

(2015) 09 MAD CK 0151

In the Madras High Court

Case No : W.P. (MD) No. 1485 of 2015 and M.P. (MD) No. 1 of 2015

A. Najeebur Rahman

APPELLANT

Vs

The District Revenue Officer, Ramnad District and Others

RESPONDENT

Date of Decision : 30-09-2015

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 9
Constitution of India, 1950 — Article 136, 226

Citation : (2015) 09 MAD CK 0151

Hon'ble Judges : R. Mahadevan, J.

Bench : Single Bench

Advocate : Babu Rajendran for R. Murugesan, for the Appellant; K. Guru, Additional Govt. Pleader, for the Respondent

Final Decision : Disposed Off

Judgement

R. Mahadevan, J.—This writ petition has been filed seeking a Writ of Certiorari to quash the impugned order dated 16.12.2014 in Pa. Mu. 25415/2014/B6, passed by the first respondent.

2. Heard both sides.

BRIEF FACTS:

3. The case of the petitioner, in nut-shell, is as follows:

3.1. Originally, the properties in S. Nos. 317/61-1, 2, 3 and S. Nos. 317/62 - 1 to 15, to an extent of 15 cents, in Thattan Thoppu Village, Keelakarai, Ramnad District, belonged to one V.M. Noor Mohammed, the grandfather of the petitioner. According to him, the said properties were purchased through the following modes:

(i) Registered sale deed dated 20.02.1943, vide Document No. 1299/1943 through one Sudalai Madan;

(ii) Sale Certificate issued by District Munsif Court, Ramnad, dated 06.03.1962 in

E.P. No. 330/1961 in O.S. No. 86/61; and

(ii) Sale Certificate issued by District Munsif Court, Ramnad, dated 27.02.1964 in E.P. No. 378/1963 in O.S. No. 211/62;

3.2. At the time of Natham Survey and sub-division, the patta was granted in favour of the grandfather of the petitioner in S. Nos. 317/61 - 1, 2, 3 and S. Nos. 317/62 - 1 to 15, on 18.04.1995. On the north of the said properties, in S. No. 317/61, an extent of 3 cents of land was measured in the names of (i) Arumuga Nadar; (ii) Perumal Nadar (father of the respondents 2 to 6) and (iii) the grandfather of the petitioner. After his death, the father of the petitioner, namely, Anwar, inherited the same and on his demise, the petitioner is in possession and enjoyment of the same.

3.3. During the year 2011, the respondents 2 to 6 applied before the Tahsildar, Ramnad District, to change the patta in respect of the property in S. No. 317/62/6 alone. Without any notice or personal hearing to the petitioner, the Tahsildar changed the patta in their names, vide proceedings dated 27.02.2012 in RTR. No. 9172-2011 in respect of S. Nos. 62/2 to 62-6, 62-8 to 62-13. Aggrieved by the same, the petitioner filed an appeal before the Revenue Divisional Officer, who set aside the order of the Tahsildar and also restored the patta in the name of the petitioner.

3.4. Challenging the same, the respondents 2 to 6 filed a revision before the first respondent, who, by the impugned order, set aside the order of the Revenue Divisional Officer. Therefore, the petitioner is before this Court to test the validity of the impugned order dated 16.12.2014, passed by the first respondent.

4. Denying and disputing the claim of the petitioner, the respondents 2 to 6 filed their counter affidavit, contending that at no point of time, the grandfather of the petitioner was the owner of the properties in question and that the petitioner failed to implead the other legal heirs as party respondents to this writ petition and hence, on that ground alone, this writ petition needs to be rejected. Further, the respondents 2 to 6 are in possession and enjoyment of the properties in question. There are several disputed questions of facts involved in the present writ petition, which, this Court, in exercise of Article 226 of the Constitution of India, could not conduct a roving enquiry into the serious title disputes among the parties. On the application made by the respondents 2 to 6, the Tahsildar, on enquiry, rightly transferred the patta in their names. Though the Revenue Divisional Officer reversed the said finding, the first respondent has rightly set aside the said finding and restored the patta in their names and therefore, they prayed for the dismissal of this writ petition.

CONTENTIONS:

5. Mr. Babu Rajendran, learned Counsel appearing for Mr. R. Murugesan, learned Counsel for the petitioner, made the following submissions:

5.1. The title of the grandfather of the petitioner relating to the properties in

question, is not disputed at no point of time.

