BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED :25.07.**2025**

CORAM:

THE HON'BLE MR JUSTICE S.SOUNTHAR

W.P(MD)No.17485 of 2019
and
W.M.P(MD)No.13972 of 2019

Habib Rahman ... Petitioner

.Vs.

1.The District Revenue Officer,
Madurai.

2.The Tahsildar,
Madurai North Taluk,
Madurai.

3.G.Sathyabama

4.A.R.Nagarathinam

5.Arumugam

6.Kumar
7.Abinaya

8.S.Pitchaimmal

9.Nagaveni

10.Balamurugan ... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Certiorarified Mandamus calling for the records relating to the proceedings of the impugned order in Ne.Mu.No.G2/1230/2015, dted 9.7.2018, on the file of the first respondent and quash the same and further direct the second respondent to issue patta to the Petitioner and the co-owners viz Parveen Banu and Mohamed Kani in respect of the property situated in S.No.5/1A1, Managiri Ist Bit Village, Madurai North Taluk, Madurai.

For Petitioner	: Mr.S.Selva Aditya for M/s.G.Prabhu Rajadurai
For Respondents 1 and 2	: Mr.D.S. Neduncheziah Govt. Advocate
For Respondents 3,5,7 and 10	: Mr.B.Ponnupandi
For Respondents 4,6,8 and 9	: No appearance

ORDER

The Writ Petition is filed challenging the order passed by the first respondent confirming the order of the second respondent rejecting the application filed by the Petitioner seeking inclusion of his name in the patta for the subject property with an extent of

7 cents in S.No.5/1A1, Managiri Ist Bit Village, Madurai North Taluk, Madurai.

2.Heard the learned counsel appearing on either side and perused the materials placed before this Court.

3.According to the Petitioner, the subject property was jointly purchased by him and two others viz., Parveen Banu and V.Mohamed Gani under sale deed, dated 15.09.2010 from one Jaffer Salim. The said Jaffer Salim got the property under oral gift(Hiba) declared by his mother Mehrunnisa on 19.12.2001. The said Mehrunnisa purchased the property from one Shamuganathan under document, dated 16.12.1990. Shanmuanathan said to have purchased the property from Karuppaiah and three others under sale deed, dated 20.9.1979. The predecessor in interest of Karuppaiah and others namely, A.Periyakaruppan got the property from his grand-father namely Chinnakaruppan Kudumban. The said Chinnakaruppan Kudumban purchased the property with an extent of 7 cents in the above mentioned survey number from Pakkir Mohammed Rowther under unregistered sale deed, dated 19.3.1924 for consideration of Rs.16/- The said Pakkir Mohammed Rowther purchased the property from the original owner Mookayee @

Karuppayee and one Muthu Karuppan under sale deed, dated 5.9.1923. Thus according to the Petitioner, he is having title over seven cents of the land in the subject survey number from the year 1923. Therefore, according to him, issuance of patta in favour of private respondents Mottaiyammal @ Palaniammal was untenable.

4.It is the further case of the Petitioner that after acquiring knowledge about the patta in the name of Mottaiyammal @ Palaniammal, he preferred an application before the Revenue Divisional officer , Madurai seeking inclusion of his name and two others and the same was rejected by him without considering the right of the Petitioner and two others over the subject property. The further revision to first respondent was also dismissed.

5.The learned counsel for the Petitioner vehemently contended that the application of the Petitioner for inclusion of his name and two others was rejected by the first respondent as well as the Revenue Divisional Officer mainly on the ground that the Petitioner and two others failed to establish that their predecessor in interest Shanmugnathan purchased the property from the person having no title over the subject property and therefore, the impugned order is liable to be set aside. He would submit that the first respondent as well as the Revenue Divisional Officer failed to take into consideration Section 17(1)(b) of the Registration Act while considering the unregistered sale deed, dated 19.3.1924 which was executed for consideration of mere Rs.16/-. It is his specific submission that since the consideration mentioned in the sale deed was below Rs.100/-, non-registration of the said document will not affect its validity.

6.The learned counsel for the contesting private respondents would submit that the revenue officials cannot go into the question of disputed title and therefore the impugned order passed by the first respondent affirming the patta that stands in the name of predecessor-in-interest of private respondents and directing the parties to approach the civil Court is in accordance with law.

7.A perusal of the affidavit filed in support of the writ Petition and typed set of papers would suggest that the second respondent herein passed an order on 17.3.1995 cancelling the patta issued in favour of one Shanmuganathan(under whom Petitioner and 2 others are claiming title).

8.The learned counsel for the Petitioner submits that the order, dated 17.3.1995 was passed by the second respondent without notice to the Petitioner or his predecessor. This Court is not impressed by the submission made by the learned counsel for the Petitioner. The Petitioner herein and two others purchased the subject property only in the year 2010. Therefore he cannot expect the second respondent to issue notice to him while passing an order in the year 1995.

9.A perusal of the order passed by the second respondent dated 17.3.1995 would establish that the same was passed after hearing one Shanmuganathan, who is the predecessor in interest of the Petitioner and two others. It is not open to the Petitioner to say that his predecessor in interest Shanmuganathan was not issued with proper notice because he himself failed to challenge the order passed by the second respondent and the Petitioner has not acquired any right over the subject property at that point of time.

