

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **.04.2014**

CORAM:

THE HONOURABLE MR.JUSTICE **R.MAHADEVAN**

W.P.(MD)No.16294 of 2012

and

M.P.No.1 of 2012 and 1 of 2013

Amsaveni : Petitioner

Vs.

1.The District Revenue Officer,
Madurai.

2.The Revenue Divisional Officer,
Madurai.

3.The Tahsildar,
Madurai North Taluk,
Madurai District.

4.K.Gomathi : Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India for the issue of a Writ of Certiorari to call for the records of the

first respondent relating to his order passed in his proceedings in Na.Ka.No.85796/2009/G2, dated 25.06.2012, and quash the same.

For Petitioner : Mr.R.Janakiramulu

For Respondent Nos.1to3 : Mr.S.Sadheeshkumar
Additional Government Pleader

For Respondent No.4 : Mr.K.Gnanasambandan

ORDER

Challenge in this Writ Petition is to the order, dated 25.06.2012, passed by the first respondent herein, in and by which the order, dated 12.10.2009, passed by the second respondent herein was set at naught, thereby transferring the patta in favour of the fourth respondent herein.

2. The case of the petitioner is that she purchased land to an extent of 4 acres and 7 cents in R.S.No.171/1, situated at Siruthur Village, Thiruppalai Group, Madurai North Taluk, by means of a registered sale deed, dated 05.12.2005 from one Mrs.L.Neelambigai. After execution of sale deed in favour of the petitioner, the said Mrs.L.Neelambigai executed a registered settlement deed in favour of

the fourth respondent herein, on 08.10.2007, in respect of a portion of the property sold to the petitioner to an extent of two acres and 29 cents, out of 4 acres and 7 cents and subsequently, she cancelled the settlement deed by means of registered document, dated 09.11.2007. Thereafter, the said Mrs.L.Neelambigai executed a registered consent deed, on 21.04.2008, in favour of the petitioner, thereby confirming the sale deed, dated 05.12.2005. Even though settlement deed dated 07.07.1977 was executed, possession was not handed over, and therefore, it was cancelled, on 21.03.2005. While so, the fourth respondent applied before the third respondent for sub – division of property and issuance of patta on the basis of settlement deed, dated 08.10.2007. On the basis of the said request, the third respondent sub-divided the property and issued patta in favour of the fourth respondent. Aggrieved over the same, the petitioner preferred an appeal before the second respondent, who, in turn cancelled the order of the third respondent and directed to issue patta in favour of the petitioner. As against the same, a revision was filed by the fourth respondent before the first respondent. By the impugned order, dated 25.06.2012, the first respondent set aside the order of the second respondent and directed the third respondent to issue patta in favour of the fourth respondent.

3. The learned counsel appearing for the petitioner submits that the petitioner is a *bona fide* purchaser. The third respondent, before effecting sub division of the property, has not afforded opportunity of hearing to the petitioner. He further submits that in respect of the very same property, the fourth respondent filed a suit for permanent injunction in O.S.No.107 of 2011, on the file of the District Munsif Court, Melur, against the petitioner and the same is pending. In support of his contention, the learned counsel makes reliance upon the decision of this Court in **T.R.Dinakaran Vs. The Revenue Divisional Officer**, reported in **2012 (3) CTC 823**.

4. The learned counsel appearing for the fourth respondent submits that the first respondent, on a careful consideration of the materials available on record, passed the impugned order, setting aside the order passed by the second respondent and rightly transferred the patta in the name of the fourth respondent herein, which does not require any interference at the hands of this Court. He further submits that if at all the petitioner is aggrieved against the order passed by the first respondent, he can very well agitate the same before the Competent Civil Court, as the disputed questions of

fact cannot be gone into in a Writ Petition, under Article 226 of the Constitution of India.

5. I have considered the above submissions and perused the records carefully.

6. Before going into the merits of the case, from records it is evident that Mrs.LNilambigai, who is the transferor of title in both the settlement deeds and sale deed, seems to have uttered disregard for law. Even before the settlement deed was cancelled in the year 2005, she had executed a power of attorney in favour of her brother in the year 1994.

7. Now traversing into the merits, the deed of cancellation of settlement, dated 21.03.2005, proceeds as if, though the settlement deed was executed in favour of the fourth respondent, 07.07.1977, the possession was not handed over. It appears that the revenue records also stood in her name. On the strength of the same, the said Mrs.Nilambigai has cancelled the settlement deed. Subsequently, her power agent has sold the property in favour of the petitioner. Again in the year 2007, the said L.Nilambigai has executed another settlement

deed and then cancelled the same and executed a consent deed in the year 2008.

8. It is not in dispute that the fourth respondent applied for patta on the strength of the second settlement deed, dated 08.10.2007. There is no material placed before this Court to show that patta was issued by the third respondent in favour of the fourth respondent after affording the petitioner a reasonable opportunity.