5.2. The petitioner is able to prove his claim by valid documentary evidence before the Revenue Divisional Officer, who, after enquiry, rightly found that the Tahsildar ought to have afforded an opportunity of hearing to the petitioner and in the absence of the same, the transfer of patta granted in favour of the respondents 2 to 6, is void in the eye of law and therefore, cancelled the same.

5.3. However, the first respondent, without appreciating the materials available on record, erred in passing the impugned order.

5.4. It is to be pointed out that the respondents 2 to 6 sought for change of patta in respect of S. No. 317/62-6, but, the Tahsildar had granted the relief over and above than that was prayed and transferred the patta in respect of several other survey numbers. The said error has been rectified by the Revenue Divisional Officer in the appeal, however, the first respondent reversed the same, without assigning any valid reasons.

5.5. The first respondent ought to have appreciated the fact that the Tahsildar while transferring the patta in favour of the respondents 2 to 6, failed to afford an opportunity of hearing to the petitioner. Had he given such opportunity, the case of the petitioner could be put forth before the Tahsildar itself and the entire issue be resolved therein.

5.6. Therefore, the impugned order passed by the first respondent calls for interference by this Court.

5.7. In support of his submissions, the learned Counsel for the petitioner relied on the following decisions:

(i) K.V. Sathyanarayanan v. The District Revenue Officer, Thiruvallur District [W.P. No. 20461 of 2008, decided on 18.12.2008], wherein it is held that when there is an alternate remedy of filing civil suit, the challenge made by way of writ petition is not maintainable.

(ii) Vishwas Footwear Company Ltd. Vs. The District Collector and Others--> , wherein, it is laid down by the Division Bench of this Court that if there is a title dispute between the parties, the Writ Court normally will not entertain the writ petition and adjudicate the disputed questions, unless it is challenged on the ground of want of jurisdiction.

(iii) The decision in S.V. Rancis Xavier @ Sankar v. The District Collector, Tuticorin District [W.P. (MD) No. 2681 of 2012, decided on 03.07.2014] also relates to the proposition that when there is an alternate remedy, the writ petition would not lie.

(iv) M. Subramanian and another v. V.K.R. Subramanian Athithan [W.A.(MD) No. 737 of 2014, decided on 17.07.2014], wherein, this Court observed that the parties have to approach the civil Court for resolving the title dispute.

(v) The decision of this Court in P. Karmegam v. The Commissioner of Land

Administration, Chepauk, Chennai - 600 005 and others [W.P. (MD) No. 4222 of 2012, decided on 14.10.2014] also reiterates the same ratio.

6. Though this writ petition was admitted as early as on 06.02.2015 and notice was served on the first respondent, no counter affidavit has been filed. However, Mr. K. Guru, learned Additional Government Pleader appearing for the first respondent supported the impugned order passed by the first respondent and prayed for the dismissal of this writ petition.

7. Whereas Mr. J. Bharathan, learned Counsel appearing for the respondents 2 to 6, refuted the submissions of the learned Counsel for the petitioner and vehemently put forth his submissions, thus:

7.1. First of all, this writ petition lacks merit, for the reason that the petitioner failed to implead all the legal heirs of the deceased erstwhile alleged owners of the properties in question and in such an event, this writ petition has to be rejected at the threshold itself.

7.2. On merits, he contended that there are serious disputed questions of fact involved in the present writ petition.

7.3. This Court, in exercise of Article 226 of the Constitution of India, could not delve deep into the same in search of the disputed factual matrix of the case of either side.

7.4. The stand of the respondents 2 to 6 is that fraud had been played on them by the father of the petitioner in obtaining patta in respect of certain survey numbers and therefore, the order impugned passed by the first respondent made clear all those aspects and rightly, the order of the Revenue Divisional Officer was reversed by the first respondent.

7.5. If the petitioner is still aggrieved by the order passed by the first respondent, the remedy open to him, is to approach the civil Court by filing a suit in the manner known to law and not before this Court, in this writ petition.

