
(2015) 09 MAD CK 0314

In the Madras High Court

Case No : Writ Petition (MD). No. 11678 of 2015, M.P. (MD). Nos. 1 and 2 of 2015

Selvaraju

APPELLANT

Vs

The District Revenue Officer, Thanjavur District and Others

RESPONDENT

Date of Decision : 09-09-2015

Acts Referred:

Constitution of India, 1950 — Article 226

Tamil Nadu Patta Pass Book Act, 1983 — Section 14, 2(10)

Citation : (2015) 6 CTC 654 : (2016) 1 LW 148 : (2015) 8 MLJ 172

Hon'ble Judges : R. Subbiah, J

Bench : Single Bench

Advocate : N. Dilipkumar, for the Appellant; S. Kumar, AGP, Advocates for the Respondent

Final Decision : Allowed

Judgement

R. Subbiah, J—This writ petition has been filed by the petitioner praying to quash the impugned order dated 18.06.2015 passed by the 1st respondent in the revision petition filed by the 4th respondent, ordering for change of patta in favour of the fourth respondent and thereby to restore the order dated 15.06.2012 passed by the third respondent, which was confirmed by the second respondent by the order dated 30.09.2014.

2. The case of the petitioner, in brief, is as follows:-

2-1. The petitioner is the sister's son of the wife of one Subbiah Pillai and the 4th respondent is one of the brothers of the said Subbiah Pillai. The subject properties viz., the lands in Survey No. 272/17 and some other survey numbers in Kalaniyakkottai Village, comprised in Vellaiyankottai Bit 1 Village, Peravoorani Taluk, Thanjavur District, originally belonged to the said Subbiah Pillai. The said properties were allotted to the share of the said Subbiah Pillai in a partition made among the brothers in the year 1951. Though the 4th respondent is one of the brothers of the said Subbiah Pillai, there was no cordial relationship between

them. There was a deep rift between them. In fact, on 14.08.2003, the said Subbiah Pillai had caused a legal notice published in the newspaper against the 4th respondent mentioning that the 4th respondent is making vicious attempts to grab his property and he is not having any relationship with the 4th respondent and that he intends his wife to inherit his property after his life time. Accordingly, the said Subbiah Pillai had already executed a registered Will in the year 1983 itself in favour of his wife Jeyathammal in respect of all his properties; but his wife Jeyathammal died on 30.04.2010. Since his wife Jeyathammal pre-deceased him, the said Subbiah Pillai again on 17.05.2010 executed a Will in favour of the petitioner, who is the son of the sister of Subbiah Pillai's wife. After the execution of the Will, the said Subbiah Pillai died on 05.07.2010 at the age of 87 years.

2-2. Upon the demise of Subbiah Pillai, acting upon the Will dated 17.05.2010, the petitioner had applied for patta before the 3rd respondent-Tahsildar on 14.07.2010. In that situation, the 4th respondent herein made a claim in respect of the subject properties on the basis of an alleged fabricated and forged settlement deed dated 23.06.2010 said to have been executed by the said Subbiah Pillai in favour of the 4th respondent. The said settlement deed dated 23.06.2010 does not contain the signature of Subbiah Pillai, who is an educated man and in the habit of signing all his documents. In fact, the registered Will executed by the said Subbiah Pillai in favour of his wife in the year 1983 as well as the subsequent Will dated 17.05.2010 executed by him in favour of the petitioner, contain the signature of Subbiah Pillai. Even the banking transaction made by the said Subbiah Pillai few days before his demise also contains his signature.

2-3. Hence, the petitioner had filed W.P.(MD).No.8706 of 2011 to direct the Tahsildar to dispose of the representation given by the petitioner. The said Writ Petition was disposed of by this Court on 04.08.2011 with a direction to the Tahsildar to consider and pass orders on the petitioner's application for patta. Pursuant to the said order of this Court, the Tahsildar after hearing the respective parties passed a detailed order on 15.06.2012 directing the parties to approach the competent Civil Court in view of the dispute involved in respect of the title claim made by the respective parties. However, the Tahsildar had ordered for maintenance of revenue records in the name of the deceased Subbiah Pillai, till the completion of the adjudication by the Civil Court.

2-4. Aggrieved over the order dated 17.05.2012 passed by the Tahsildar, the 4th respondent has filed an appeal in Appeal No. 21 of 2012 before the Revenue Divisional Officer, 2nd respondent herein. When the said appeal was pending, a communication was sent by the Revenue Divisional Officer in favour of the 4th respondent. Hence, the petitioner was constrained to file another Writ Petition in W.P.(MD).No.4182 of 2014 to issue a direction to the Revenue Divisional Officer to dispose of the Appeal No. 21 of 2012 filed by the 4th respondent. This Court by order dated 10.03.2014 directed the 2nd respondent to dispose of the said

appeal within a period of eight weeks.

