

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:30-10-2009

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM

W.P.No.13708 of 1999

A. Raju

.. Petitioner.

-vs-

1. Karuppaih
2. Shanmugam
3. Karnan
4. Anbu
5. Babu
6. Rajendran
7. R. Muthuvelar

8. The Record Officer
(Tenancy Records) and
Tahsildar, Madurai North

9. The Revenue Divisional Officer
Madurai

10.The District Revenue Officer,
Madurai

.. Respondents.

Writ petition is filed under Article 226 of the Constitution of India for issuance of Writ of Certiorari calling for the records relating to the order of the District Revenue Officer, Madurai dated 03.05.1999 and passed in Cee.Ma 5 of 1998 (R.P.No.) (Na.Ka.3165/98) and quash the same.

For Petitioner : Mr.C.R. Krishnamoorthy

For R8 to R10 : Mr.G.Desingu
Special Government Pleader

O R D E R

The petitioner had filed the above Writ petition challenging the order passed by the 10th respondent herein, The District Revenue Officer, Madurai. By the impugned order, the 10th respondent has set aside the earlier orders passed by the Record Officer

(Tenancy Records)-cum- Tahsildar, Madurai North and the Revenue Divisional Officer, Madurai, thereby deleting the petitioner's name as the cultivating tenant of the lands owned by Poosaries. Patta has been issued in the name of four Poosaries and Iyyanar Temple.

2. The facts of the case are that the petitioner herein submitted an application to the 8th respondent on 12.09.1979 to record his name as the cultivating tenant. The 8th respondent, after conducting necessary enquiry, recorded the name of the petitioner as the cultivating tenant. Aggrieved by such entry, the Pattathars of the property filed an appeal before the 9th respondent. The Appellate Authority, by an order dated 27.05.1985 confirmed the order of the Record Officer dated 12.09.1979. Aggrieved by such order, the Pattathars filed a Revision before 10th respondent. The Revisional Authority, by an order dated 14.09.1986 allowed the Revision Petition and set aside the orders passed by the 8th and 9th respondents. Aggrieved by such order, the petitioner filed a Writ petition before this Court in W.P. No. 11198 of 1986. The said Writ petition was allowed by an order dated 09.12.1996 and remanded the matter to the District Revenue Officer, Madurai for fresh disposal according to law within a period of 90 days from receipt of a copy of order. On remand, the 10th respondent herein by an order dated 03.05.1999 dismissed the Revision Petition, which order is impugned in the Writ petition.

3. Mr. C.R. Krishnamoorthy, learned counsel appearing for the petitioner would contend that the impugned order is erroneous and outcome of non application of mind. The petitioner is in possession of the property as the tenant and he has been regularly paying "Warams" and he is in possession of receipts also issued for such payment. Learned counsel for the petitioner would further contend that even as on date, the petitioner is in possession of the property and Kist is remitted by the petitioner. It is further contended that there is no jurisdiction for Civil Court to decide the present question and on the basis of any such decision, right of the petitioner cannot be extinguished. On the above ground, learned counsel for the petitioner would submit that the impugned order is not sustainable.

4. A counter affidavit has been filed on behalf of the respondents 1 to 4 and 6 & 7 wherein it has been contended that after the Inams were abolished as per Tamil Nadu Act 30 of 1963, the 7th respondent and parents of respondents 1 to 6 represented before the Settlement Tahsildar, Madurai and obtained Ryot Wari Patta for the lands along with other lands under Section 8(2)(ii) of the Act 30 of 1963 by the order of the Tahsildar dated 22.06.1976 in favour of the Manjampatty Ayyanar Temple and four others recognizing them as hereditary Poosaries and trustees of the Temple doing services to the Temple. Since one of the trustees began to lay claim of the property

for himself, one of the trustees filed an appeal in C.M.A. No. 227 of 1971 and the mischief was averted. The Settlement Tahsildar, after due enquiry, has granted Ryot Wari Patta to the lands in favour of Ayyanar Temple and recognized all the four Poosaries as Trustees.

5. It is submitted that the Writ petitioner's father and eight others had laid some claims over the lands based on some documents executed by one of the Poosaries namely S. Karanthamalai Velar. Therefore, a suit in O.S. No. 54 of 1977 came to be filed before the District Munsif Court at Melur for recovery of possession. The said suit was decreed on 31.07.1978 and the Plaintiff filed an execution petition in E.P.No. 217 of 1978 and possession was taken over by three trustees on 08.11.1978 through Court.

