

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.03.2016

CORAM

THE HONOURABLE MR. JUSTICE R.SUBBIAH

Writ Petition No.5831 of 2016

and

WMP.No.5177 of 2016

S.Velusamy

... Petitioner

Vs.

1.The District Collector,
Erode District, Erode.

2.The Tahsildar,
Erode Taluk, Erode.

3.G.S.Krishnamoorthy

(R3 impleaded as per the order of this Court
dated 17.03.2016 made in WMP.No.7902/2016)

... Respondents

Writ petition has been filed under Article 226 of the
Constitution of India, praying for a Writ of mandamus,
forbearing the respondents from forming a road in the
petitioner's land in Survey No.14/3 of Kodumudi Village, Erode
Taluk, Erode District.

For Petitioner : Mr.S.Lakshmanasamy

For R1 & R2 : Mr.M.Dig Vijaya Pandian,
Addl.Govt.Pleader

For R3 : Mr.T.Sathyaseelan

ORDER

The petitioner has come up with the present writ
petition for a mandamus, forbearing the respondents from forming
a road in his land in Survey No.14/3 of Kodumudi Village, Erode
Taluk, Erode District.

2. According to the petitioner, the land in S.No.14/3 of Kodumudi Village originally belonged to his grand father Palanisamy Gounder. The said Palanisamy Gounder died on 21.05.1992, leaving behind a registered Will executed in favour of the petitioner, with respect to his landed properties. Based on the same, the petitioner has been in possession and enjoyment of the said properties. While so, on 10.02.2016, the officials of the respondents 1 and 2 trespassed into the petitioner's patta land for the purpose of laying a road, without following any procedure under law. Therefore, the petitioner is before this Court with the present writ petition for the above stated relief.

3. Denying the averments made in the writ petition, a counter affidavit has been filed by the respondents 1 and 2, interalia stating as follows:

(i) Survey No.14/3 of Kodumudi Village is a Nilaviyal Odai. The property in S.No.14/2 of Kodumudi Village is an Odai poramboke and is belonging to the Government. Therefore, the petitioner or any other person has no right over the same.

(ii) Though S.No.14/3 is belonging to the petitioner's grandfather and patta stood in his name, the petitioner cannot prevent the village people to use the same as pathway or cart track, because the said land was classified as Nilaviyal Odai in the village register.

(iii) It is further stated in para 7 of the counter affidavit that the respondents are not trying to form any road in the land in S.No.14/3. Based on the petition submitted by one K.S.Krishnamurthy to the Chief Minister's Special Cell regarding encroachment in S.Nos.14/3 and 14/2 of Kodumudi Village, the revenue officials inspected the land in the said survey numbers. At that time, they came to know about the pipe line put up in S.No.14/2 without obtaining any permission. Therefore, the respondents are going to take steps to evict the encroachment only in respect of S.No.14/2 and they will not disturb the petitioner's possession and enjoyment in respect of the land in S.No.14/3.

4. During the pendency of this writ petition, one G.S.Krishnamoorthy has filed a petition in WMP.No.7902 of 2016 to implead him as third respondent in the writ petition. The said Miscellaneous Petition was ordered on 17.03.2016. It has been stated in the affidavit filed by the third respondent as follows:

(i) The third respondent is the owner of the land in S.Nos.12/3, 12/4 and 10 of Kodumudi Village. He and other

adjacent owners were using the cart track in S.Nos.6/2, 14/2, 14/3, 13/3, 11/3, 78/1, 80/2, 81/2, 82/1, 83/1. The writ petitioner encroached the portion of cart track, which runs through his land situated in S.Nos.13/3 and 14/3. Therefore, the third respondent filed a suit in O.S.No.146 of 2011 before the District Munsif Court, Kodumudi against the petitioner herein and his father Subbanna Gounder for permanent injunction and the same is pending. The writ petitioner has also filed a suit in O.S.No.129 of 2011 before the District Munsif Court, Kodumudi against the third respondent and other adjacent land owners for permanent injunction and the same is pending.

(ii) S.No.14/2 of Kodumudi Village totally measuring to an extent of 1 acre 60 cents is a Government Poramboke land, which was used as a pond to storage the waste water and rain water.