7.6. Therefore, the respondents 2 to 6 prayed for the dismissal of this writ petition.

ANALYSIS:

8. I have carefully considered the rival submissions and meticulously scrutinised the materials available on record.

9. At the outset itself, this Court finds it apposite to mention that when there is a dispute regarding title, the revenue authorities can only relegate the parties to approach the civil court and cannot go into the title of the parties. In this connection, it is worthwhile to refer to the following decisions:

9.1. In Chockkappan and Others Vs. The State of Tamil Nadu and Others, , this Court has held as follows:

"5. Coming to the facts of the case, it is not in dispute that the petitioners are the co-owners of the land and they were granted joint patta as early as on 16.7.1984. The name of the 3rd respondent was included by the Zonal Tahsildar, Aruppukottai after a period of 11 years i.e., on 27.10.1995 after deciding the title in favour of the 3rd respondent which ought to have been agitated only in the Civil Court. Though the Revenue Officials are empowered to consider the prima facie consideration of the right of the parties for the grant of patta, when the patta stands in the name of a particular person, inclusion of others in the patta is impermissible, that too, on consideration of title by the Revenue Officials. In all fairness, the Zonal Tahsildar, Aruppukottai ought to have directed the 3rd respondent to first establish her title before the Civil Court before any inclusion is made in the patta, as it is not the case of fresh patta but inclusion of 3rd respondent in the patta which already stand in the name of the petitioners. In this context, the impugned order cannot be sustained as the 3rd respondent's name has been included only after the decision rendered by the Revenue Officials regarding the title of the 3rd respondent. Hence, the impugned order is set aside. However, liberty is given to the 3rd respondent to work out her remedy in Civil Court as to her title over the land in question and in the event, the 3rd respondent has obtained a decree in her favour she can make her application for inclusion of her name in the patta. The Writ petition is allowed with the above observation. No costs. Consequently, W.P.M.P. No. 39936/2003 is closed."

9.2. In C. Sabesan Chettiar (deceased) and Others Vs. The District Revenue Officer, The Revenue Divisional Officer, The Tahsildar and R. Padmanabhan, , the Division Bench of this Court has held as follows:

"29. As per Section 4 of the Tamil Nadu Patta Pass-Book Act, 1986 (4 of (1986)), the entries in the Patta Pass-book and the certified copies of entries in the Patta Pass-book shall be presumed to be true and correct, until the contrary is proved or a new entry is lawfully substituted therefor. As a matter of fact, Section 6 of the Act envisages that the entries in the Patta Pass-book issued by the Tahsildar as per Section 3 shall be prima facie evidence of title of the person, in whose name the Patta Pass-book has been issued to the parcels of land entered in the Patta Pass-book, free of any prior encumbrance, unless otherwise specified therein. However, the Patta Pass-book being a prima facie evidence is a rebuttable presumption in law, as opined by this Court.

30. From a reading of Rule 4(4) of the Tamil Nadu Patta Pass Book Rules, it is clear that if the Tahsildar is 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 a ruling on ownership from a competent Civil Court having jurisdiction before changing the entries already recorded and existing in the various Revenue Records. The Learned Single Judge, in paragraph No. 19 of the order, had specifically held that in terms of Sub-Rule (4) of Rule 4, the First Respondent/District Revenue Officer

ought to have directed the parties to go before the competent Civil Forum for adjudication of dispute with regard to the ownership, as the Fourth Respondent/ Writ Petitioner and the Deceased Appellant/Fourth Respondent disputes the version projected by each one of them.

31. At this juncture, we deem it appropriate to quote the decision of this Court in *Samsuddin Rowther and Another Vs. Avvammal and Others*, , wherein, in paragraph 33, it is observed as follows:

"33. Thus it is seen that the patta passbook is only providing prima facie evidence and it is rebuttable. The Proviso to Sec. 14 of this Act enables an aggrieved person to file a suit. In the present case, these proceedings are already pending in which the question of title is canvassed. The patta-passbook issued during the pendency of these proceedings will not conclude the question. Whoever wins in these proceedings ultimately, is entitled to get the entry in the patta passbook rectified in accordance with the decision. There is no substance in the argument that the only remedy of the defendants is only to file a fresh suit against the plaintiffs for declaration of their title under the Specific Relief Act. Learned counsel submits that the burden is placed squarely on the defendants by this Act and it is for them to establish their title by so independent proceeding. I do not agree. Evidence has been let in by both the parties in the present proceedings and the question of title was already in issue. Hence, there is no necessity for the defendants to file a fresh suit to decide the question of title."

32. Section 12 of the Tamil Nadu Patta Pass-Book Act, 1986 refers to filing of an Appeal by any person aggrieved by an order made by the Tahsildar 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.