6. It is further submitted that among nine Defendants in O.S. No. 54 of 1977, five Defendants continued to interfere with the possession of the petitioner's land. Hence, O.S. No. 61 of 1979 was filed before District Munsif Court, Melur for permanent injunction and the Writ petitioner's father and four other were permanently enjoined from interfering into the lands. In fact, the Writ petitioner sought for impleading himself in I.A.No. 734 of 1980 in O.S. No. 61 of 1979 which was rejected by an order dated 13.12.1980. As against the said order, the petitioner preferred C.R.P. No. 1041 of 1981 before this Court and the same was dismissed as not pressed on 15.07.1981. Thus, it is contended that the possession of the land was taken over by the trustees on 08.11.1978 and now the petitioner at the instigation of his father filed an application on 12.09.1979 after the decree in O.S. No. 54 of 1977 dated 31.07.1978 and got his name recorded as tenant. Therefore, learned counsel would contend that the impugned order in the present Writ petition is perfectly valid and calls for no interference.

7. I have carefully considered the submissions on either side and perused the materials available on record.

8. It is not in dispute that the suit in O.S. No. 54 of 1977 came to be decreed on 31.07.1978 and the decree was executed in E.P. No. 217 of 1978 and the trustees have taken possession through Court on 08.11.1978. One of the Defendants in the said suit is father of the Writ petitioner. After more than one year after the suit was decreed, the petitioner / son has filed an application before the Record Officer (Tenancy Record) on 12.09.1979. The Record Officer by an order dated 21.02.1983, recorded name of the petitioner as tenant in Survey No. 81/4 Part northern portion. It is seen even in the said order, observation has been made that prior to handing over the possession of land to the 1st respondent herein (one of the hereditary poosaries), they continue to till the land. Thus, it is to be noted that the property in question was in possession of the trustees of the Temple pursuant to the decree of the Civil Court. However, an

appeal filed before the 9th respondent, the same was not considered. When the Revision came to be filed before the 10th respondent, after issuing notice to both the parties and hearing the submissions made by the learned counsels for both the parties, the Revisional Authority came to a conclusion that possession has been handed over to the trustees by pursuant to decree in O.S. No. 54 of 1977 by Court on 08.11.1978 and there is no record to show that the land in question is now in possession of the Writ petitioner. On this ground, the Revision Petition was allowed. This Court, by an order dated 09.12.1996 quashed the said order and remanded the matter for fresh consideration. On remand, the 10th respondent considered the entire facts and circumstances of the case and rejected the contention raised by the petitioner stating that what was delivered was only a paper delivery and the possession continued to remain with the petitioner. The Revisional Authority found that the Civil Court Decree has been executed through Court and the possession has been delivered and no record has been produced to prove that the petitioner was the cultivating tenant especially after the Civil Court Decree and handing over of possession. The Revisional Authority correctly held that such possession should be lawful possession and cannot be as a result of high handed action. Further, the Revisional Authority has taken note of facts that the application for recording the tenancy itself was filed after the suit was decreed and the possession was taken over. Thus, by considering entire facts and circumstances of the case and also taking note of the facts that the petitioner failed to produce any document in support of his claim and rejected the petition. Therefore, I am fully convinced that the claim made by the petitioner is not justified and the effect of the Civil Court Decree and taking over of possession is essentially a matter which has to be taken note of by the Authority functioning under provisions of the Tamil Nadu Agricultural Lands Record of Tenancy Rights Act 1969 and the contention of the petitioner, that the Civil Court Decree does not have any bearing on the proceedings, is not tenable. The Honourable Division Bench of this Court, while considering the scope of enquiry by the Revenue Officer in matters relating to Pattas and as to whether question of title have gone into the proceedings under Article 226 of Constitution of India in Kuppasamy Vs. District Revenue Officer and others, reported in (1995) 1 MLJ 426 wherein it is held that "the Revenue Officers in a Patta proceeding may express their view on the question of title, but such expression of opinion is not conclusive and 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 after the Revenue Authorities decide the question of title that will not in any way affect adjudication of Civil Court which has to decide the question without reference to the decision of the Revenue Authorities."

9. By applying the principle laid down in the above referred judgement, if facts of the present case are looked into, there is undoubtedly the Civil Court Decree in favour of trustees and possession of such property has been validly handed over to them by Court Ameen and such possession cannot be construed to be a paper delivery as contended by the petitioner. The Civil Court Decree and the effect of handing over the possession would have a binding effect on the present proceedings under the Record of Tenancy Act. Therefore, in my view, the Revisional Authority rightly rejected the contention raised by the petitioner and held that after the Civil Suit Decree, no record has been produced by the petitioner to prove the possession.

10. For all the above reasons, I find that there is no merit in the present petition and accordingly, Writ petition is dismissed. However, there will be no order as to costs.

Sd/-
Asst. Registrar.

/true copy/

Sub Asst. Registrar.

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To

1. The Record Officer
(Tenancy Records) and
Tahsildar, Madurai North
2. The Revenue Divisional Officer
Madurai
3. The District Revenue Officer,
Madurai.

+ 1 cc to Mr.C.R.Krishnamoorthy, Advocate, SR.No.37620

W.P.No.13708 of 1999

CKN (CO)
A.S. 04.11.2009