(iii) Apart from the encroachment in the cart track, the writ petitioner has also encroached the portion of land in S.No.14/2 by laying the pipe line without getting proper permission from the authorities. Therefore, the third respondent sent a representation to the Chief Minister's Special Cell to take appropriate action.

By stating so, the third respondent prayed for dismissal of this writ petition.

5. Heard the learned counsel for the petitioner, learned Additional Government Pleader appearing for the respondents 1 and 2 and the learned counsel for the third respondent and perused the materials available on record.

6. It is the specific case of the petitioner that he is the owner of the land in S.No.14/3 of Kodumudi Village, through a registered Will executed by his grandfather Palanisamy Gounder and he has been in possession and enjoyment of the same, whereas, the same is denied by the respondents 1 and 2 as well as the third respondent on the ground that the land in S.No.14/3 is an Odai Poramboke land. It is also categorically stated by the third respondent that the civil suits are pending against each other in respect of the issue involved herein. In such circumstances, this Court is of the view that such disputed issues cannot be gone into in this writ petition filed under Article 226 of the Constitution of India by conducting a roving enquiry. Therefore, the relief sought for in this writ petition cannot be granted by this Court.

7. Accordingly, the writ petition is dismissed. However, the petitioner is at liberty to work out his remedy

before the appropriate civil forum. No costs. Consequently,
connected Miscellaneous petition is closed.

rk

Sd/-
Asst.Registrar

/true copy/

Sub Asst. Registrar

To

1.The District Collector,
Erode District, Erode.

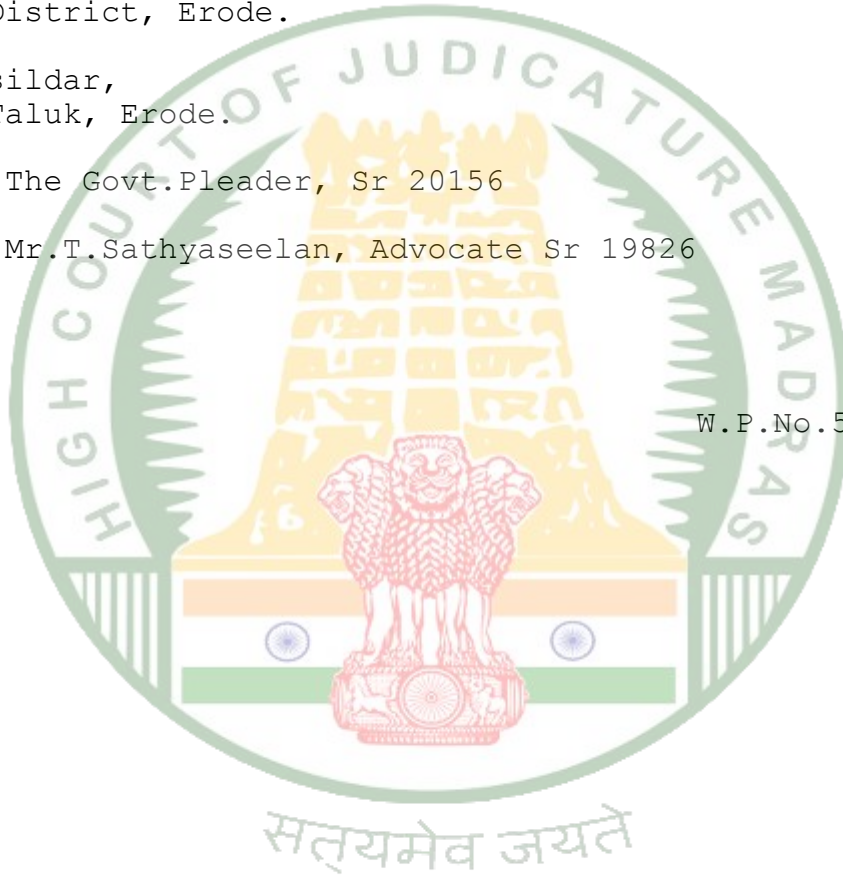
2.The Tahsildar,
Erode Taluk, Erode.

+ 1 cc to The Govt.Pleader, Sr 20156

+ 1 cc to Mr.T.Sathyaseelan, Advocate Sr 19826

KR/3/6/16

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