



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 20.12.2017

CORAM:

THE HONOURABLE MR. JUSTICE K. KALYANASUNDARAM

and

THE HONOURABLE Mrs. JUSTICE T. KRISHNAVALLI

W.A (MD) No. 1482 of 2017

and

CMP (MD) No. 11725 of 2017

Arunachalam : Appellant/2nd Respondent

Vs.

1. P. Luke jeyakumar : 1st Respondent / Petitioner

2. The Tahsildar,
Senkottai Taluk,
Tirunelveli District. : 2nd Respondent/1st Respondent

PRAYER: Writ Appeal has been filed under Section 15 of the Letters Patent, against the order passed in WP (MD) No. 21548 of 2016, dated 13.11.2017.

Prayer in WP (MD). 21548/ 2016 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Certiorarified Mandamus, to call for the records pertaining to the impugned order passed by the 1st respondent in his proceedings in O. Mu. Aa. 2. FLA. 253/2016 dated 23.09.2016 and quash the same as illegal and consequently direct the 1st respondent to survey and fix boundaries in Survey No. 177,181/2B1, situated at Kanakkapillai Valasai Village, Senkottai Taluk, Tirunelveli District.

For Appellants : Mr. M. Ajmal Khan
Senior counsel
for Mr. A. Vadivel

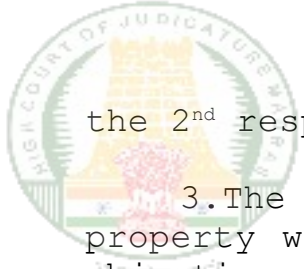
For 1st Respondent : Mr. J. Jeyakumaran
For 2nd Respondent : Mr. C. Selvaraj
Special Government Pleader

J U D G M E N T

(Judgment of the Court was made by **K. KALYANASUNDARAM, J**)

Challenge in this Writ Appeal is to the order of the learned single Judge passed in W.P (MD) No. 21548 of 2016, dated 13.11.2017.

2. Heard Mr. M. Ajmal Khan, learned Senior counsel for the appellant, Mr. J. Jeyakumaran, learned counsel for the 1st respondent, Mr. C. Selvaraj, learned Special Government Pleader for



the 2nd respondent and perused the materials available on record.

3.The request of the first respondent herein to measure his property was rejected by the 2nd respondent on the sole ground of objection made by the appellant. The writ court, having found that the order of rejection could not be upheld, issued directions to measure the property of the first respondent.

4.The main grievance of the appellant is that when his petition to recognise him as a cultivating tenant in respect of the property in dispute is pending before the competent authority and the 1st respondent had purchased a portion of larger extent, no measurement could be done at this juncture.

5.Learned Senior counsel for the appellant submitted that considering the facts of this case, the proper remedy for the first respondent is to institute a suit for partition. Further until the rights of the parties are decided by the Record Tenancy Tahsildar, it would not be proper to conduct survey of the property in dispute. We do not find force in the said contention for the reason that the appellant does not claim title over the property and he only claims tenancy right. Further, no civil suit is pending to decide the right of the parties.

6.Therefore, in our considered view, the appellant has no legal right to object for measuring the property of the first respondent. In that view, the appeal fails and the same is **dismissed**. Consequently, connected Miscellaneous Petition is closed. No costs.

Sd/-
Assistant Registrar(W)

/True Copy/

Sub Assistant Registrar

+ 1 cc TO Mr.J.Jeyakumaran , Advocate in SR No. 94051
+ 1 cc TO The Special Government Pleader in SR No. 94306

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20.12.2017