33. Added further, Section 13 of the Tamil Nadu Patta Pass-Book Act, 1986 deals with preferring of Revision which runs as follows:

"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."

34. As per Section 9 of the Civil Procedure Code, if a suit is expressly or impliedly barred under a provision of law, the Court cannot take cognizance of it. However, Section 14 of the Tamil Nadu Patta Pass-Book Act, 1986, though speaks of Bar of Suits by stating that "No suit shall lie against the Government or any officer of the Government in respect of a claim to have an entry made in any Patta Pass-book that is maintained under this Act or to have any such entry omitted or

amended", yet, the said Section also enjoins as follows: "Provided 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, for a declaration of his rights under Chapter VI of the Specific Relief Act, 1963 (Central Act 47 of 1963); and the entry in the Patta Pass-book shall be amended in accordance with any such declaration."

35. Admittedly, in the instant case on hand, there is a serious dispute with regard to the title of lands measuring an extent of 7.18 acres in S.F. Nos. 547 and 548, Kalapatti Village, Coimbatore District. In cases of this nature, it is not open to the Revenue Authorities, much less the First Respondent/District Revenue Officer, to decide the same. In Civil Law, when there is a dispute between the rival parties touching upon the title to the property, the competent forum would be only the Civil Court. In the instant case, the First Respondent/District Revenue Officer had not followed such a procedure. However, he had chosen to decide the title in respect of the said property mainly relying upon the reports submitted by the Second Respondent/Revenue Divisional Officer and the Third Respondent/Tahsildar."

9.3. In *M/s. GMMCO Limited Vs. The Government of Tamil Nadu and Others*--> , this Court has held as follows:

"15. In the light of the said judgments, I am of the view that the impugned order passed by the 5th respondent dated 13.1.2011 and the consequential order passed by the 11th respondent dated 16.8.2011 cannot be sustained and accordingly they are set aside. As the title of the petitioner is now disputed, the prayer sought for to transfer patta in favour of the petitioner by application dated 31.12.2008 cannot be ordered. The said issue is well settled in the following decisions:

(a) In the decision reported in *P.R. Murlidharan and Others Vs. Swami Dharmananda Theertha Padar and Others*, the Supreme Court held that jurisdiction under Article 226 would remain effective and meaningful only when it is exercised prudently and in appropriate situation, and writ of mandamus cannot be sought for, especially when determination of the questions involved did not merely involve interpretation of documents alone, but require adducing of oral evidence, and writ proceedings cannot be a substitute for a civil suit.

(b) In the decisions reported in *Arya Vyasa Sabha and Others Vs. The Commissioner of Hindu Charitable and Religious Institutions and Endowments, Hyderabad and Others*, ; *Rourkela Shramik Sangh Vs. Steel Authority of India Ltd. and Another*, ; *Steel Authority of India Ltd. and Others etc. etc. Vs. National Union Water Front Workers and Others etc. etc.*, ; *Himmat Singh Vs. State of Haryana and Others*, ; *Food Corporation of India and Others Vs. Harmesh Chand*, ; *S.D.O. Grid Corporation of Orissa Ltd. and Others Vs. Timudu Oram, etc.*, also the Honourable Supreme Court held that disputed facts

cannot be decided in writ petition and parties can approach the appropriate forum.

16. In fine, the writ petition is partly allowed on the above terms. The observations made in this order need not be construed as accepting the case of the petitioner/contesting respondents, in any future proceedings which may be initiated by either party. There is no order as to costs. Connected miscellaneous petitions are closed."

9.4. In *Kuppuswami Nainar Vs. The District Revenue Officer and Others*, , the Division Bench of this Court held as follows:

"4. Now the question for consideration is, having regard to the fact that the District Revenue Officer has expressed his opinion on the question of title whether the order under question should be interfered with. It may be pointed out here that in a petition under Article 226 of the Constitution the question of title regarding immovable property cannot properly be gone into, because a mass of evidence may be required for adjudicating the question of title. Even if we are to interfere with the order under appeal, it is the other party, who has to go to a civil court and establish title. As far as the exercise of jurisdiction under Article 226 of the Constitution is concerned, it does not matter to it whether "A" party goes to civil court or "B" party. Therefore, we are of the view that the question of title has to be decided by the civil court, without reference to the order under question. Hence, we decline to interfere with the order challenged in the writ petition. However, we make it clear that in the event a suit for declaration of title and for appropriate consequential relief is filed, the civil court shall decide such a suit, without reference to the findings recorded by respondents 1 and 2 in the impugned orders, but only on the basis of the pleadings of the parties and evidence adduced by them before it. We also make it clear that any opinion expressed by the learned single Judge, contrary to what we have stated above, shall also stand modified accordingly. With these observations, the writ appeal is dismissed. Consequently, C.M.P. No. 15872 of 1994 filed along with the appeal is also dismissed."

