BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **01.10.2024**

CORAM

THE HONOURABLE Ms.JUSTICE **P.T.ASHA**

W.P.(MD) No.19690 of 2015
and
M.P.(MD) No.1 of 2015

Patchaiammal ... Petitioner

/vs./

1.The District Revenue Officer,
Trichirappalli,
Trichirappalli District.

2.The Revenue Divisional Officer,
Trichirappalli,
Trichirappalli District.

3.The Tahsildar,
Thiruverambur Taluk,
Trichirappalli District.

4.Mohamed Siddick

5.Nagoor Siddick ... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorari, calling upon the records relating to the proceeding of 1st respondent in Na.Ka.Aa6/36123/13 dated 09.10.2015 and quash the same as arbitrary, bias, illegal and without jurisdiction.

For Petitioner	: Mr.K.Mahalingam for B.Chandran
For R1 to R3	: Mr.P.Thambidurai Government Advcoate
For R4 & R5	: Mr.M.Saravanan

ORDER

The above writ petition has been filed for the issue of a Writ of Certiorari, calling upon the records relating to the proceeding of 1st respondent in Na.Ka.Aa6/36123/13 dated 09.10.2015 and quash the same as arbitrary, bias, illegal and without jurisdiction.

2. The case of the petitioner is that the property comprised in S.No.89/1B measuring an extent of 0.32.5 ares in Gundur Village, Thiruverambur Taluk, Trichirappalli District belonged to the petitioner's mother, Kunjammal and her sister, Somasundarathammal. Their names had been jointly entered in the 'A'

register. On 16.06.1976, Somasundarathammal settled her ½ share in favour of the petitioner's sister, Muthukannu Ammal, as a result the property belonged to Kunjammal and Muthukkannu Ammal. Kunjammal had died nearly 25 years prior to the filing of the writ petition and Muthukkannu Ammal managed the entire properties with the help of the family members and labourers.

3. The fourth respondent owned lands on the northern side of the property in question. He had taken advantage of the fact that Muthukannu Ammal, the sister of the petitioner and the other members were illiterate and managed to manipulate the revenue records by inserting his name in the revenue records without any documents. Thereafter, on 24.09.2007, he had executed a settlement deed in favour of his wife, the fifth respondent and on 29.11.2007, the patta was transferred in the name of the fifth respondent. Immediately on coming to know about this fraudulent transfer, the said Muthukannu Ammal had made several representations to the Tahsildar through her power agent to correct the fraudulent entry.

4. Meanwhile, the said Muthukannu Ammal passed away and it appears that on 08.03.2013, a memo was filed by the fourth respondent reporting the death of the said Muthukannu Ammal and praying that the appeal be dismissed. The orders were passed on the basis of this memo and thereafter the petitioner had immediately moved a petition for impleading herself as legal representatives of Pitchammal and to continue the proceedings. This application after contest was allowed and the matter was reopened and thereafter, by order dated 30.09.2013, the second respondent taking note of the fact that the respondents 4 and 5 have not given any details as to how they obtained the patta and considering the earlier patta issued to Somasundarthammal and Kunjammal, restored the patta back to in their names and cancelled the patta issued to the fifth respondent.

5. Challenging the same, the respondents 4 and 5 have preferred an appeal before the first respondent. In the proceedings before the first respondent, the fourth respondent came forward with a contention that he had entered into an agreement of sale with Muthukannu Ammal on 06.10.1983 and thereafter, Kunjammal had executed an unregistered sale deed on 12.05.1993 in his favour receiving the entire sale consideration. This plea has not been taken when the

matter was pending before the Revenue Divisional Officer. The petitioner had filed a detailed counter setting out the fraud and fabrication that had been done by the respondents 4 and 5 and the manipulation done by them to the revenue records. However, the District Revenue Officer proceeded on the basis that the Revenue Divisional Officer had no power to reopen his own order, after it had been disposed of and set aside the order passed by the Revenue Divisional Officer, thereby reverting the patta in the name of the fifth respondent. Challenging the same, the petitioner is before this Court.