9. At this juncture, it would be worthwhile to extract the relevant provisions of the Tamil Nadu Patta Pass Book Act, 1983, which reads as follows:-

“10.Modification of entries in the patta pass-book.- (1) Where any person claims that any modification is required in respect of any entry in the patta pass-book already issued under section 3 either by reason of the death of any person or by reason of the transfer of interest in the land or by reason of any other subsequent change in circumstances, he shall make an application to the Tahsildar for the modification of the relevant entries in the patta pass-book. (2) An application under sub-

section (1) shall contain such particulars as may be prescribed and shall be accompanied by the documents, if any, relied on by the applicant as evidence in support of his claim. (3) (a) Before passing an order on an application under sub-section (1), the Tahsildar shall follow such procedure as may be prescribed and shall also give a reasonable opportunity to the parties concerned to make their representations either orally or in writing. If the Tahsildar decides that any modification should be made in respect of entries in the patta pass-book, he shall pass an order accordingly and shall make such consequential changes in the patta pass-book, as appear to him to be necessary, for giving effect to his order.

(b) If the Tahsildar decides that there is no case for effecting any modification in the entries in the patta pass-book, he shall reject the application.

(c) An order under clause (a) or clause (b) shall contain the reason for such order and shall be communicated to the parties concerned in such manner as may be prescribed.

12.Appeal.- Any person aggrieved by an order made by the Tahsildar under this Act may, within such period as may be prescribed, appeal to such authority as may be prescribed and the decision of such authority on such appeal shall subject to the provisions of section 13, be final.

"13.Revision.- Any officer of the Revenue Department not below the rank of District Revenue Officer authorised by the Government, by notification in this behalf for such area as may be specified in the notification, may of his own motion or on the application of a party call for and examine the records of any Tahsildar or appellate authority within his jurisdiction in respect of any proceeding under this Act and pass such orders as he may think fit:

Provided that no such order prejudicial to any person shall be made unless he has been given a reasonable opportunity of making his representation."

10. Similarly, the relevant Rules under the Tamil Nadu Patta Pass Book Rules, 1987 is extracted below.

"12.Application for modification of entries in

Patta Pass-Book.- (1) Application for modification of entries in the Patta Pass-Book under Section 10 of the Act shall be in Form - VI and shall be made within ninety days from the date of acquisition of right:-

Provided that the Tahsildar may for just and sufficient reasons allow a further period of not exceeding ninety days for making an application for this purpose.

(2) The application under sub-rule (1) shall be affixed with court fee labels of Rs.3 towards fee for this purpose.

14. Appeal. - An appeal against any order of the Tahsildar passed under the Act shall be filed before the officer in charge of Revenue Division in whose jurisdiction the property lies within a period of thirty days from the date of the receipt of the order.

15. Revision on application.- (1) An application under section 13 to the District Revenue Officer or such officer as may be authorised by the Government in this behalf by Notification for revision of an order passed by the Tahsildar or the appellate authority shall be filed

within ninety days from the date of receipt of the order.

(2) The District Revenue Officer or such officer as may be authorised by the Government may admit an application for revision presented after expiry of the period mentioned in sub-rule (1), if he is satisfied that the party had just and sufficient cause for not presenting it within the said period."

11. In the decision in **T.R.Dinakaran Vs. The Revenue Divisional Officer**, reported in **2012 (3) CTC 823**, this Hon'ble Court has held as follows:

"15. From the reading of the above said provisions under the Tamil Nadu Patta Pass Book Act, 1993 and the Rules made thereunder, it could be seen that the Tashildar is the competent authority under Section 10 for modifications of the relevant entries in the Patta Pass Book and such modifications are also possible only under the following circumstances, namely, (i) by reason of the death of any person; or (ii) by reason of the transfer of interest in the land; or (3) by reason of any other

subsequent change in circumstances. Therefore, the Tashildar is empowered to make modification of entry in the Patta Pass Book only under those three circumstances as referred above. Even for making such modification based on application filed by the person, the Tashildar is bound to give reasonable opportunity to the parties concerned to make their representations either orally or in writing. Thereafter, the Tashildar shall pass an order accordingly, and also make such consequential changes in the Patta Pass Book as appears to be necessary for giving effect to his order. If the Tashildar decides that there is no necessity for effecting any modification, he shall reject the application seeking for modification."

12. Upon perusal of the above, it is clear that the third respondent was duty bound to hear all the parties concerned before making any alteration in revenue records. If there is any dispute in title, the parties have to be directed to approach the competent Civil Court without any alteration in the patta. Apparently, he has failed to do so.