2-5. Thereafter, the 2nd respondent passed a detailed order dated 30.09.2014 reiterating that the claim of the petitioner has to be adjudicated only before the Civil Court and the issue of mutating of revenue records including patta can be decided only after final decision of the Civil Court. Accordingly, the 2nd respondent relegated the parties to the Civil Court and ordered for maintenance of patta in respect of the subject properties in the name of the deceased Subbiah Pillai. Thus, the order passed by the 3rd respondent-Tahsildar was confirmed by the 2nd respondent-Revenue Divisional Officer.

2-6. Subsequent to the order dated 30.09.2014 passed by the 2nd respondent-Revenue Divisional Officer, the 4th respondent herein has filed a suit in O.S. No. 152 of 2014 before the learned Sub-Judge, Pattukottai, praying for permanent injunction. Along with the said suit, the 4th respondent has also filed an Interlocutory Application No. 241 of 2014 for interim injunction; but the said Interlocutory Application was dismissed by the Sub- Judge, Pattukottai, by order dated 11.06.2015. Subsequent to the filing of the said suit, the 4th respondent has also filed a revision before the 1st respondent challenging the order dated 30.09.2014 passed by the 2nd respondent. After hearing both sides, the 1st respondent has passed the impugned order dated 18.06.2015 by setting aside the orders passed by the 2nd respondent as well as the 3rd respondent and thus, ordered for change of patta in respect of the subject properties in favour of the 4th respondent. Aggrieved over the same, the present writ petition has been filed by the petitioner.

3. Pending the writ petition, the petitioner has filed a Miscellaneous Petition No. 1 of 2015 for grant of interim stay of the operation all further proceedings of the impugned order passed by the 1st respondent dated 18.06.2015. This Court has also granted interim stay on 09.07.2015.

4. On appearance, the 4th respondent has filed M.P. No.2 of 2015 to vacate the interim stay granted in M.P. No.1 of 2015. In the affidavit filed in support of the vacate stay petition, it has been stated by the 4th respondent, inter alia, that it is true that the 4th respondent's brother Subbiah Pillai had executed a registered Will in favour his wife Tmt.Jeyathammal in the year 1983; but the beneficiary under the said Will viz, Tmt.Jeyathammal died on 30.04.2010 even before the testator. Hence, the said Will became redundant. Thereafter, no Will was created by the said Subbiah Pillai. The 4th respondent and his brother Subbiah Pillai were in good terms and after the demise of Tmt.Jeyathammal, the said Subbiah Pillai was under the care of the 4th respondent. Due to the love and affection, the said Subbiah Pillai executed a registered Settlement Deed dated 23.06.2010 in favour of his brother viz., 4th respondent. But, the petitioner herein, who is the son of sister of Subbiah Pillai's wife, has created an unregistered Will dated 17.05.2010 in a plain paper alleged to have been executed by 4th respondent's brother Subbiah Pillai on the Eve of 16th day function of the death of Tmt.Jeyathammal W/o.Subbiah Pillai. After the demise of

Subbiah Pillai, the petitioner approached the revenue authorities for mutation of his name in the revenue records relating to the subject properties. Hence, the 4th respondent made objection before the 3rd respondent and produced the registered Settlement Deed dated 23.06.2010 executed by the deceased Subbiah Pillai in favour of 4th respondent. It is further stated by the 4th respondent that the Deputy Regional Tahsildar, Peravoorani, by his order dated 30.08.2010 ordered for change of patta in respect of the subject properties in favour of the 4th respondent. Suppressing all these material facts, without impleading the 4th respondent, the petitioner herein had earlier filed a writ petition in W.P. (MD).No.8706 of 2011 before this Court to dispose of his representation dated 14.07.2010, which was given by him to change of patta in his name. When the said writ petition came up before this Court, the petitioner herein had pleaded before this Court as if there was no rival claim and there was no dispute with regard to his right. Hence, this Court by order dated 04.08.2011 directed the Revenue Officials to dispose of the representation of the petitioner herein. In this background only, the 3rd respondent has passed the order on 15.06.2012 changing the patta back to the name of the original owner late Subbiah Pillai. Aggrieved over the same, the 4th respondent had filed an Appeal No. 21 of 2012 before the 2nd respondent on 13.06.2012. At this juncture, the petitioner herein again filed a writ petition in W.P.(MD).No.4182 of 2014 to dispose of the Appeal No. 21 of 2012 dated 13.07.2012. This Court also by order dated 10.03.2014 directed the 2nd respondent herein to dispose of the appeal within eight weeks. Pursuant to the same, the first appellate Authority viz., the 2nd respondent herein passed an order dated 30.09.2014 confirming the order passed by the 3rd respondent and directed the parties to approach the Civil Court. Aggrieved over the same, the 4th respondent preferred a revision petition before the 1st respondent. Before the said revision petition was numbered, as there was interruption by the petitioner herein with regard to possession of the 4th respondent over the subject properties, the 4th respondent has filed a suit in O.S. No.152 of 2014 before the Sub-Court, Pattukottai, for permanent injunction restraining the petitioner herein and his power of attorney from any manner interfering with his peaceful possession over the subject properties by virtue of the registered Settlement Deed dated 23.06.2010. Hence, according to the 4th respondent, the present writ petition is not maintainable and the petitioner is having remedy to adjudicate his grievance before the Civil Court. Thus, the 4th respondent sought for dismissal of the writ petition.

