
(2014) 03 MAD CK 0110

In the Madras High Court

Case No : W.P. (MD) No. 2248 of 2014 and M.P. (MD) Nos. 2 to 4 of 2014

Dharmambal, Chandrasekaran and Sthanunathan

APPELLANT

Vs

The District Collector, Tirunelveli and Others

RESPONDENT

Date of Decision : 19-03-2014

Acts Referred:

Constitution of India, 1950 — Article 226

Tamil Nadu Patta Pass Book Act, 1983 — Section 12, 13, 14

Citation : (2014) 03 MAD CK 0110

Hon'ble Judges : R. Subbiah, J

Bench : Single Bench

Final Decision : Allowed

Judgement

R. Subbiah, J.—This writ petition has been filed by the petitioner, challenging the order, dated 09.01.2014, passed by the fourth respondent/the Zonal Deputy Tahsildar, Tirunelveli, whereby the fourth respondent rejected the claim of the petitioners and included the name of the respondents 5 to 28 in the patta in respect of the lands in T.S. Nos. 1075, 1076, 1077, 1078, 1080 & 1081, situated at S.N. High Road, Tirunelveli. The brief facts which are relevant for consideration herein are;

(a)The first petitioner is the mother of the second and third petitioners.

Originally the land measuring 84 cents comprised in S. No. 7B, now T.S. Nos. 1075, 1076, 1077, 1078, 1080 and 1081, at S.N. High Road, Tirunelveli, belonged to the family of one Ramanatha Pandiyajiyar. The grandfather of the petitioners 2 & 3 viz., T. Venkadachala Iyer took the said property on lease in the year 1933 and put up constructions in the said lands and he was running a hotel with lodge in the name and style of "Chandra Vilas Hotel" and vehicles" stand therein. The said lease was subsequently extended in the years 1938 and 1940. A suit was filed for partition among the members of the abovesaid Ramanatha Pandiyajiar in O.S. No. 81 of 1946 on the file of the Subordinate Court, Tirunelveli and the same was decreed. In the said suit, final decree was also

passed in I.A. No. 126 of 1948 on 23.03.1951. But, the grandfather of the petitioners 2 & 3, who was a tenant of the vacant site and put up constructions thereon, was not arrayed as party to the suit proceedings. While so, the grandfather of the petitioners 2 & 3 died, leaving behind his son T.V. Subramania Iyer, who is the father of the petitioners 2 & 3 and husband of the first petitioner. After the demise of the grandfather and after passing of the final decree on 23.03.1951 in O.S. No. 81 of 1946, the father of the petitioners 2 & 3 obtained lease deeds from five persons belonging to the Ramanatha Pandiyajiyar family in respect of the properties allotted to them in the partition suit. One other sharer executed a deed of Othi in respect of the property allotted to him in the above said suit proceedings. As far as the remaining one share is concerned, the father of the petitioners 2 & 3 was continuing in possession till his demise. Thus, the entire 84 cents has been in possession and enjoyment of their grandfather and thereafter, their father and they have been running business under the name and style of "Chandra Vilas Hotel" in the same.