10.The next limb of argument made by the learned counsel for the Petitioner is that the said Shanmuganathan sold his interest in the subject property as early as in the year 1990 in favour of Mehrunnisa and therefore, the impugned order passed by the second respondent in the year 1995 without hearing Mehrunnisa was untenable. Though the Petitioner produced the sale deed in favour of Mehrunnisa dated 06.12.1990, there is nothing on record to suggest that subsequent to the sale in favour of Mehrunnisa mutation had taken place and Mehrunnisa's name was included in the revenue records prior to the order passed by the second respondent on 17.3.1995. It appears that the order was passed by the second respondent on 17.03.1995 when the records stood in the name of Mehrunnisa's Vendor Shanmuganathan and therefore, he was issued with notice and after hearing him, order was passed for deletion of his name and inclusion of the name of Mottaiyamal @ Palaniyammal. Copy of the order, dated 17.03.1995 was also marked to the Petitioner's predecessor-in-interest Shanmuganathan. It is also not disputed that the above mentioned Mehrunnisa never challenged the order passed by the second respondent, dated 17.03.1995 granting patta to the subject property in the name of Mottaiyammal @ Palaniyammal. In such circumstances, the Petitioner who is claiming right under Mehrunnisa is not entitled to challenge the order passed by the second respondent in the year 1995 after several years on the ground that no notice was issued to Mehrunnisa.

11.The learned counsel for the Petitioner also drawn the attention of this Court to the patta issued in the name of Mehrunnisa, dated 3.2.2002. A perusal of the patta produced in the typed set of papers in the name of Mehrunnisa would indicate that no survey number has been mentioned in the page signed by the Tahsildar. However, in the page, wherein, the subject survey number is mentioned, there is no signature of the Tahsildar. However, the same was only signed by the Village Administrative Officer , that too, with an endorsement as ''true copy''. The Village Administrative Officer is not competent to issue patta and therefore, the patta produced by the Petitioner in the name of Mehrunnisa is not reliable. Further, according to the Petitioner, Mehrunnisa parted with the property in the year 2001 itself by way of oral Hiba in favour of her son. In such circumstances, there was no occasion for Mehrunnisa to obtain patta in her name in the year 2002. In any event, when an order was passed by second respondent in the year 1995 cancelling patta in the name of Shanmuganathan, vendor of Mehrunnisa, there was no mutation of revenue records in the name of Mehrunnisa. Therefore, submission of learned counsel regarding absence of notice to Mehrunnisa by second respondent before passing order in the year 1995 is not appealable to this Court.

12.The Petitioner claims right under an unregistered document allegedly executed by Pakkir Mohamed Rowther in favour of Chinna Karuppan Kudumban. Further, the case of the Petitioner is that Mehrunnisa orally gifted the property in the year 2001 by way of Hiba in favour of Petitioner's vendor and her son Jaffer Salim on 19.12.2001.

13.Though the sale for the value less than Rs.100/- need not be registered, presumption as to the genuineness available to the registered sale deed is not available to the unregistered sale deed. The revenue officials are not entitled to go into the genuineness or other wise of the unregistered sale deed in favour of Chinna Karuppan Kudumban who purchased 7 cents in the subject property under said unregistered sale deed. The Petitioner relies on the recitals in the mortgage deed executed by Periyakaruppan in the year 1967 to link Periyakaruppan with Chinna Karuppan Kudumban. Inferences with regard to the relationship based on the recitals under registered deed is a weak piece of evidence and only civil Court can make such inferences. In view of various loose ends in tracing of title by the petitioner, there is clear cloud over the title of the Petitioner and hence, based on the documents produced by the Petitioner, revenue officials are not entitled to cancel the patta issued in favour of Mottaiyammal @ Palaniyammal, the predecessor-in-interest of the private respondents, in whose favour order was passed as early as in the year 1995.

14.In view of the discussions made earlier, the first respondent is justified in confirming the order passed by the Revenue Divisional Officer rejecting the application submitted by the Petitioner seeking cancellation of patta issued in the name of Mottaiyammal @ Palaniyammal and inclusion of his name and two others in the revenue documents based on the sale deed in his favour and two others, dated 15.09.2010.

15.Accordingly, the writ Petition stands dismissed by confirming the order passed by the first respondent in revision. However, it is made clear that the petitioner is entitled to establish his alleged right over the subject property by moving the Civil Court. If any such suit is filed, the same shall be considered on its own merits, without being influenced by anything said in this order or in the order passed by the first respondent. No costs. Consequently, connected Miscellaneous Petition is closed.

25.07.2025

NCS : Yes/No
Index : Yes / No

Internet : Yes / No

vsn

To

1.The District Revenue Officer,
Madurai.

2.The Tahsildar,
Madurai North Taluk,
Madurai.

S.SOUNTHAR.,J.

vsn

ORDER MADE IN

W.P(MD)No.17485 of 2019
and
W.M.P(MD)No.13972 of 2019

25.07.2025