

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.04.2016

CORAM :

THE HONOURABLE MR.JUSTICE R.SUBBIAH

W.P.No.34741 of 2013

G.V.Satheesh Kumar

... Petitioner

Vs.

1.The District Collector,
Thiruvallur District at Thiruvallur.

2.The Tahsildar
Ambattur Taluk at Ambattur, Chennai.

3.The Sub Registrar,
O/o.Sub Registrar, Avadi.

4.S.Kalimuthu

5.Elumalai

6.H.Naveed Hasan

... Respondents

Writ petition is filed under Article 226 of the Constitution of India praying for issuance of Writ of Mandamus to direct the respondents 1 to 3 to remove the encroachments made by respondents 4 to 6 forthwith and to restore possession to the petitioner.

For Petitioner

For respondents

:

:

Mr.L.Chandrakumar

Mr.V.Jayaprakash Narayanan,
Spl.GP. for R1 to R3.

Mr.Murali Babu

M/s.My Lord Associates for R4.

Mr.D.S.Ramesh for R6.

No appearance for R5.

O R D E R

The petitioner has come forward with the present Writ Petition seeking for issuance of Mandamus to direct the respondents 1 to 3 to remove the encroachments made by respondents 4 to 6 forthwith and to restore possession to the petitioner.

2.The petitioner is the absolute owner of the property to an extent of 1.39acres in S.No.513/13, Morai Village, Ambattur Taluk having purchased the same for valuable sale consideration during 2006 for the partnership firm and having been in possession and enjoyment of the same and all the revenue records stand mutated in favour of the petitioner, including patta, Chitta and Adangal. Thereafter, the petitioner approached the competent authority in application No.14116 dated 27.06.2012 for measuring of boundaries, on apprehension that the lands are being mis-utilized by certain 3rd parties in view of non disclosure of the boundaries.

3.Thereafter, the petitioner filed WP.No.4737 of 2013, this Court by an order dated 08.04.2013, directs the second respondent therein/Tahsildar, Ambattur to consider the representation of the petitioner dated 27.06.2012 and pass orders on merits and in accordance with law, after affording opportunity to the petitioner and others. The official respondents have failed to discharge the statutory obligations cast upon them despite receipt of the representation from the petitioner and inspite of direction given by this Court.

4.In fact, the Inspector General of Registration in its proceedings addressed to the Sub Registrar, Avadi in Ka.No.50362/R3/10 dated 30.08.2010 stated that the petitioner's survey No.514/13 of Morai Village is not covered under any acquisition proceedings and therefore registration can be accepted. At that point of time, the petitioner's land was not identified with metes and bounds by proper demarcation of boundaries. The petitioner verified the documents and the register from the concerned Registrar Office and it came to light that the private respondents have sold the property without any right what so ever which act tantamount to land grabbing coupled with encroachment. Hence, the petitioner filed the present writ petition to give direction to the respondents 1 to 3 to remove the encroachment made by the respondents 4 to 6.

5.The 6th respondent filed his counter inter alia stating that he purchased the plot bearing No.79 measuring 1215 sq.ft in Tirumalainagar Annexe VI in S.No.514/2 situated at Morai Village vide sale deed dated 22.03.2012 in document No.6519/2012 on the file of Sub Registrar, Avadi from one Rajendra Raja, R.Sasikumar and R.Pushparaj. The said sale deed was executed by one S.Kalimuthu Power of Attorney holder of Rajendra Raja, R.Sasikumar and R.Pushparaj who have executed a General Power of Attorney in document No.844/2009 dated 29.05.2009. The Zonal Deputy Thasildar, Ambattur has also issued patta No.4822 dated 30.03.2010 in favour of the said Rajendra Raja and his two sons namely Sasikumar and Pushparaja. It is further stated that after verifying the patta in the name of the vendor, the power

of attorney Kalaimuthu/fourth respondent executed the sale deed and the encumbrance certificate issued by the Sub Registrar, Avadi also ensure that the vendor has clear title over the said property. Hence, sought for dismissal of the writ petition.

6.Heard the submissions of learned counsel appearing for the petitioner and the learned Special Government Pleader who accepts notice on behalf of the respondents 1 to 3 and the learned counsels appearing for respondents 4 and 6.