(b) The patta bearing No. 64, in respect of the land in T.S. Nos. 1075, 1076, 1077, 1078, 1080 and 1081, at S.N. High Road, Tirunelveli, was granted in the name of Jagannatha Pandiyajiyar, Sarveswara Pandiyajiyar, T.V. Rajabhai, Hiranya Kameswara Pandiyajiyar, Kameswara Pandiyajiyar, Ganapathi Pandiyajiyar and Mani Sankara Pandiyajiyar. While so, the sons of Jagannatha Pandiyajiyar by name Sarveswara Pandiyajiyar, S. Subbaraya Pandiyajiyar, Hiranya Kameswara Pandiyajiyar, M. Mothisankara Pandiyajiyar, K. Gopinath Pandiyajiyar, K. Bhavanibai and K. Jamuna Bai, have filed separate suits in O.S. No. 125 to 128 of 1979 before the Subordinate Court, Tirunelveli, for recovery of possession against the father of the petitioners 2 & 3. The father of the petitioners 2 & 3 has also filed a petition u/s 9 of the Tamil Nadu City Tenant Protection Act, for a direction to the landlords to sell their respective portion of the lands to him. The said application was partly allowed. For the disallowed portion, the father of the petitioners 2 & 3 has preferred appeals in C.M.A. Nos. 22 to 25 of 1983 and the owners of the lands have also filed C.M.A. Nos. 31 to 34 of 1983. All the appeals filed by the father of the petitioners 2 & 3 were allowed and the appeals filed by the owners of the lands were dismissed on 22.04.1991. Thereafter, the father of the petitioners 2 & 3 had initiated execution proceedings and sale deed was also executed by the Court on 22.04.2007 in favour of the petitioner's father. One of the land owners by name Manisankara Pandiyajiyar also executed a sale deed independently in respect of his share in favour of their father. Thus, the father of the petitioners 2 & 3 became absolute owner in respect of the properties of five sharers and in respect of the property of one sharer, he has been in possession and enjoyment as "Othithar" and in respect of the property of remaining one sharer, he has been in continuous possession.

(c) After the demise of the father of the petitioners 2 & 3 and husband of the first petitioner, the petitioners, as legal heirs of the deceased, had approached the third respondent to effect mutation of patta in the year 2013. The 5th respondent herein has also given a petition to include the name of the

respondents 5 to 28 in the patta in respect of the very same properties. According to the petitioners, the respondents 5 to 28 did not file any title deed or any decree or order of the competent Court, along with their application. They claim right over the properties only on the strength of two partition deeds effected in the years 1904 and 1905, among the members of their family. The said documents are only self serving documents. According to the petitioners, the respondents 5 to 28 are not entitled to claim title on the basis of the above said partition deeds. The fourth respondent, without considering the above aspects, has rejected the claim of the petitioners on the ground of non production of the death certificate and legal heir certificate of the original pattadars and decided the title in favour of the respondents 5 to 28 and included the respondents 5 to 28 in the patta in respect of the lands in T.S. Nos. 1075, 1076, 1077, 1078, 1080 and 1081. Aggrieved by the same, the present writ petition has been filed by the petitioners.

2. When the matter came up for admission on 11.02.2014, this Court has granted interim stay of the order, dated 09.01.2014, passed by the fourth respondent. Aggrieved by the interim order, dated 11.02.2014, the respondents 5 to 28 filed M.P. (MD). No. 4 of 2014 for vacating the stay order.

3. It is stated by the respondents 5 to 28 in the vacate stay petition that as against the rejection order passed by the fourth respondent, the petitioners ought to have filed an appeal before the RDO and the present writ petition filed by the petitioner is not maintainable. It is further stated that before the fourth respondent the petitioners have not produced any document to substantiate their claim and therefore, the claim of the petitioners was rightly rejected by the fourth respondent. Thus, the respondents 5 to 28 prayed for vacating the interim stay and for dismissal of the writ petition.

4. Heard the rival submissions made on both sides and perused the materials available on records.

5. The main submission of the learned counsel for the respondents 5 to 28 is that against the order of the Zonal Deputy Thasildar, the fourth respondent herein, the petitioners ought to have filed an appeal u/s 12 of the Tamil Nadu Patta Passbook Act before the competent authority. But, without doing so, they approached this court under Article 226 of the Constitution of India. Therefore, this writ petition is liable to be dismissed. Whereas the learned counsel for the petitioners submitted that the fourth respondent, who is a quasi judicial authority, is not competent to decide the title of the property. But, in the instant case, by deciding the disputed question of title, the fourth respondent included the name of the respondents 5 to 28 in the patta. As the fourth respondent has decided the title in question without jurisdiction, the writ petition is maintainable.

6. From the perusal of the records, it is seen that the petitioners as well as the respondents 5 to 28 are claiming title over the property in question. While the petitioners claim title over the property based on the sale deeds executed by the

Court, the respondents 5 to 28 claim their title through partition deeds of the years 1904 & 1905. On perusal of the impugned order passed by the fourth respondent, I find that the fourth respondent has sought for a legal opinion from the Personal Assistant (Legal Services) of the District Collector and after obtaining legal opinion, he has decided the title of the property and passed the impugned order. When two persons claim title over the property, the fourth respondent ought not to have passed the impugned order. Instead, he ought to have directed the parties to approach the competent civil Court having jurisdiction.