9.5. In *Suraj Bhan and Others Vs. Financial Commissioner and Others*, , the Hon"ble Apex Court has held as follows:

"7. We have heard learned counsel for the parties. We have also perused the relevant record. From the record, it is clear that the main question relates to genuineness or otherwise of Will dated April 14, 1989 said to have been executed by Ratni Devi in favour of respondent No. 5. The validity and genuineness of the Will can only be decided by a competent Civil Court. A suit had already been instituted in a Civil Court and though it was dismissed, the order is subject matter of appeal pending in the appellate court. It is, therefore, neither desirable nor advisable to express any opinion on that question and as and when the matter will come up for hearing, it will be decided on its own merits by the High Court where it is pending.

9. There is an additional reason as to why we need not interfere with that order under Article 136 of the Constitution. It is well settled that an entry in Revenue Records does not confer title on a person whose name appears in Record of Rights. It is settled law that entries in the Revenue Records or Jamabandi have only "fiscal purpose" i.e. payment of land-revenue, and no ownership is conferred on the basis of such entries. So far as title to the property is concerned, it can only be decided by a competent Civil Court (vide Jattu Ram Vs. Hakam Singh and others,). As already noted earlier, Civil Proceedings in regard to genuineness of Will are pending with High Court of Delhi. In the circumstances, we see no reason to interfere with the order passed by the High Court in the writ petition."

9.6. In *L. Vadivudaiyal @ Sigappi v. District Revenue Officer* reported in CDJ 2010 MHC 7038, this Court has held as follows:

"3. The learned counsel for the respondents 4 to 8 submitted that this Court cannot go into the veracity of the findings given by the authorities in a patta proceedings. The Division Bench of this Court in the judgment reported in *Kuppuswami Nainar Vs. The District Revenue Officer and Others*, has observed as follows:

Now the question for consideration is, having regard to the fact that the District Revenue Officer has expressed his opinion on the question of title whether the order under question should be interfered with. It may be pointed out here that in a petition under Art. 226 of the Constitution the question of title regarding immovable property cannot properly be gone into, because a mass of evidence may be required for adjudicating the question of title. Even if we are to interfere with the order under appeal, it is the other party, who has to go to a civil court and establish title. As far as the exercise of jurisdiction under Art. 226 of the Constitution is concerned, it does not matter to it whether "A" party goes to civil court or "B" party. Therefore, we are of the view that the question of title has to be decided by the civil court, without reference to the order under question. Hence, we decline to interfere with the order challenged in the writ petition. However, we make it clear that in the event a suit for declaration of title and for appropriate consequential relief is filed, the civil court shall decide such a suit, without reference to the findings recorded by respondents 1 and 2 in the impugned orders, but only on the basis of the pleadings of the parties and evidence adduced by them before it. We also make it clear that any opinion expressed by the learned single Judge, contrary to what we have stated above, shall also stand modified accordingly. With these observations, the writ appeal is dismissed. Consequently, C.M.P. No. 15872 of 1994 filed along with the appeal is also dismissed.

4. Therefore in view of the ratio laid down by the Division Bench of this Court, I am of the opinion that the issue raised in the writ petition cannot be adjudicated

before this Court. However it is made it very clear that the dismissal of the writ petition will not stand in the way of the parties in working out their rights in the civil proceedings, if any appeal has been filed against the judgment and decree passed in suit in O.S. No. 56 of 2006 on the file of the District Munsif Court, Periyakulam, Theni District."

