

Murugammal Vs. Special Tahsildar Updated Registry Scheme

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Court : Chennai

Decided On : Aug-14-2013

Judge : The Hon'Ble Mrs.Justice Chitra Venkataraman

Appellant : Murugammal

Respondent : Special Tahsildar Updated Registry Scheme

Judgement :

IN THE HIGH COURT OF JUDICATURE AT MADRAS DATED :

14. .08..2013 C O R A M The Honourable Mrs. Justice R.BANUMATHI and The Honourable Mr. Justice T.S. SIVAGNANAM Writ Appeal No.2841 of 2002 Murugammal .. Appellant versus 1.The Special Tahsildar, (Updated Registry Scheme), Unit 2, Ramanathapuram. 2.The Revenue Divisional Officer, Ramanathapuram District, Ramanathapuram. 3.The District Revenue Officer, Ramanathapuram District, Ramanathapuram. 4.S.Jayalakshmi 5.K.Pitchaimani 6.S.Ramupillai 7.S.Raghavan 8.S.Rajkumar 9.S.Ravikumar .. Respondents Prayer : Memoranda of Grounds of Appeals filed under Clause 15 of the Letters Patent against the order of a learned single Judge of this Court dated 09.08.2002 passed in Writ Petition No.11979 of 1993. - - - - - For Appellants : Mr.S.Anbarasan For Respondents : Mr.P.S.Shiva Shanmughasundaram AGP for RR1to3 Mr.R.T.Doraisamy for R6 No Appearance for RR4,5, 7 to 9 - - - - -

JUDGMENT

R.BANUMATHI, J & T.S.SIVAGNANAM, J This appeal is directed against the order dated 09.08.2002 in W.P.No.11979 of 1993.

2. The writ petitioner is the appellant herein. The writ petition was filed challenging the order passed by the second respondent dated 31.12.1992, as confirmed by the third respondent by dated 20.03.1993, and for a consequential direction to the respondents 1 to 3 to include the name of the appellant in the Joint patta bearing No.683 in respect of survey No.134/1, Nochiyurani village, Ramanathapuram Taluk and District.

3. The case of the appellant is that during the Samasdhanam period, the appellant's father Chinna Munikaruppan was granted patta in respect of Paimash No.105 of Nochiyurani village, Ramanathapuram Taluk, measuring an extent of about 5.40 acres. In the settlement proceedings conducting during 1964, the lands in paimash No.105, 91 & 92 were clubbed together and survey No.134 was assigned and the total extent is said to be 6.67.0 hecets., and a joint patta No.75, dated 12.09.1964 was issued in the name of 10 persons including the father of the appellant. It is further submitted that during 1987, Joint patta No.223, was issued including the name of the appellant. During 1989, the appellant submitted an application for sub-division of the property and issuance of separate patta in her name. The fourth respondent, who was a co-pattadhar submitted his objections and based on which the Tahsildhar conducted enquiry after inspecting the land and confirmed the Joint patta including the name of the appellant. Aggrieved by such order, the fourth respondent preferred an appeal to the second respondent, who by proceedings dated 25.02.1991, dismissed the appeal. The fourth respondent filed a revision before the third respondent, who allowed the revision and remanded the matter to the second respondent with certain directions. On such remand, the second respondent by order dated 31.12.1992, directed the deletion of paimash No.105 and inclusion of paimash Nos.90, 91 & 92. Against such order passed by the second respondent, the appellant preferred appeal to the third respondent, which was dismissed by order dated 20.03.1993. Challenging the order dated 20.03.1992, passed by the third respondent confirming the order passed by the second respondent dated 31.12.1992, the writ petition was filed.

4. The official respondents and the fourth respondent filed counter affidavit resisting the claim of the appellant.

5. The writ Court after considering the rival contentions took note of the statement made in the counter affidavit filed by the third respondent that the S.L.R., copy was not produced either before the second respondent or the third respondent and on the other hand, the fourth respondent has produced Patta Passbook issued in his name and in the light of the overwhelming material, the writ Court confirmed the factual findings recorded by the respondents 2 & 3 and dismissed the writ petition by order dated 09.08.2002. Challenging the said order, this appeal has been filed.

6. We have heard Mr.S.Anbarasan, learned counsel appearing for the appellant, Mr.P.S.Shiva Shanmughasundaram learned Additional Government Pleader appearing for the respondents 1 to 3 and Mr.R.T.Doraisamy learned counsel appearing for the sixth respondent and carefully perused the materials placed on record.

7. In the writ petition, the third respondent had filed a counter affidavit on behalf of the respondents 1 to 3. The official respondents sought to justify their order by referring to an inspection conducted by the second respondent on 31.12.1992, in which it is stated that the contentions raised by the appellant, were not proved. Further, it is stated that the fourth respondent has produced documents and during the inspection of the property, it was found that paimash Nos.90, 91 & 92 alone correlate to survey No.134 and paimash No.105 has been wrongly included in survey No.134. Further, in the counter affidavit the official respondents have made a statement that the appellant has not filed the SLR copy either before the second respondent or the third respondent to prove that the land in survey No.134/1, belong to his ancestor. This stand taken in the counter affidavit appears to have largely weighed with the writ Court for dismissing the writ petition. However, when we peruse the impugned orders in the writ petition, it is seen that the appellant has produced the relevant SLR copy. In such circumstances, the statement made in the counter affidavit filed by the respondents 1 to 3 in the writ petition is factually incorrect. The certified copy of the SLR has been filed by the appellant in the typed set of papers, from which it is seen that survey No.134 corresponds to paimash

No.91, 105 and 92. From column No.29 of the certified copy of the SLR, it is seen that the name of Chinna Munikaruppan finds place as serial No.10. The specific contention of the appellant is that this record has not been properly appreciated by the respondents 2 & 3 and when the appellant produced kist receipts to show that Chinna Munikaruppan had paid kist for the land in patta No.75, during 1977 and kist was paid by the appellant for patta No.75, during 1982, ignoring these vital documents, without due application of mind, the second respondent proceeded to solely rely upon the inspection conducted to held that property in paimash No.105, does not form part of the survey No.134.

