



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 19.08.2016

CORAM

THE HONOURABLE **MR. JUSTICE T. RAJA**

W.P(MD) .No.15332 of 2016

K.Petchimuthu

... Petitioner

Vs

1.The Commissioner,
Dindigul Corporation,
Dindigul.

2.M.L.Kesavan

... Respondents

Writ Petition filed under Article 226 of the Constitution of India for the issuance of a Writ of Mandamus directing the 1st respondent not to grant approval in favour of the 2nd respondent in the petitioner's property situated in Town Survey No.505/2, Elupamaram 2nd Street, Nagar Nagar, Dindigul Town, based on petitioner's representation dated 10.03.2016 within stipulated time period to be fixed by this Court.

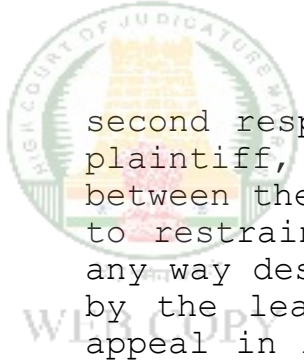
For petitioner : Mr.S.Mohan Gandhi
For Respondents : Mr.J.Lawrance for R1

ORDER

The petitioner herein seeks for the issuance of a Writ of Mandamus, directing the first respondent not to grant approval in favour of the second respondent as regards the petitioner's property in Town Survey No.505/2, Elupamaram 2nd Street, Nagar Nagar, Dindigul Town, based on the representation of the petitioner, dated 10.03.2016.

2. The petitioner, after filing a suit in O.S.No.177 of 2013 before the District Munsif Court, Dindigul, for permanent injunction against the second respondent not to construct any new house in the property in question, has come to this Court almost for a similar relief.

3. Learned counsel appearing for the petitioner would submit that on 10.07.1986, in respect of the property in question a partition was effected between one KNS Ramamoorthy and KNS Srinivasan and as per the same, eastern portion of the house was allotted to Ramamoorthy and the western portion along with a mud wall between the two houses to KNS Srinivasan, from whom, the petitioner herein purchased the house on 08.02.2006. While so, the



second respondent herein had filed a suit in O.S.No.540 of 2007 as plaintiff, seeking declaration that the common mud wall situated between the two houses belongs to him and for a permanent injunction to restrain the defendant/petitioner herein and his agents from in any way destroying the common mud wall. The said suit was dismissed by the learned Principal District Munsif, Dindigul, whereupon, an appeal in A.S.No.34 of 2009 was filed unsuccessfully by the second respondent herein/plaintiff before the learned Sub-Judge, Dindigul. In the meanwhile, the petitioner had filed a suit in O.S.No.507 of 2012 for permanent injunction, restraining the second respondent and his agents not to disturb the new constructions and the said suit is also pending. Again, the petitioner filed another suit in O.S.No.177 of 2013, seeking permanent injunction against the second respondent not to construct any new house in the property in question. Subsequently, during the pendency of the said suits, he made a representation to the first respondent not to grant any approval in favour of the second respondent. While so, since the second respondent has moved an Application before the first respondent, seeking building approval, the petitioner apprehending that an order may be passed in favour of the second respondent, has come to this Court.

4. But, this Court is not inclined to entertain this writ petition. The reason is, the petitioner had already filed O.S.No.507 of 2012 seeking permanent injunction to restrain the second respondent and his agents from disturbing the new constructions and the same is pending. Again, he filed another suit in O.S.No.177 of 2013, seeking permanent injunction against the second respondent not to construct any new house in the property in question. Therefore, till the said pending civil suits are disposed of, he is not entitled to file a writ petition invoking extraordinary jurisdiction of this Court under Article 226 of the Constitution of India.

5. Therefore, this writ petition fails and the same is dismissed. However, the dismissal of the writ petition will not prevent the petitioner from approaching the Civil Court, where the suits are pending. No costs.

Sd/-

Assistant Registrar (AE)

/True Copy/

Sub Assistant Registrar

+ 1 CC TO MR.J.LAWRANCE, ADVOCATE IN SR No. 46272

+ 1 CC TO MR.S.M.MOHAN GANDHI, ADVOCATE IN SR No. 45876

SKN

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 1E/DB : 14/09/2016 : 2P/3C

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