9.7. In *P. Jebamani v. The District Revenue Officer* reported in CDJ 2010 MHC 7713, the Division Bench of this Court held as follows:

"6. Learned single Judge of this Court by relying upon the judgments of the Supreme Court and this Court reported in *Suraj Bhan and Others Vs. Financial Commissioner and Others*, and *Kuppuswami Nainar Vs. The District Revenue Officer and Others*, , disposed of the writ petition on a finding that a person who had lost his remedy before the revenue authorities, has to seek appropriate remedy only before the Civil Court. In the instant case, the husband of the vendor was the co-owner of the property along with two other persons. The fourth respondent who had purchased the property from the other co-owner is opposing the prayer of the appellant, directing the respondents to effect corresponding mutation in the revenue records by entering the name of the writ petitioner in respect of the subject property. In our opinion, since disputed questions of fact are involved in this matter, the appropriate forum is only the Civil Court to decide the issue. We do not find any error in the order passed by the learned single Judge. Hence, the writ appeal is dismissed. No costs."

10. Keeping in mind the ratio laid down in all the above decisions, this Court is of the firm view that the revenue authorities as well as this Court cannot go into the title dispute between the parties.

11. Rule 4 of the Patta Pass Book Rules contemplated that when there is a dispute regarding title, the authority concerned can relegate the parties to civil court without making any alteration in the patta. Insofar as the impugned proceedings passed by the first respondent is concerned, the patta that stood in the name of the petitioner has been cancelled after going into the title, which the first respondent ought not to have.

12. At this juncture, it is just and proper to place reliance on the decision of the Division Bench of this Court in *Vishwas Footwear Company Ltd. Vs. The District Collector and Others*--> , wherein, the issue regarding the powers of the revenue authorities in patta transfers, when there is a title dispute between the parties has been elaborately dealt with and it is, further, held as follows:

"12. The only provision available for modification of the entries in the patta pass book is Section 10, which reads as under:-

"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 reasons for such order and shall be communicated to the parties concerned in such manner as may be prescribed. By that provision, in the event any modification is required on an application by any person, it can be made either by reason of the death of any person or by reason of transfer of interest in the land or by reason of any subsequent change in the circumstances. This section also does not empower the Tahsildar to cancel the patta already granted, as the power of the Tahsildar to modify the entries in the patta pass book is limited only in case of death of the person who was holding the patta pass book or by reason of the transfer of interest in the land or by reason of any other subsequent change in the circumstances. In the event an application is made that the patta pass book has been wrongly issued in favour of any person and consequently claiming title over the land entitling such person to grant of patta, that person can only file a suit for declaration that the entries made in the patta pass book should be cancelled and consequently for a mandatory injunction for grant of patta."

13. Section 12 contemplates that any person aggrieved by an order made by the Tahsildar under the Act may within such period as may be prescribed appeal to such authority as may be prescribed. Rule 14 of the Rules empowers such an appeal to 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 receipt of the order. In order to invoke the provisions of appeal, there must be an order passed by the Tahsildar either under section 3 or under section 5 or under section 10 of the Act and any person aggrieved by such order made by the Tahsildar could prefer appeal within a period of thirty days from the receipt of the order under Rule 14. If the above provisions of sections 3, 5 and 10 are read together with the rule 14, the only conclusion which could be arrived at by the Court is in the event an application is made for issuance of patta and if it is denied or if it is granted in favour of somebody, the person aggrieved, as the

case may be, can file an appeal under section 12 of the Act. Hence, the provisions of section 12 must be read to empower the Revenue Divisional Officer to entertain an appeal challenging the grant of patta in favour of a person or persons and consequently seek for cancellation of the same. Nevertheless, such request must be made strictly in terms of the provisions of section 12 read with rule 14 of the rules, which prescribe a mandatory period of thirty days from the date when the entry was made.

14. Keeping the above in mind, the issue is to be considered. The writ appeal raises two important questions. Firstly, whether the Revenue Divisional Officer would be competent to go into the disputed question of title while considering the application for cancellation of patta. In fact, the law on this is not *res integra*. As early as in the year 1995, a Division Bench of this Court in *Kuppuswami Nainar Vs. The District Revenue Officer and Others*, , has observed as follows:

"3. No provision is brought to our notice in the Standing Orders of the Board of Revenue taking away the jurisdiction of the civil court to adjudicate upon the question of title relating to immovable property. Revenue Officers in a patta proceeding may express their views on the question of title, but such expression of opinion or decision is not conclusive and it is only intended to support their decision for granting patta. Ultimately, it is the civil court which has to adjudicate the question as to whether the person claiming patta is the title holder of the land. Even if the revenue authorities decide the question of title, that will not in any way affect the jurisdiction of the civil court, which has to decide the question without reference to the decision of the revenue authorities.