7. In this regard, I am of the opinion, it would be appropriate to extract Rule 4(4) of the Tamil Nadu Patta Passbook Act.

4(4). In the event of the Tahsildar being 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 as already recorded and existing in the various revenue records."

8. From the reading of the above Rule, it can easily be discerned that when two persons claim ownership in respect of the same property, the revenue authority has to keep the proceedings in abeyance and direct the parties to approach the competent civil Court having jurisdiction before changing the entries as already recorded and existing in the various revenue records.

9. Here, in this case, it is not in dispute that the petitioners, on the one hand and the respondents 5 to 28, on the other hand, have approached the fourth respondent for mutation of patta claiming title over the same property. When there is a dispute with regard to the title of the property, the fourth respondent, as per Rule 4(4), ought to have directed the parties to approach the civil Court to decide the issue with regard to the title. But, without doing so, the fourth respondent has decided the title and passed the impugned order without jurisdiction.

10. As far as the issue with regard to the maintainability of the writ petition is concerned, a Division Bench of this Court, in the judgment reported in Vishwas Footwear Company Ltd. Vs. The District Collector and Others , has given a befitting answer as follows:

As far as the power of this Court to entertain a Writ petition on disputes questions, we may refer to the following decisions of the Supreme Court 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, and Himmat Singh Vs. State of Haryana and Others, . Therefore, when disputed questions are involved, this Court will not entertain the Writ petition and adjudicate upon such dispute, as it

is for the parties to approach the Civil Court to decide the issue. However, in the event the order challenged in the Writ Petition is questioned on the ground of want of jurisdiction, certainly this Court would entertain the Writ Petition and particularly when such an order was passed when effective remedy is available before a Civil Court for a person or persons who seek for cancellation of Patta. As already pointed out, though the fourth respondent has filed Appeal to the Revenue Divisional Officer seeking for cancellation of Patta, in view of the fact that the Revenue Divisional Officer cannot go into the Civil dispute, his order cancelling the patta by deciding the disputed question of title is without jurisdiction. In this context, we may refer to the proviso to Section 14 of the Act, which bars the suit. The proviso reads that if any person is aggrieved as to any right of which he is in possession by an entry made in the patta Passbook under this Act, he may institute a suit against any person denying or interested to deny his title to such right of declaration of his right under Chapter VI of the Specific Relief Act and the entry in the Patta Pass Book shall be amended in accordance with any such declaration. By that Proviso, in the event any grievance is made by the fourth respondent over the patta granted to the appellant, he should have approached the Civil Court for necessary orders. In the event the Revenue Divisional Officer had no jurisdiction to go into the disputed question of title and in spite of that fact if he decides the same, on the very same yardstick, the further remedy is only a Revision u/s 13 of the Act which is limited to calling for and examining the records of either the Tahsildar or the appellate authority by the District Revenue Officer and such Revisional power cannot be equated to Appellate power. Hence, the contention of the fourth respondent that the appellant has got an effective remedy of appeal and without availing such remedy cannot file the Writ petition, has no merit. Accordingly, the said contention is rejected.

11. Applying the same view, this Court has no hesitation to hold that the writ petition is maintainable as the fourth respondent has exceeded his jurisdiction in passing the impugned order. As far as the unreported judgment relied upon by the learned counsel for the respondents 5 to 28 in W.P. No. 20461 of 2008, dated 18.12.2008 (K.V. Sathyanarayanan Vs. The District Revenue Officer) is concerned, the same is not applicable to the facts of the present case.

12. For the foregoing reasons, the impugned order, dated 09.01.2014 is liable to be quashed and accordingly quashed. The parties are directed to approach the competent civil Court having jurisdiction in respect of the dispute with regard to the title of the property in question and thereafter to approach the revenue authorities. This writ petition is accordingly allowed. No costs. Consequently, connected Miscellaneous petitions are closed.