

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 03.08.2016

CORAM:

THE HONOURABLE MR. JUSTICE M.SATHYANARAYANAN

W.P.No.22637 of 2016

1.N.Chinnasamy

2.N.Kannusamy

... Petitioners

Vs.

1.District Collector,
Perambalur District,
Perambalur.

2.Tahsildar,
Veppanthattai Taluk,
Perambalur District.

3.Executive Officer,
Arumbavur Town Panchayat,
Arumbavur, Veppanthattai,
Perambalur District.

... Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying for the issuance of Writ of Mandamus, forbearing the respondent from dispossessing the petitioners from their land of an extent of 2816 sq. ft (32ft X 88ft) in Survey No.495/1 in Arumbavur Village, Veppenthattai Taluk, Perambalur District except under due process of law.

For Petitioners: Mr.V.Ravi

For Respondents: Mr.R.Govindasamy
Special Government Pleader.

O R D E R

The learned counsel appearing for the petitioners would submit that their father viz., Navu Reddiar had purchased a land admeasuring to an extent of 2816 sq. ft (32ft X 88ft) in survey No.495/1 in Arumbavur Village, Veppenthattai Taluk, Perambalur District, through a registered sale deed bearing Document No.671 of 1964, registered on the file of the Sub Registrar, Perambalur

and claim to be in possession and enjoyment of the same for the past 52 years. The petitioners would further state that in the year 2012, the third respondent herein sought to disturb his possession and therefore, they filed a suit in O.S.No.290 of 2012 on the file of the Court of District Munsif, Perambalur praying for permanent injunction restraining the defendant or his agents from interfering with their peaceful possession and enjoyment of the suit property and also for costs.

2. Mr.V.Ravi, learned counsel appearing for the petitioners would submit that despite the fact that the third respondent herein/third defendant in the said suit remained exparte, the possession of the petitioners is sought to be disturbed and therefore, they are constrained to approach this Court by filing this writ petition.

3. The matter was listed on 05.07.2016 and this Court directed the learned Principal District Judge, Perambalur, to submit a report as to the stage of the proceedings and accordingly, the learned Principal District Judge has submitted a report on 27.07.2016 stating that the defendant was set exparte on 10.12.2013 and the exparte evidence was taken and thereafter, the suit argument was heard and subsequently, the petitioners/plaintiffs were directed to produce the title deed of the vendor as well as the encumbrance certificate and the suit is pending for production of further document. It is further stated that I.A.No.954 of 2012 filed by the petitioners/plaintiffs for ad-interim injunction was closed on 15.10.2014 with the liberty to reopen the same and despite the fact that the third respondent has been set exparte, continue to disturb the possession of the petitioner and prays for appropriate orders.

4. Per contra, Mr.R.Govindasamy, learned Special Government Pleader, who accepts notice on behalf of the respondents 1 to 3 would submit that since the petitioners have also instituted a suit for the very same relief, they cannot be permitted to prosecute the writ petition and prays for dismissal of this writ petition.

5. This Court has carefully considered the rival submissions and also perused the materials before this Court.

6. The petitioners has already instituted a suit in O.S.No.290 of 2012 on the file of the Court of Principal District Munsif, Perambalur for the very same relief and in paragraph No.4 of the plaint, it is averred that the defendants are attempting to interfere with their possession unlawfully. It is also pertinent to point out at this juncture that though pendency of the suit, the petitioners/plaintiffs had filed

I.A.No.954 of 2012 for ad-interim injunction, they did not get any interim orders and it was closed on 15.10.2014 with liberty to reopen the same as and when required.

7. A perusal of the report would also disclose that the exparte judgment could not be passed on account of non production of certain documents sought for by the Court from the petitioners/plaintiffs.

8. In the considered opinion of this Court that on account of the pendency of the suit, the petitioners cannot parallelly prosecute this writ petition. Therefore, this Writ Petition is dismissed subject to the above observations and the petitioners are at liberty to move the said Court for appropriate relief in O.S.No.290 of 2012.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

- 1.District Collector,
Perambalur District,
Perambalur.
- 2.Tahsildar,
Veppanthattai Taluk,
Perambalur District.
- 3.Executive Officer,
Arumbavur Town Panchayat,
Arumbavur, Veppanthattai,
Perambalur District.

+1cc to the Government Pleader, S.R.No.44181
+1cc to Mr.V.Ravi, Advocate, S.R.No.44092
+1cc to Mr.R.Govindasamy, Advocate, S.R.No.44137

Writ Petition No.22637 of 2016

vd(CO)
srg(26/08/2016)