4. Now the question for consideration is, having regard to the fact that the District Revenue Officer has expressed his opinion on the question of title, whether the order under question should be interfered with. It may be pointed out here that in a petition under Article 226 of the Constitution, the question of title regarding immovable property cannot properly be gone into, because a mass of evidence may be required for adjudicating the question of title. Even if we are to interfere with the order under appeal, it is the other party, who has to go to a civil court and establish title. As far as the exercise of jurisdiction under Article 226 of the Constitution is concerned, it does not matter to it whether A party goes to civil court or B party. Therefore, we are of the view that the question of title has to be decided by the civil court without reference to the order under question. Hence, we decline to interfere with the order challenged in the writ petition. However, we make it clear that in the event a suit for declaration of title and for appropriate consequential relief is filed, the civil court shall decide such a suit, without reference to the findings recorded by respondents 1 and 2 in the impugned orders, but only on the basis of the pleadings of the parties and evidence adduced by them before it. We also make it clear that any opinion expressed by the learned single Judge, contrary to what we have stated above, shall also stand modified accordingly. With these observations, the writ appeal is dismissed. Consequently, C.M. P. No. 15872 of 1994 filed along with the appeal is

also dismissed."

15. Following the said judgment, one of us (DMJ) in Chockkappans 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.

17. The question as to whether the revenue authorities be it the Tahsildar exercising power under section 3 or under section 5 or under section 10 or the Revenue Divisional Officer exercising power under section 12, can consider only a prima facie case as to the entitlement of a person or persons for issuance of patta. In the event such officers encounter a dispute which could be resolved only by a competent civil Court, they would not have jurisdiction to enter into such civil dispute for adjudication. To this extent, the judgments in Kuppuswami Nainar's case followed in Chockkappan's case may be relied upon. The learned Judge in the order under appeal has also relied upon those judgments and we are in agreement with the same.

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 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."

13. In view of the above decision of the Division Bench of this Court, this Court is

of the considered opinion that it is not for the revenue authorities to delve deep into the disputed questions of title when an application for cancellation of patta is being considered and if there is any rival claim, then, the course to be adopted by the revenue authorities, is only to relegate the parties to the competent civil Court, more particularly, when the claim of a party is disputed by the other individual who is holding the patta granted by the competent authority.

14. Admittedly, the respondents 2 to 6 got transfer of patta in their names in respect of the above said properties and on appeal, the Revenue Divisional Officer cancelled the same. Challenging the same, the respondents 2 to 6 filed the revision before the first respondent, who, by virtue of the impugned order, restored the patta in their names, however, giving liberty to the aggrieved party to work out his remedy before the competent civil Court.

15. What transpired is, the title dispute is being entertained by the revenue authorities, either by granting patta in favour of one party or cancelling the same in respect of the other party, which, in the opinion of this Court, is untenable. Once the revenue authorities find that there is a rival claim over the issue, it is for them to relegate the parties to seek their appropriate remedy before the competent civil Court, unless and until there is a decree of a civil Court in favour of either of the parties.

16. Now, the petitioner is seeking remedy before this Court by invoking the jurisdiction of this Court under Article 226 of the Constitution of India, to quash the impugned order passed by the first respondent, however, this Court holds that it could not be so, because, the rival parties are agitating their claims again and again before the revenue authorities, which, would ultimately lead them to move before the civil Court in accordance with law.

17. Considering the facts and circumstances of the case, this Court holds that there is a serious title dispute between the parties concerned, which the revenue authorities ought not to have entertained the same, instead, they have to be relegated to the competent civil Court for proper remedy available to them, but, it is not so. However, this Court finds it not proper to interfere with the impugned order passed by the first respondent at this stage.

18. For the foregoing reasons, this writ petition stands disposed of, with the following directions:

- (i) The parties concerned, namely, the petitioner as well as the respondents 2 to 6, and all the other interested parties, if any, are at liberty to move before the civil Court for resolving the title disputes in regard to the properties in question;
- (ii) As and when the civil Court decides/decrees on the issue, the revenue authorities can act accordingly and effect transfer of patta in the name of the party/parties concerned;
- (iii) The impugned order passed by the first respondent, is subject to the outcome of the civil suit to be filed, if any;

(iv) The parties concerned shall abide by the decree of the civil Court and move before the revenue authorities for appropriate remedy to work out their further remedy, if any, as per law.

Consequently, the connected miscellaneous petition is closed. No costs.