7.The learned counsel for the petitioner submitted that by creating forged documents, the fourth respondent in his capacity as power of attorney holder sold the property of the petitioner to the sixth respondent. But this submission of the counsel for the petitioner was denied by the counsel for the sixth respondent.

8.However, this Court cannot conduct a roving enquiry, with regard to the disputed question of facts and hence this Court cannot give any positive direction to respondents 1 to 3 with regard to removal of encroachment. However, this Court directs the respondents 1 to 3 to consider the representation of the petitioner dated 19.08.2013 and pass orders on merits and in accordance with law, by affording an opportunity of personal hearing to the petitioner as well as to the respondents 4 to 6 and other necessary parties, if any. The said exercise shall be completed within a period of eight weeks from the date of receipt of a copy of this order. It is made clear that this Court has not expressed any opinion on the merits of the claim of the petitioner and it is for the respondents 1 to 3 to decide the claim of the petitioner purely on merits.

9.The writ petition is disposed of accordingly. No costs.
tsh

s/d-
Assistant Registrar (CS-V)

True Copy

Sub-Assistant Registrar

To

1. The District Collector,
Thiruvallur District at Thiruvallur.

2.The Tahsildar
Ambattur Taluk at Ambattur, Chennai.

3.The Sub Registrar,
O/o.Sub Registrar, Avadi.

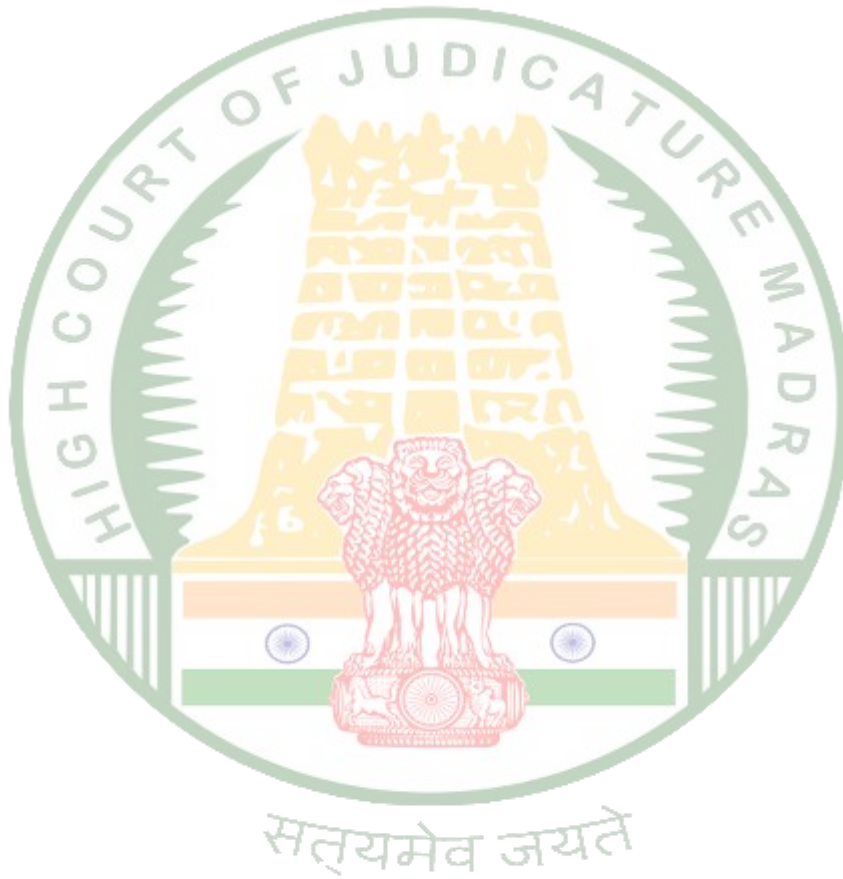
+ 1 cc to Mr.L.Chandrakumar, Advocate, SR21343

+ 1 cc to Mr.K.Muralibabu, Advocate, SR 21191

+ 1 cc to Govt.Pleader, High Court, Madras SR 21307

svi(co)
prk25/4

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