

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20.12.2018

CORAM:

THE HONOURABLE MR. JUSTICE T.RAJA

W.P.No.29439 of 2016

and

W.M.P.Nos.25487 and 25488 of 2016

M.Sanmugam

... Petitioner

Vs

1.The Tahsildar,
Tiruchengode,
Namakkal District.

2. The Revenue Divisional Officer,
Tiruchengode, Namakkal District.

3. The Deputy Superintendent of Police,
Tiruchengode, Namakkal District.

4. The President,
Kuppuchipalayam Panchayat,
Mallasamudram Union,
Tiruchengode Taluk,
Namakkal District.

... Respondents

Prayer: Petition filed under Article 226 of the Constitution of India, to issue a Writ of Certiorarified Mandamus, calling for the records relating to laying of the 10 feet road in Survey No.319/2 in pursuant to the Proceedings in M.C.43/2016/C dated 08.08.2016 on the file of the 2nd respondent and quash the same and direct the 2nd respondent not to interfere with the peaceful possession and enjoyment of the petitioner except in accordance with law.

For Petitioner : Mr.G.Murugendran
For Respondents: Mrs.P.Rajalakshmi,
Addl. Govt. Pleader for R1 to 3
Mr.N.Manoharan for R4

O R D E R

Challenging the Proceedings in M.C.43/2016/C dated 08.08.2016 on the file of the 2nd respondent and to quash the same and for further direction, directing the 2nd respondent not

to interfere with the peaceful possession and enjoyment of the petitioner except in accordance with law, the present Writ Petition has been filed.

2. Learned Counsel appearing for the petitioner submitted that the petitioner is the owner of the property in Survey No.319/2, Maraparai Village, Tiruchengode Taluk, Namakkal District and he inherited the said property by virtue of a Partition Deed in the year 1990. While so, in the year 1984, the land to an extent of 6 cents were donated to burial ground in Survey No.319/2 for laying pathway and the remaining of the land in the said survey number was enjoyed by the petitioner herein. The above said fact was reflected in FMB Book and other relevant Revenue Records. The petitioner has no objection except laying 10 feet road because the 2nd respondent has decided to lay the 10 feet road in his property in Survey No.319/2 on the basis of the Proceedings of the 2nd respondent herein, namely, the Revenue Divisional Officer, Tiruchengode, Namakkal District in M.C.43/2016/C dated 8.8.2016. In view of the steps taken by the 2nd respondent to encroach the petitioner's land in S.No.319/2 in addition to 6 cents of lands already donated by his grandfather, a Civil Suit in O.S.No.82/2016 on the file of the learned District Munsif, Tiruchengode has been filed against four respondents. In the meanwhile, since the 2nd respondent herein, who was not a party to that proceedings, proceeded further to encroach the petitioner's land for laying common pathway, the petitioner has come to this Court.

3. The respondents 2 and 4 have filed their Counter Affidavits.

4. Mr.N.Manoharan, learned Counsel appearing for the 4th respondent submitted that when a civil suit is pending before a competent civil court, without disclosing the said fact in the affidavit filed in support of the writ petition, the present Writ Petition has been filed by the petitioner seeking the very same relief. The learned Counsel further submitted that since the petitioner has approached this Court with unclean hands, the Writ Petition is liable to be dismissed.

5. Learned Additional Government Pleader appearing for the respondents 1 to 3 submitted that the respondents 1 to 3 are not going to encroach any land belonging to the petitioner in Survey No.391/2 and in the counter affidavit filed by the 2nd respondent, it has been stated that the 2nd respondent has well known the fact that the land in Survey No.319/2 is petitioner's patta land and he never wanted to interfere with his possession. Therefore, recording the same, the present Writ Petition may be closed.

6. In view of the statement made by the learned Additional Government Pleader appearing for the respondents 1 to 3 that the 2nd respondent has undertaken in his Counter Affidavit that he is not going to encroach the petitioner's land covered in Survey No.319/2, Maraparai Village, Tiruchengode Taluk, Namakkal District, recording the same, the Writ Petition is closed. No costs. Consequently, connected Miscellaneous Petitions are closed.

s/d-
Assistant Registrar(CS V)

True Copy

Sub-Assistant Registrar

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To

- 1.The Tahsildar,
Tiruchengode,
Namakkal District.
2. The Revenue Divisional Officer,
Tiruchengode,
Namakkal District.
3. The Deputy Superintendent of Police,
Tiruchengode,
Namakkal District.
4. The President,
Kuppuchipalayam Panchayat,
Mallasamudram Union,
Tiruchengode Taluk,
Namakkal District.

+1 CC to Mr.G.Murugendran, Advocate sr 88843.
+1 CC to Mr.N.Manoharan, Advocate sr 89129

W.P.No.29439 of 2016

KK(CO)
SP(24/01/2019)