing patta in favour of Prakash Chand. This Court, by the order dated 28.04.2009 passed the following order :

“8. In view of the above rival submissions, the writ petitions are disposed of in the following terms:-

(i) The third respondent is directed to retain pattas in respect of the properties covered under the sale deed dated 07.06.1968 executed by Mr.Pitchai in favour of the fourth respondent and as per the sale deed dated 27.12.2006 executed by the fourth respondent herein in the name of the fifth respondent.

(ii) In respect of the remaining portions covered in the compromise decree in O.S.No.31 of 1973, if



W.A.Nos.2242 and 2675 of 2018

pattas have already been issued either in the name of the fourth respondent or in the name of the fifth respondent, the third respondent is directed to cancel the same and issue pattas in the name of the person who is entitled for the same. In any event, the said exercise shall be completed within a period of three months from the date of receipt of a copy of this order.”

13. The said writ petitioners/vendors/predecessor in title of respondents 4 & 5 filed W.A.Nos.785 to 789 of 2009. The Division Bench of this Court, by judgment dated 08.02.2010 set aside the order of the learned Single Judge on the ground that writ petitions filed by the petitioners therein were not maintainable in view of appellate remedy available under Section 12 of Tamil Nadu Patta Pass Book Act and granted liberty to the appellants therein to approach the concerned authorities by way of appeal. In the mean while, the petitioner approached the 3rd respondent for issue of patta. The patta issued in favour of the petitioner Padmini by 3rd respondent, confirmed by the 2nd respondent is set aside by the 1st respondent.

14. From the order of the 1st respondent, it is seen that Prakash Chand, vendor of the petitioner filed O.S.No.105 of 1993 against Khader Beevi and others and the said suit was dismissed for default on



W.A.Nos.2242 and 2675 of 2018

03.04.1996. Muthuvel, one of the predecessors of respondents 4 & 5 filed

O.S.No.311 of 2006 against Prakash Chand and others. In I.A.No.1402

of 2006, the District Munsif, Alandur granted interim injunction against

Prakash Chand on 27.04.2006. While interim injunction was in force,

Prakash Chand sold the property to the petitioner and petitioner filed

I.A.No.3235 of 2007 under Order I Rule 10(2) of C.P.C. for impleading

herself in the said suit. The said I.A. was dismissed. The petitioner filed

O.S.No.291 of 2007 on the file of Sub Court, Chengalpet against

Muthuvel and Prakash Chand to set aside the sale deed executed by

Krishnamurthy in favour of Muthuvel and injunction restraining not to

sell. The said suit was dismissed for default on 13.06.2008. Subsequently,

the suit was restored to file, transferred to Sub Court, Tambaram, re-

numbered as O.S.No.539 of 2009 and the same was dismissed as

withdrawn on 05.08.2011. The 1st respondent in his order has elaborately

considered all the above facts, especially various suits filed by the

petitioner and her vendor and the fact that both the parties claim title over

the same property, cancelled the orders of the 3rd respondent dated

10.02.2005 & 22.06.2010 issuing patta to the petitioner and her vendor

and the order of the 2nd respondent dated 20.04.2012 confirming the said

order, directed the 3rd respondent to restore the patta in the names prior to



W.A.Nos.2242 and 2675 of 2018

UDR and held that patta will be issued based on the decree passed by the

Civil Court with regard to title.

15. It is pertinent to take into account the facts that in the present writ appeal, the Division Bench of this Court by order dated 27.07.2022 appointed Advocate Commissioner to inspect the property in question along with surveyor, survey the land to find out whether petitioner is in possession of 9795 sq.ft. purchased by her by the sale deed dated 27.12.2006 and to find out the boundaries mentioned in the said sale deed and to file his report. The Advocate Commissioner inspected and measured the property purchased by the petitioner and respondents 4 & 5 with the help of the surveyor and Tahsildar. According to the Advocate Commissioner, when the properties were verified with FMB sketch, he found that in the FMB sketch, plot numbers given from West to East and in sale deed of the petitioner, the plot numbers are given from East to West. The Advocate Commissioner also noted that petitioner has sold portion of the property purchased by her and an apartment called Mahalakshmi Flat is constructed in the said land and the remaining portion, the petitioner is deemed to be in possession. The Advocate Commissioner also mentioned that one Kalyana Mandapam in the name



W.A.Nos.2242 and 2675 of 2018

and style of 'Mallika Thirumana Hall', is situated in the property purchased by the respondents 4 & 5 and 5th respondent is in possession of the property from 2014 even though she has purchased the property from 4th respondent by sale deed dated 20.04.2016.

16. From the order of the 1st respondent and report of the Advocate Commissioner, it is clear that there is no clarity with regard to identification of the property purchased by the petitioner. The 1st respondent considering all the above materials cancelled the patta issued to the petitioner's vendor and petitioner and ordered to restore the patta prior to UDR and held that only after establishing the title by competent Civil Court, patta can be issued to the owner. The learned Judge considered all the above materials and held that there is no infirmity in the order of the 1st respondent and dismissed the writ petition.

17. The respondents 4 & 5 are not questioning the compromise decree or purchase of 9795 sq.ft. by Prakash Chand. In view of the same, the judgment relied on by the learned Senior Counsel appearing for the petitioner is not applicable to the facts of the present case. In the two judgments relied on by the learned Senior Counsel appearing for the 4th



W.A.Nos.2242 and 2675 of 2018

respondent, it has been held that when there is a dispute with regard to title, only Civil Court can decide the title of the persons. The said judgments are squarely applicable to the facts of the present case as petitioner is claiming that after selling the property to her vendor, the said property was again sold to vendor of the respondents 4 & 5 (Khader Beevi and others). On the other hand, it is the contention of the respondents 4 & 5 that the property sold to her vendor's vendor is the land measuring 5453 sq.ft. out of 5805 sq.ft. retained by Khader Beevi and others as per compromise decree. In view of said rival claim, only Civil Court is the competent authority to resolve the said dispute. The petitioner has not made out any case for setting aside the order of the 1st respondent as well as order of the learned Judge.

18. For the above reasons, W.A.No.2675 of 2018 filed by the petitioner is dismissed.

19. It is the case of the learned counsel appearing for the 5th respondent that in view of the order of the learned Single Judge, patta issued in the names of the vendors of respondents 4 & 5 should not be



W.A.Nos.2242 and 2675 of 2018

cancelled. From the order of the 1st respondent, it is seen that names of persons in the patta before UDR was restored. The learned Judge held that there is no infirmity in the order of the 1st respondent. In view of the same, the contention of the learned counsel appearing for the 5th respondent is without merits.

20. For the above reasons, W.A.No.2242 of 2018 filed by the 5th respondent also stands dismissed. No costs. Consequently, connected Miscellaneous Petitions are closed.

(V.M.V., J) (R.H., J)
31.01.2023

Index :Yes/No
Internet : Yes/No
Neutral Citation : Yes/No

Rgr/kj



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W.A.Nos.2242 and 2675 of 2018

**V.M.VELUMANI, J.
and
R.HEMALATHA, J.**

Rgr/Kj

To

1.The District Revenue Officer
Kancheepuram
Kancheepuram District.

2.The Revenue Divisional Officer
Kancheepuram
Kancheepuram District.

3.The Tahsildar
Pallavaram Taluk
Kancheepuram District.

Pre-delivery judgment in
W.A.Nos.2242 and 2675 of 2018
and C.M.P.Nos.21794, 21795 of 2018 and 494 of 2019

31.01.2023



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W.A.Nos.2242 and 2675 of 2018