



W.P.(MD)No.13077 of 2015

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED :06.01.2023

CORAM

THE HONOURABLE MR.JUSTICE K. KUMARESH BABU

W.P.(MD)No.13077 of 2015

and

M.P.(MD).No.1 of 2015

Thangaraj (Died)

2.Mallika

3.Dhanalakshmi

4.T.Gurusamy

5.T.Kannan

... Petitioners

(P2 to P5 are impleaded vide Court order dated 30.08.2022 in W.M.P. (MD).No.14364 of 2022 in W.P(MD).No.13077 of 2015 by RVJ)

Vs.

1.The Revenue Divisional Officer,
Devakkottai.

2.Athinamilagi

3.T.Muniyandi

4.Devika

... Respondents

(R3 and R4 are impleaded vide Court order dated 06.01.2023 in W.M.P. (MD).No.14365 of 2022 in W.P.(MD).No.13077 of 2015 by KBJ)

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PRAYER : Petition filed under Article 226 of the Constitution of India praying for issuance of Writ of Certiorari, calling for the records of the impugned order of the 1st respondent herein dated 04.05.2015 in K.K.m. 1-859-20156 and quash the same.

For Petitioner :Mr.R.Sundar Srinivasan

For Respondents :Mr.M.Prakash
Additional Government Pleader for R1
:Mr.N.Balakrishnan for R2

ORDER

This writ petition has been filed challenging the order of the Revenue Divisional Officer/1st respondent herein.

2.The case of the petitioner is that she is in possession of the property in Survey No.225/2, Sukkanendal group, Devakottai Taluk, based upon a lease that she had entered into with one Chockkalingam. While that be so, the 1st respondent herein in an appeal filed by the 2nd respondent seeking patta in respect of Survey No.225 of the aforesaid property has passed orders, injuncting the petitioner from interfering with the possession



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of the 2nd respondent. He would submit that the 2nd respondent herein had originally filed an application to cancel the patta, in respect of Survey No. 225/2, and grant patta in his name.

3.The learned counsel for the petitioner would submit that the 1st respondent having found that the second respondent is not entitled for patta as the land in survey No.225/2 has been classified as Government Punja land, he had proceeded to give a finding that the 2nd respondent is in possession of the same and therefore, has restrained the petitioner and her husband who is the original writ petitioner from interfering with the possession of the 2nd respondent. According to him, the 1st respondent does not have any authority to grant such a injunction, exercising the powers of the civil Court. He would also further submit that no notice has been issued to the petitioner and therefore, he would seek interference with the order of the 1st respondent insofar as it relates to grant of injunction against them.

4.Countering his arguments Mr.N.Balakrishnan, learned counsel appearing on behalf of the 2nd respondent would submit that notice has been



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served upon the petitioners and the same has been recorded in the impugned order. However, even after receipt of the notice they have not appeared. He would claim that he has been in possession and enjoyment of the property and therefore, the 1st respondent is right in granting the order of injunction restraining the petitioners from interfering with the possession of the property.

5.Mr.M.Prakash, learned Additional Government Pleader appearing on behalf of the 1st respondent would submit that the lands are recorded as unobjectionable Government Punjai lands. He would further submit that on instructions from the Tahsildar of the said revenue village, that the 2nd respondent is in possession of the property.

6.I have considered the rival submissions made by the parties on either side.

7.The order of the 1st respondent dated 04.05.2015 comprises of two parts, the 1st part is rejecting the claim of the 2nd respondent for granting



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of patta which has remain unchallenged and become final between the parties.

8.As regards to the second part, the 1st respondent has proceeded to give a finding that the 2nd respondent is in possession of the property and has issued orders restraining the petitioner from interfering with such possession. The petitioners and the 2nd respondents claims to be in possession of the property neither of the parties have produced any documents evidencing their possession. In my view, the order restraining a party from interfering with the possession of another is a relief that is made under the provisions of the Specific Relief Act. The attempt made by the learned Additional Government Pleader to trace such order to the powers exercised under the provisions of Cr.P.C., is fanciful, unacceptable as the order impugned has not been passed under the provision of Cr.P.C.,

9.In view of the aforesaid observations, the order restraining the petitioner from interfering with the possession of the 2nd respondent will have to be set aside. However, it is open to the parties to approach the Civil



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Court for such relief.

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10. Accordingly, this writ petition stands disposed of. There shall be no order as to costs. Consequently, connected miscellaneous petition is also closed.

06.01.2023

Index : Yes / No
Speaking Order/Non Speaking Order
sbn

To

The Revenue Divisional Officer,
Devakkottai.



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K.KUMARESH BABU, J.

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