5. The learned counsel appearing for the petitioner submitted that the petitioner is the son of the sister of Subbiah Pillai's wife. The subject properties viz., the lands in Survey No. 272/17 and some other survey numbers in Kalaniyankottai Village, comprised in Vellaiyankottai Bit 1 Village, Peravoorani Taluk, Thanjavur District, originally belonged to the said Subbiah Pillai. Patta in respect of the said properties was standing in the name of the said Subbiah Pillai. Originally, in the year 1983, the said Subbiah Pillai had executed a registered Will in favour of his wife Tmt.Jeyathammal. But, the said Jeyathammal predeceased the testator

Subbiah Pillai, as she died on 30.04.2010. Hence, the said Subbiah Pillai again executed a Will in favour of the petitioner on 17.05.2010. The 4th respondent is one of the brothers of the said Subbiah Pillai. During the life time of Subbiah Pillai, there was no cordial relationship between the 4th respondent and his brother Subbiah Pillai. In fact, on 14.08.2003 the said Subbiah Pillai had caused a legal notice through newspaper publication against the 4th respondent, mentioning that the 4th respondent is making various attempts to grab his properties and he is not having good relationship with the 4th respondent. In this regard, the learned counsel appearing for the petitioner has also invited the attention of this Court to the paper publication dated 14.08.2003.

6. The learned counsel for the petitioner would further submit that the said Subbiha Pillai died on 05.07.2010. After the demise of Subbiah Pillai, based on the unregistered Will dated 17.05.2010 executed by the said Subbiah Pillai, the petitioner has made a representation dated 14.07.2010 before the 3rd respondent to change the patta in his name. The 4th respondent raised objection before the 3rd respondent based on the Settlement Deed dated 23.06.2010 alleged to have been executed by the deceased Subbiah Pillai in his favour. After conducting enquiry, the 3rd respondent came to the conclusion that he cannot test the genuineness of the documents produced on either side; thus, the Tahsildar directed the parties to approach the Civil Court. Aggrieved over the same, the 4th respondent has filed an appeal before the Revenue Divisional Officer, 2nd respondent herein. The 2nd respondent by order dated 30.09.2014 confirmed the order passed by the 3rd respondent. Aggrieved over the same the 4th respondent has filed a revision before the 1st respondent. By the impugned order dated 18.06.2015, by analysing the validity of the Settlement Deed and Will and by deciding the question of title, the 1st respondent has set aside the concurring findings of the respondents 2 & 3 and ordered for change of patta in favour of the 4th respondent.

7. The learned counsel for the petitioner would further submit that when there are disputed questions of facts, the 1st respondent ought not to have ordered for change of patta in favour of the 4th respondent by deciding the title. Thus, the learned counsel for the petitioner submitted that the 1st respondent by dismissing the revision petition filed by the 4th respondent ought to have directed the parties to approach the Civil Court. In this regard, the learned counsel for the petitioner has also relied upon the judgments reported in 2014(3) TNLJ 145 (Civil) [L.K.M.A. Mohammed Saleem, Tirunelveli Vs. The District Revenue Officer, Tirunelveli and others]. The learned counsel for the petitioner has also relied upon the judgment reported in T.R. Dinakaran Vs. The Revenue Divisional Officer, Aruppukottai. and 9 Others, (2012) 3 CTC 823 : (2012) 3 LW 181 wherein herein it has been held as follows:-

