

(2011) 11 MAD CK 0194

In the Madras High Court

Case No : Writ Petition (MD) No. 499 of 2011

N. Meenakshi

APPELLANT

Vs

The Tahsildar and Others

RESPONDENT

Date of Decision : 08-11-2011

Acts Referred:

Tamil Nadu Patta Pass Book Act, 1983 — Section 10, 10(3)

Citation : (2011) 11 MAD CK 0194

Hon'ble Judges : K. Chandru, J

Bench : Single Bench

Advocate : S.S. Sundar, for the Appellant; M.Govindan, Special Government Pleader For Respondents 1 and 2 and Mr. A.Thiruvadikumar For Respondents 3-5, for the Respondent

Final Decision : Allowed

Judgement

Honourable Mr. Justice K. Chandru

1. The petitioner is the wife of Late.Nagalingam, Korkai Village, Srivaikundam Taluk, Tuticorin District.

2. In this writ petition, she is aggrieved by the order of the Tahsildar in returning the application made by the petitioner stating that her request for grant of patta by subdividing the property in S.No.45/1A1A1A cannot be considered as there has been objection by the joint pattadars and hence, it is not feasible to subdivide the properties.

3. The contention of the petitioner was that a partition suit was filed before the Sub Court, Tuticorin in O.S.No.63 of 2008 and when the final decree came to be passed all the parties to the suit have compromised and filed a joint memo of compromise. The decree was passed in terms of the compromise memo, dated 05.09.20008. The compromise memo was accepted by the Sub Court and the land in question was allotted to the petitioner. It was thereafter, she filed an application, stating that unless sub division is made, the likelihood of the land

which has allotted to her were illegally sold by the other brothers of her husband. She also got a decree in the sub Court. Therefore, it was the first respondent, Tahsildar, stated that there has been objectors who are all the joint pattadars. It is at this stage, the petitioner challenging the stand taken by the first respondent, filed the present writ petition.

4. When the matter came up on 12.01.2011, this Court directed notice to be taken by the learned Special Government Pleader for the official respondents and in respect of the private respondents, private notice was also ordered. Pending writ petition, this Court granted a direction to the second respondent, Sub Registrar not to register any instrument in respect of property in S.No.45/1A1A1A situated at Korkai Village, Srivaikundam Taluk, till the sub division of the survey number. The said direction continues as on date.

5. On notice from this Court, on behalf of the third respondent, learned counsel entered appearance and for the respondents 4 and 5 also learned counsel entered appearance and the respondents 1 and 2 represented by the learned Special Government Pleader.

6. The short question that has to be decided is whether the first respondent can claim a unilateral declaration that he will not consider the case of the petitioner's application without informing her as to whether all the joint pattadars have made objections and what is their relationship in respect of the land and whether the party to the judgment and decree passed by the Sub Court, Tuticorin.

7. While entertaining the claim for making sub division and grant for an independent patta, the Tahsildar, discharges a statutory provision u/s 10 of the Tamil Nadu Patta Pass Book Act, 1983 and the authority has empowered to make modification of entries in the patta pass book. u/s 10(3) the procedure to be adopted in entertaining such application, it is also clearly stated that 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. If he is satisfied, he should pass an order and in case, he dissatisfied, there is no case for effecting modification and he should reject the application. "Decides" as found in Section 10(3)(b) subscribes Section 10(3) (c) wherein he should give reasons for such an order. Except making a bald statement that joint pattadars have made objections, he had not disclosed the nature of objections and he had also not considered the petitioner's shares made by the Civil Court in its judgement and decree in which a compromise memo has also been entered into.

8. Under the said circumstances, the impugned order is stand set aside and the matter is remitted to the first respondent for making a decision in accordance with Section 10 of the Tamil Nadu Patta Book Act after due notice to the objectors if any. This exercise shall be carried out within a period of eight weeks from the date of receipt of a copy of this order and till such time, the second respondent shall be restrained from the registration of any document in respect

of S.No.45/1A1A1A situated at Korkai Village, Srivaikundam Taluk.

9. The writ petition stands allowed to the extent indicated above. In view of the above, the miscellaneous petition is dismissed.