

(2006) 11 MAD CK 0085

In the Madras High Court

Case No : Writ Petition No. 9040 of 2004

Subramaniam, S. Arputharajan and Subbulakshmi

APPELLANT

Vs

The Special Commissioner and Commissioner of land
Administration and Others

RESPONDENT

Date of Decision : 22-11-2006

Acts Referred:

Constitution of India, 1950 — Article 226
Hindu Succession Act, 1956 — Section 8

Citation : (2006) 11 MAD CK 0085

Hon'ble Judges : M. Jaichandren, J

Bench : Single Bench

Advocate : N. Kannan, for the Appellant; D. Sreenivasan Government Advocate and M.V. Venkateshan RR1 to R4 and R5, for the Respondent

Final Decision : Dismissed

Judgement

M. Jaichandren, J.—The Writ Petition has been filed praying for the issuance of a writ of Certiorari to call for the impugned proceedings D.Dis.K4/R.P.29/03 (K4/1306/03), dated 5.3.2004, of the first respondent herein and to quash the same as illegal.

2. Heard the learned Counsel for the petitioners as well as the respondents. The brief facts of the case, as stated in the affidavit filed in support of the writ petition, are as follows:

3. It is submitted by the petitioners that originally the land bearing Survey Numbers 92/2A, 2B, 142/12, 192/2A4, 200/1, 201/4 of Kovilpappakudi Village, Madurai North Taluk belonged to one Alagu Moopnar. The said Alagu Moopnar died intestate, on 11.6.1999, leaving behind his wife one Periakkal as his sole legal heir. After the demise of the said Alagu Moopnar, his wife Periakkal became the absolute owner of the above said properties and had been in possession and enjoyment of the same. Periakkal had obtained a legal heirship certificate from the fourth respondent herein, on 8.7.1999 and thereafter, applied

for transfer of patta in her favour and for the necessary changes to be made in the Revenue Records. The fourth respondent by his order, dated 24.7.1999, after conducting an enquiry, ordered the transfer of patta in favour of Periakkal as requested by her.

4. The second petitioner had purchased the land admeasuring to an extent of one acre and 57 cents in Survey No. 92/2A and one cent in Survey No. 92/2B from Periakkal by way of a registered sale deed, dated 14.10.1999, bearing document No. 5397/1999, registered at the office of the Sub- Registrar, Arasaradi, Madurai. Likewise, the first petitioner and the third petitioner had purchased lands from Periakkal by way of registered sale deeds, dated 14.10.1999, bearing document Numbers 5396/1999 and 5395/1999 registered at the office of the Sub-Registrar, Arasaradi, Madurai.

5. The fifth respondent herein had filed an objection before the fourth respondent herein for transfer of patta in the name of Periakkal and the petitioners herein. The third respondent by his order, dated 21.1.2000, had set aside the legal heirship certificate issued in favour of Periakkal by the fourth respondent, without conducting any enquiry and without giving due notice to the parties concerned. Thereafter, the fifth respondent had filed an appeal before the third respondent against the order, dated 24.7.1999 and the third respondent had directed the fifth respondent and Periakkal to seek remedy from the Civil Court by his order, dated 2.3.2000. Immediately thereafter, Periakkal preferred a revision petition before the second respondent against the order, dated 2.3.2000, passed by the third respondent. While the above revision petition was pending, Periakkal had died, on 14.2.2002, without any issues. Therefore, the petitioners had impleaded themselves in the revision petition before the second respondent. The second respondent, after considering the facts and circumstances of the case, set aside the order of the third respondent and confirmed the order of the fourth respondent granting patta, vide his order, dated 18.12.2002. Further, the second respondent had categorically held that it is for the fifth respondent to prove that she is the legal heir of late Alagu Moopanar before a competent Civil Court as she is claiming to be the second wife, especially, in the circumstances where she had admitted the fact that the said Periakkal was the first wife. Against the order, dated 18.12.2002, passed by the second respondent, the fifth respondent preferred a revision petition before the first respondent. The first respondent, without considering the materials on record, had erroneously allowed the revision petition and set aside the order, dated 18.12.2002, passed by the second respondent and confirmed the order of the third respondent vide first respondent's impugned order No. D.Dis.k4/R.S.29/03 (K4/1306/03), dated 5.3.2004. Hence, the present writ petition.

6. The petitioners have raised the following grounds for challenging the impugned order of the first respondent, dated 5.3.2004, stating that

(i) the first respondent had failed to see that the fourth respondent had issued the legal heir certificate and patta in favour of Periakkal only after conducting a

detailed enquiry.

(ii) The first respondent ought to have held that the fifth respondent should have agitated her rights only before the competent civil Court in the manner known to law and as such, the cancellation of patta by the third respondent, without any notice to the parties concerned, was violative of the principles of natural justice.