"In view of the Proviso to Section 14, if any person is aggrieved over the entry made in the Patta Pass Book in respect of any property over which he claims title and also possession, he can only file a Suit for declaration of his right and

thereafter, the entry in the Patta Pass Book can be amended in accordance with any such declaration made by the Competent Civil Court. In this case, admittedly, the Patta was standing in the name of the petitioner under Patta No. 949. The petitioner claims title over the property and equally, the Respondents 4 to 9 also claim the same. If that is the position, the proper course for the Respondents 4 to 9 is to go before the competent Civil Court and file a Civil Suit for declaration. Without doing so they cannot agitate the matter before the First Respondent straight away seeking for cancellation of Patta standing in the name of the petitioner and consequently, seeking for grant of Patta in their name. In any event, the Petitioner herein has already filed a Suit in O.S. No.63 of 2006 before the District Munsif Court, Aruppukkottai and same is pending. It is also an admitted fact that all these respondents are party Respondents in the said Suit. Therefore, in respect of the dispute over the title to the property, already a Civil Suit is filed before the Competent Civil Court. Only when a decree is granted, the Revenue Authority can act according to the decree and make necessary changes in the Patta Pass Book. While that being the position, the First Respondent is not justified in passing the impugned order. It is needless to say that neither the First Respondent nor any other Revenue Authority has got any power or jurisdiction to confer the title of the properties on any person while considering an Application for grant of Patta or for cancellation of Patta."

The learned counsel for the petitioner has also relied upon the judgment delivered by the Division Bench of this Court reported in C. Sabesan Chettiar (deceased) and Others Vs. The District Revenue Officer, The Revenue Divisional Officer, The Tahsildar and R. Padmanabhan, (2011) 5 CTC 241 , wherein it has been held that if there is dispute between the rival parties touching upon the title to the property, the remedy for the parties would be before the Civil Court and not before the revenue authorities. For the same proposition, the learned counsel for the petitioner has also relied upon the decision reported in Vishwas Footwear Company Ltd. Vs. The District Collector and Others .

8. Per contra, the learned counsel for the 4th respondent submitted that the present writ petition has been filed by the petitioner by suppressing several material facts. In fact, after the demise of Subbiah Pillai, patta was transferred in the name of the 4th respondent by the Deputy Regional Tahsildar by order dated 30.08.2010, by ordering for change of patta in favour of the 4th respondent. Pursuant to the same, a communication was also issued to carry out the mutation in the revenue records. At this juncture, the 3rd respondent-Tahsildar passed the order dated 15.06.2012 for restoration of the patta in the name of the deceased Subbiah Pillai and relegated the parties to the Civil Court. The fact about the change of patta by the Deputy Regional Tahsildar in favour of the 4th respondent by order dated 30.08.2010 was suppressed by the petitioner herein in the writ petition. The order dated 30.08.2010 passed by the Deputy Regional Tahsildar would show that after the death of Subbiah Pillai, patta was already transferred in the name of the 4th respondent. The 1st respondent by setting aside the orders passed by the respondents 2 & 3, only restored the patta once

again in the name of the 4th respondent. As on date the patta is standing in the name of the 4th respondent. If the petitioner is aggrieved over the order passed by the 1st respondent, it is he who has to approach the Civil Court against the said order and not the 4th respondent. In this regard, the learned counsel for the 4th respondent has relied upon the decision rendered by the Division Bench of this Court reported in Kuppuswami Nainar Vs. The District Revenue Officer and Others, (1995) 1 MLJ 426 , wherein it has been held 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 proceedings 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."

The learned counsel for the 4th respondent would further submit that even if the revenue authorities decided the question of title, that will not in any way affect the jurisdiction of the Civil Court. Hence, the party who feels aggrieved over the order passed by the revenue authorities alone has to approach the civil Court. For the same proposition, the learned counsel appearing for the 4th respondent

has relied upon another judgment reported in Rayathal (died) (Thulasiammal and Others) Vs. Periya Kannu and Others .

9. Further, on factual aspect also, the learned counsel for the 4th respondent has made an elaborate argument stating that the Settlement Deed dated 23.06.2010 executed by Subbiah Pillai is a genuine document and that it is incorrect to state that there was no cordial relationship between the 4th respondent and his brother Subbiah Pillai.

10. By way of reply, the learned counsel for the petitioner would submit that first of all, the Deputy Regional Tahsildar is not a competent authority to order for change of patta; it is only the Tahsildar who can pass an order for change of patta; therefore, the order passed by the Deputy Regional Tahsildar on 30.08.2010 has no significance in this matter. Hence, according to the learned counsel for the petitioner, by setting aside the impugned order passed by the 1st respondent, the patta has to be restored to the name of the original owner ie., in the name of the deceased Subbiah Pillai.