8. Prima facie on perusal of the certified copy of the SLR, it appears that the findings recorded by the respondents 2 & 3 are incorrect. If the entry contained in the SLR is incorrect, then the respondents 2 & 3 ought to have assigned reasons, which are legally justifiable to show that paimash No.105, has been wrongly included and the correct paimash numbers to be included are only 90, 91 & 92. However, when we peruse the orders passed by the respondents 2 & 3, there is no such findings recorded by the authorities.

9. The learned counsel appearing for the appellant submitted that the second respondent in his order dated 25.02.1991, categorically stated that the appellant was in possession of her land and joint patta have been issued in the name of 10 persons including the appellant and without altering the said finding, the second respondent deleted her name from the patta without any valid reason. Further, it is submitted that nobody has claimed that paimash No.90 should be included in survey No.134 and to delete paimash No.105 and even as per the claim of the fourth respondent, paimash Nos.91 & 92 alone comprises survey No.134 and it was nobody's case that paimash No.90 should be included in survey No.134. Further, the learned counsel submitted that the appellant also produced a decree passed in O.S.No.419 of 1971, on the file of the District Munsif, Ramanathapuram, which arose out of a dispute between the fourth respondent and his co-sharers in which paimash No.91, is described as item 70 and the extent given is only 5.4 acres as against the total extent of 16.93 acres. Further, it is submitted that patta No.62 for paimash No.92, has been issued in the name of Ramapillai and it is the fourth respondent's claim that Ramapillai was his grandfather, but the said

contention is not correct, as he is the father of the Nagalingampillai, which is why the name of Nagalingampillai has also been incorporated in survey settlement patta No223. Therefore, it is the contention of the appellant that the entire extent of 16.93 acres claimed by the fourth respondent is erroneous.

10. The learned counsel for the fourth respondent would contend that the authorities have concurrently held that paimash No.105, has been wrongly included and this came to light during inspection and the writ Court also found the factual finding recorded by the respondents 2 & 3 as acceptable and therefore, this court should not interfere.

11. It is true that a writ court will not interfere in patta proceedings more particularly when there is a rival claim of the title to the property and the proper remedy is to approach the Civil Court of competence jurisdiction. However if the authorities exercising their power under the Patta Passbook Act have erroneously proceeded with the matter, failed to appreciate the relevant revenue entries or when there is a violation of principles of natural justice, the aggrieved persons are entitled to approach the writ Court for appropriate remedy.

12. As noticed above, the respondents 1 to 3 filed a counter affidavit in the writ petition stating that the appellants have not filed the SLR copy either before the second respondent or the third respondent. This statement made in the counter affidavit is shown to be false, as the SLR record is document No.1, produced by the appellant, who was the respondent before the second respondent. At the first blush, perusal of the order passed by the second respondent dated 31.12.1992, appears to be a reasoned order, but on a closure scrutiny, it is seen that the order (typed copy) containing 13 pages of which 12 pages deals with the contentions raised by both parties and the list of documents and the operative portion of the order is last paragraph of the order, which says that based on inspection conducted by the second respondent, the appellant is not in possession and during the settlement proceedings, paimash No.105 has been wrongly included and the correct paimash numbers to be included are 90, 91 & 92 and not 105 and therefore, the Joint patta granted in favour of the appellant has to be cancelled. Thus, it is evident that there was no discussion by the second respondent with

regard to the entries found in the SLR and the other contentions, which were raised by the appellant. This erroneous order was confirmed by the third respondent by passing the order dated 31.03.1993, which is also a non-speaking order solely relying upon the inspection conducted by the second respondent.

13. Thus, it is evidently clear that the respondents 2 & 3 did not appreciate the rivals contentions and solely relied upon the inspection, rejected the contentions raised by the appellant, did not adhere to the entry found in the SLR and without assigning any reasons as to the legal basis for coming to the conclusion that paimash No.105, was wrongly included in the SLR passed the impugned orders in the writ petition.

14. In the light of the above, we are fully satisfied that the authorities did not exercise their statutory powers in a proper manner and their orders do not reflect the materials on record and clearly arbitrary. Therefore, the matter requires to be reconsidered in its entirety without being in any manner influenced by any of the earlier orders passed.

15. Accordingly, the writ appeal is allowed, the order passed by the second respondent dated 31.12.1992, and the order passed by the third respondent dated 20.03.1993, are set aside and the matter is remanded to the second respondent for fresh consideration. The second respondent shall issue notice to the appellant, fourth respondent and other persons, who may be interested and on receipt of their written objections and after affording an opportunity of personal hearing to the parties, consider the entire matter afresh and pass a reasoned order on merits and in accordance with law. The entire exercise shall be completed within a period of three months from the date of receipt of a copy of this order. Till the matter is considered afresh by the second respondent in terms of the above direction, the status quo with regard to the entries in the patta as on date shall be maintained.

16. It is needless to state that the appellant as well as the private respondents shall co-operate for the expeditious disposal of the proceedings by the second respondent. No costs. Consequently, connected miscellaneous petition is closed.
pbn To 1.The Special Tahsildar, (Updated Registry Scheme), Unit 2, Ramanathapuram. 2.The Revenue Divisional Officer, Ramanathapuram District,

Ramanathapuram. 3.The District Revenue Officer, Ramanathapuram District,
Ramanathapuram

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