13. In the Judgment in **Naramadaben Maganlal Thakker Vs. Pranjivandas Maganlal Thakker and others** reported in **1997 SAR 118 : 1997 (2) SCC255**, relied upon by the learned counsel for the petitioner, the Apex Court has held as follows:

"4. It would thus be clear that the execution of a registered gift deed, acceptance of the gift and delivery of the property, together make the gift complete. Thereafter, the donor is divested of his title and the donee becomes the absolute owner of the property. The question is whether the gift in question had become complete under Section 123 of the TP Act? It is seen from the recitals of the gift deed that Motilal Gopalji gifted the property to the respondent. In other words, it was a conditional gift. There is no recital of acceptance nor is there any evidence in proof of acceptance. Similarly, he had specifically stated that the property would remain in his possession till he was alive. Thereafter, the gifted property would become his property and he was entitled to collect *mesne profits* in respect of the existing rooms throughout his life. The gift deed conferred only limited

right upon the respondent-donee. The gift was to become operative after the death of the donor and he was to be entitled to have the right to transfer the property absolutely by way of gift or he would be entitled to collect the *mesne profits*. It would thus be seen that the donor had executed a conditional gift deed and retained the possession and enjoyment of the property during his lifetime. The recitals in the cancellation deed is consistent with the recitals in the gift deed. He had expressly stated that the respondent had cheated him and he had not fulfilled the conditions subject to which there was an oral understanding between them. Consequently, he mentioned that the conditional gift given to him was cancelled. He also mentioned that the possession and enjoyment remained with him during his lifetime. He stated, "I have to execute immediately this deed of cancelling the conditional gift deed between us. Therefore I hereby cancel the conditional gift deed dated 15-5-1965 of Rs 9000 in words rupees nine thousand presented at Serial No. 2153 on 15-5-1965 in the Office of the Sub-Registrar, Baroda for registration. Therefore, the said

conditional gift deed dated 15-5-1965 is hereby cancelled and becomes meaningless. The property under the conditional gift has not been and is not to be transferred in your name". Thus he expressly made it clear that he did not hand over the possession to the respondent nor did the gift become complete during the lifetime of the donor. Thus the gift had become ineffective and inoperative. It was duly cancelled. The question then is whether the appellant would get the right to the property? It is not in dispute that after the cancellation deed dated 9-6-1965 came to be executed, duly putting an end to the conditional gift deed dated 15-5-1965, he executed his last Will on 17-5-1965 and died two days thereafter."

The above case cannot be squarely applied to the case on hand, as the facts are different.

14. In the decision in **Vishwas Footwear Company Ltd., v. The District Collector and others**, reported in **2012 (1) MLJ 566** relied upon by the learned counsel for the petitioner, the Division

Bench of this Court held as follows:

"15. Following the said Judgment, one of us (**DMJ**) in **Chockkappan's** case has held that the Revenue Divisional Officer has no jurisdiction to go into the disputed questions of title at the time when an application for cancellation of patta is being considered. As far as this law is concerned, there cannot be a second opinion as to the limited jurisdiction of the Revenue Divisional Officer only to find out prima facie as to the title and when the title is in dispute and there are rival claimants, he should refer the parties to civil Court for adjudication and depending upon the decree that may be passed by the civil Court, relevant entries in the patta could be effected by the Revenue Divisional Officer."

15. The present Writ Petition is against the order of the first respondent restoring the patta in the name of the fourth respondent. Therefore, in this Writ Petition, under Article 226 of the Constitution of India, this court cannot go into the title of the parties. Any opinion by this Court on the validity of the settlement deed and cancellation deed would prejudice the interest of the parties. Already, the fourth respondent filed a Civil Suit in O.S.No.107/2011 for permanent

injunction. But no relief as to title is sought in the suit. On the date of filing the suit, the order of the second respondent was in force. The allowance or dismissal of the suit would also not confer any title over the parties as the appropriate relief would be to file a suit for declaration.

16. Patta is not a document conferring title, unless the same is issued by the Government by way of assignment. When there is a dispute regarding title based on documents and possession, it is only the civil court, which will have jurisdiction. In this case, both the Appellate Authority, the second respondent herein and the Revisional Authority, the first respondent herein have gone into the question of title, which they cannot do so. If there is a cloud over the title, they must have relegated the parties to approach the Civil Court. In the order impugned, the first respondent has restored the patta in the name of the fourth respondent, which was issued by the third respondent, without hearing the petitioner.

17. In view of the above, the orders of the respondents 1 to 3 are set aside. The petitioner and the fourth respondent are at liberty to take appropriate steps to confirm their title before the competent

Civil Court and patta shall be issued by the third respondent to the successful party before the civil court.

18. The Writ Petition is disposed of, on the above terms. No costs. Consequently, connected Miscellaneous Petitions are closed.

.04.2014

Index :Yes/No
Internet :Yes/No

NB

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1.The District Revenue Officer,
Madurai.

2.The Revenue Divisional Officer,
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3.The Tahsildar,
Madurai North Taluk,
Madurai District.

R.MAHADEVAN, J.

NB

PRE-DELIVERY ORDER MADE IN

W.P.(MD)No.16294 of 2012

DATED - .04.2014