(iii) The first respondent ought to have seen that the fifth respondent had not filed any civil Suit challenging the sale deed executed by Periakkal in favour of the petitioners.

(iv) Since Periakkal was the legal heir of the deceased Alagu Moopanar, the patta ought to have been granted to her only and anyone else disputing such granting of the patta ought to have approached the competent civil Court.

(v) The first respondent had erred in holding that Alagu Moopanar had two wives, namely, Periyakkal as the first wife and the fifth respondent as the second wife, in spite of having no evidence to show that the fifth respondent was his second wife.

(vi) The first respondent had overlooked the fact that the petitioner's vendor, namely, Periakkal was the sole class I legal heir of late Alagu Moopanar and as per Section 8 of the Hindu Succession Act, the said Periakkal alone was entitled to succeed to the properties of late Alagu Moopanar.

(vii) The first respondent had overlooked the fact that the said suit O.S. No. 156 of 1999 on the file of the District Munsiff Court, Madurai, filed by the fifth respondent herein was only a suit for bare injunction and it has nothing to do with regard to the grant of patta by the fourth respondent.

(viii) The first respondent ought to have seen that the fourth respondent alone was the competent authority for the grant of patta as prescribed by law.

7. In the counter affidavit filed by the fifth respondent, it is stated that the statements made by the petitioners that late Alagu Moopanar died intestate, on 11.6.1999, is not correct. In fact, as early as 9.1.1995, he had executed a will bequeathing the property, in question in favour of the fifth respondent and it was duly registered before the Sub-Registrar, Arasaradi, Madurai, on 10.1.1995. The validity of the will has been challenged in O.S. No. 156 of 1999, on the file of the District Munsiff Court, Madurai Taluk and it is pending disposal. While so, the petitioners are not entitled to maintain the present writ petition.

8. Even though Periakkal had obtained the legal heir certificate from the Tahsildar, Madurai North Taluk, by proceedings, dated 21.1.2000, the Revenue Divisional Officer, Madurai, had cancelled the said certificate. Aggrieved by the said decision, Periakkal had filed a revision before the District Revenue Officer, Madurai. By order, dated 2.6.2000, the revision had also been rejected. Since the issue relating to the property in question is in the nature of a civil dispute, only the civil Court, which has the competent jurisdiction, could decide the same.

Even in the order, dated 5.3.2004, the first respondent had only relegated the parties to settle the issue before the civil Court. Therefore, impugned order of the first respondent, dated 5.3.2004, is not illegal or ultra vires as alleged by the petitioners.

9. The petitioners, had filed a suit in O.S. No. 828 of 1999, before the II Additional Sub Judge, Madurai Town and renumbered as O.S. No. 1759 of 2004. The suit had been filed by the petitioners for the relief of injunction and the fifth respondent had not been impleaded as a party. Therefore, the fifth respondent had filed a petition in I.A. No. 199 of 2000 before the II Additional Sub Court, Madurai, for impleading herself as a party defendant and the same had been ordered. The above mentioned facts have not been mentioned by the writ petitioners in their affidavit filed in support of the writ petition.

10. On hearing the rival contentions and on a perusal of the records placed before this Court, it is seen that there has been a dispute between Periakkal, first wife of late Alagu Moopanar, and the fifth respondent in the present writ petition, with regard to the property, in question. The fifth respondent claiming to be the second wife of late Alagu Moopanar has claimed that the property of late Alagu Moopanar had been bequeathed to her by way of a registered will, dated 9.1.1995. While the validity of the will has been challenged by the petitioners in O.S. No. 156 of 1999 on the file of the District Munsiff Court, Madurai Taluk, it may not be open to the petitioners to challenge the order of the first respondent in the present writ petition. Further, it is noted that another suit O.S. No. 1759 of 2004 has also been filed before the Principal District Munsiff Court, Madurai Town, praying for the relief of injunction wherein the fifth respondent has also impleaded herself as a party defendant. While so, it is appropriate for the petitioners and the fifth respondent to settle their rival claims, with regard to the property in question, before the concerned civil Court. In such circumstances, it is not open to the respondents herein to decide the civil dispute with regard to the said property.

11. In such circumstances, this Court is of the considered view that the order passed by the first respondent in D.Dis.K4/R.P.29/03 (K4/1306/03), dated 5.3.2004, does not call for interference by this Court by invoking its extraordinary jurisdiction under Article 226 of the Constitution of India as the said dispute between the petitioners and the fifth respondent could be settled effectively by a civil Court of competent jurisdiction, in accordance with law. Therefore, the writ petition stands dismissed. No costs. Consequently, connected W.P.M.P. No. 10548 of 2004 is closed.