11. But, the learned counsel appearing for the 4th respondent by relying upon Section 2(10) of the Tamil Nadu Patta Pass Book Act, submitted that the definition for "Tahsildar" includes all the revenue officers not below the rank of Deputy Tahsildar. Under such circumstances, no fault could be found in the order passed by the Deputy Regional Tahsildar. Therefore, it is only for the petitioner to approach the Civil Court. Thus, according to the learned counsel for the 4th respondent, there is no need for this Court to interfere with the order passed by the 1st respondent and the writ petition is liable to be dismissed.

12. I have also heard the learned Additional Government Pleader appearing for the official respondents as well as the learned counsel for the 5th respondent.

13. Keeping the submissions made on either side, I have carefully perused the materials available on record.

14. Though an elaborate argument was also made by both sides on the factual aspects of the case also, I find that the only question that has to be decided in this matter is as to whether the order passed by the 1st respondent ordering for change of patta in favour of the 4th respondent is legally sustainable. Hence, I am of the opinion that this Court need not discuss the other factual disputes found in the case.

15. In my considered opinion, no doubt, the 1st respondent is the competent person to order for change of patta. But, in the instant case, I find that the petitioner is claiming right over the subject properties based on the unregistered Will dated 17.05.2010 said to have been executed by the deceased Subbiah Pillai. Similarly, the 4th respondent who is the brother of the deceased Subbiah Pillai is also claiming right over the subject properties based on the settlement deed dated 23.06.2010 said to have been executed by the deceased Subbiah Pillai in his favour. Both the parties are claiming that the document produced on

the opposite is forged and concocted document. Therefore, I find that there is serious of facts between the parties. Under such situation, the 1st respondent, instead of ordering for change of patta by deciding the genuineness of the documents, ought to have relegated the parties to the Civil Court to decide the issue. But, by rendering findings to the effect that the Settlement Deed dated 23.06.2010 is a registered document and the Will dated 17.05.2010 alleged to have been executed by Subbiah Pillai in favour of the petitioner is only an unregistered document, the 1st respondent has ordered for change of patta in the name of the 4th respondent. In my considered opinion, without adducing evidence in respect of those documents, the 1st respondent has no authority to give finding with regard to the genuineness of the documents. In the instant case, the impugned order passed by the 1st respondent ordering for change of patta in favour of the 4th respondent is not correct.

16. Though the learned counsel for the 4th respondent submitted that the patta is standing in his name by virtue of the order dated 30.08.2010 passed by the Deputy Regional Tahsildar, I find that even before ordering transfer of patta in the name of the 4th respondent, the petitioner herein had also filed an application on 14.07.2010 before the Tahsildar to change the patta in his name. Therefore, the objection was already made by the petitioner in changing the patta in the name of the 4th respondent. But, without considering the said objection of the petitioner, the order dated 30.08.2010 was passed by the Deputy Regional Tahsildar in favour of the 4th respondent. Under such circumstance, I am not inclined to accept the submission made by the learned counsel for the 4th respondent that since the patta was also standing in the name of the 4th respondent right from 30.08.2010, there is no need to interfere with the findings of the 1st respondent in the impugned order. It is well known legal principle that each case has to be decided only on the factual aspects of that case. A straight jacket formula cannot be applied for all the cases. In the instant case, since the parties have to prove their case by adducing evidence, the 1st respondent ought not to have ordered for change of patta in favour of the 4th respondent. Evidence on record would show that both the parties have made attempts to change the patta in respect of the subject properties clandestinely without the knowledge of the opposite party. In this situation, now no significance could be attached to the order dated 30.08.2010 passed by the Deputy Regional Tahsildar. Therefore, the claim of the 4th respondent that the patta is standing in his name after the demise of Subbiah Pillai does not attract any significance in this case. The respondents 2 & 3 have rightly directed the parties to approach the Civil Court to decide the issue. Whereas, the 1st respondent has erroneously, by deciding the question of title and genuineness of the documents, ordered for change of patta, which is not legally sustainable.

17. Hence, the impugned order dated 18.06.2015 passed by the 1st respondent is set aside and consequently, the order passed by the 3rd respondent, which was confirmed by the 2nd respondent, is restored. Either of the party, who feels aggrieved over the same, can approach the Civil Court.

With the above terms, the writ petition is allowed. Consequently, connected Miscellaneous Petitions are closed. No costs.