6. In the counter affidavit filed by the fourth respondent for himself and on behalf of his wife, the fifth respondent, he would talk about the agreement of sale deed dated 06.10.1983 and an unregistered sale deed dated 12.05.1993 stating that the property had been sold to him and that he is in possession and enjoyment of the same. He would submit that he had leased out the property to one Perumal Pandurer and after his life time, his son, P.Murugesan, was a cultivating tenant.

7. The main defense taken was that the patta has been challenged after 30 years and that too through the power agent. They would also make allegations

that the power of attorney of the petitioner is an Advocate and he and his wife have manipulated Muthukannu Ammal. He would further state that the petitioner without giving notice had filed an application claiming to be the sister of Muthukannu Ammal and it was taken on file without setting aside the earlier order and later, the appeal has been allowed. The claim of the petitioner that she is the daughter of Kunjammal and sister of Muthukannu Ammal is false and has been made for the purpose of this appeal. Therefore, they sought for dismissal of the writ petition.

8. Heard the learned counsel on either side and perused the records.

9. It is an admitted fact that the property belonged to Somasundarathammal and Kunjammal and later, Somasundarathammal had settled her property to Muthukannu Ammal. The parties are inconsonance up to the above transfers. Thereafter, the fourth respondent would contend that he had obtained an agreement of sale from Kunjammal and Muthukannu Ammal on 06.10.1983 and thereafter, Kunjammal has executed an unregistered sale deed on 12.05.1993. These transactions do not find a mention in the proceedings before the Revenue

Divisional Officer, wherein the petitioner has sought for cancellation of the patta. It is only at the stage of Revision that the above statement has been made.

10. That apart, when the sale agreement has been executed by both Kunjammal and Muthukannu Ammal, the reason for entering into the sale deed only with Kunjammal and thereafter claiming right to the entire property is unexplained. The sale deed cannot be looked into as the same is unregistered. That apart, a perusal of the same, particularly page 3 of the sale deed would clearly give the impression that the document has been created since the alleged thumb impression is found on the extreme end of the page. Further, in the gift settlement deed that has been executed by the fourth respondent in favour of his wife, he would describe that the property belonged to him both through the sale as well as it is ancestral. All of this would go a long way to show the fabrication of the documents done by the fourth respondent. As has been held by the various decisions of both this Court as well as the Hon'ble Supreme Court, fraud vitiates the entire transaction and when it was questioned, all other defenses pales into insignificance.

11. The defense of the fourth respondent that the petitioner has approached this Court belatedly is absolutely incorrect, since even during the life time of Muthukannu Ammal, an application had been filed to cancel the patta that has been issued in favour of the fifth respondent. Further, the manipulation in the Chitta has also been clearly taken note of by the second respondent. The cancellation has been initiated even as early as in the year 2011 itself and not 30 years as alleged by the fourth respondent, since the patta has been issued in favour of the fifth respondent only in the year 2007. The first respondent has failed to appreciate the fact that the petitioner has played fraud by fabricating the documents. Independent of the orders of the Revenue Divisional Officer, the District Revenue Office could have considered the documents and passed orders. However, he has failed to do so and has proceeded to allow the Revision only on the ground that it is belated and that the Revenue Divisional Officer had no authority to reopen his order totally overlooking the fact that the Revenue Divisional Officer had closed the application only on the basis of the false memo that has been filed by the fourth respondent stating that on the death of the principle, the proceeding would come to an end and not giving the legal representatives a chance to put forward the case.

12. In the light of the series of allegations of fraud that has been put forth, the first respondent ought to have referred the respondents 4 and 5 to the civil Court and ought to have upheld the orders passed by the Revenue Divisional Officer, who has only restored the patta to its original state in the name of Somasundarathammal and Kunjammal, who admittedly were the original owners. It is also admitted that in the light of the settlement deed in favour of Muthukannu Ammal, the Revenue Divisional Officer ought to have directed the patta to be restored back to the name of Kunjammal and Muthukannu Ammal.

13. In fine, the Writ Petition stands allowed modifying the order of the Revenue Divisional Officer that the patta should be restored in the name of Muthukannu Ammal and Kunjammal. The parties shall workout their remedies in the manner known to law. No costs. Consequently, connected Miscellaneous Petition is closed.

01.10.2024

Speaking : Yes / No
NCC : Yes / No
Internet : Yes / No
Index : Yes / No

To

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P.T.ASHA, J.

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