

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 21.11.2017
CORAM
THE HONOURABLE MR.JUSTICE M.SATHYANARAYANAN
AND
THE HONOURABLE MR.JUSTICE N.SESHASAYEE
WP.No.29712/2017

Ambika Ammal

...

Petitioner

vs

- 1.The District Collector
Cuddalore District, Cuddalore.
- 2.The Commissioner
Cuddalore Municipality
Cuddalore 607001.

3.S.Kaliyaperumal

...

Respondents

Prayer:- Writ petition filed under Article 226 of the Constitution of India praying for a writ of mandamus directing the respondents 1 and 2 to remove all encroachments in the channel in S.No.2745 in Cuddalore O.T., Cuddalore Taluk, Cuddalore District.

For Petitioner : Mr.R.Gururaj

For R1, R2 : Mr.M.Digvijaya Pandian, AGP

ORDER

[Order of the Court was made by M.SATHYANARAYANAN, J.]

By consent, the writ petition is taken up for final disposal. Mr.M.Digvijaya Pandian, learned Additional Government Pleader accepts notice on behalf of the respondents 1 and 2.

2 The petitioner claims to have purchased a vacant land admeasuring to an extent of 2535 sq.ft., in TS.No.2744/A in Cuddalore Old Town, through a registered Sale Deed dated 27.12.1989 and the said property remains vacant till date and the survey number has been sub-divided as 2744/A/A1. The petitioner would further state that the 3rd respondent had purchased a property in TS.NO.1581E which lies east to the property of the petitioner through a registered Sale Deed dated 20.06.2005 and the description of the Sale Deed does not give a clear picture as to the tile and extent purchased by him. It is the specific case of the petitioner that a channel lies between the properties purchased by the petitioner as well as by the 3rd respondent and in her Sale Deed, the channel is shown in the

Eastern boundary and as such, the 3rd respondent is estopped from denying that TS.No.2745 is a channel. Since the 3rd respondent has started putting up construction on his land, which is also a part of the said channel. The petitioner filed OS.No.211/2010 on the file of the Court of Principal District Munsif against the 3rd respondent as well as against the 2nd respondent herein, praying for permanent injunction restraining the defendants therein/respondents 2 and 3 herein, from encroaching upon any portion of the suit schedule property, obstructing the channel and also to remove the fence. The 2nd defendant therein / 2nd respondent herein has entered appearance and filed the written statement, wherein, the Municipality took a stand that the 1st defendant / 3rd respondent herein has encroached upon the municipal channel and despite notice given, he is yet to remove the same and action is being taken to remove it. The Court of Principal District Munsif, Cuddalore, vide judgment and decree dated 18.04.2015, though recorded the finding that the 1st defendant / 3rd respondent herein had committed an act of encroachment, has dismissed the suit on the ground that the description of the property has not been clearly mentioned.

3 The learned counsel for the petitioner has drawn the attention of this Court to the typed set of documents and would submit that despite such a stand taken by the 2nd respondent, it is yet to take any kind of action to remove the encroachment committed by the 3rd respondent and in this regard, the petitioner has also submitted a representation dated 25.07.2017 and despite receipt and acknowledgment, so far no orders have been passed and hence, the petitioner came forward to file the present writ petition. It is further submitted by the learned counsel for the petitioner, on instructions, that as against the dismissal of the suit, no appeal has been filed.

4 Mr.M.Digvijaya Pandian, learned Additional Government Pleader appearing for the respondents 1 and 2 would submit that after inspection and survey, necessary action will be taken to remove the encroachment.

5 The Court has considered the rival submissions and also perused the materials placed before it.

6 Though the petitioner has prayed for a larger relief, this Court, in the light of the above facts and circumstances and without going into the merits of the claim projected by the petitioner, directs the 2nd respondent herein, after putting the petitioner as well as the 3rd respondent on notice, to cause survey of the property of the petitioner as well as the 3rd respondent herein with the help of the jurisdictional Tahsildar and Surveyor within a period of four weeks from the date of receipt of a copy of this order and depending upon the result of the survey, shall take action in accordance with law for

removing encroachment.

7 The writ petition stands disposed of with the above direction. No costs.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

AP

To

1.The District Collector
Cuddalore District, Cuddalore.

2.The Commissioner
Cuddalore Municipality
Cuddalore 607001.

Copy to

The Tahsildar

Cuddalore, Cuddalore District.

+1 cc to Mr.R.Gururaj Advocate sr 82582

+1 cc to Government Pleader sr 82431

+1 cc to Mr.M.Digvijayapandian Advocate sr 82603

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