



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 27.02.2018

CORAM:

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THE HONOURABLE MR. JUSTICE M. SATHYANARAYANAN
and
THE HONOURABLE MRS. JUSTICE R. HEMALATHA

W.A(MD)No.1263 of 2017 against
WP(MD)No.24320 of 2016
and C.M.P. (MD) Nos.8872 and 10459 of 2017

Durairaj ... Appellant/Third Party

Vs.

1.G.Kanagaraj ... 1st Respondent/Petitioner

2.The Tahsildar,
Thottiyam Taluk,
Trichy.

3.Head Taluk Surveyor,
Thottiyam Taluk,
Trichy District.

... Respondents 2 & 3/Respondents

PRAYER: The Writ Appeal is filed under Clause 15 of the Letters Patent against the order dated 09.06.2017 made in W.P.(MD) No.24320 of 2016.

Prayer in WP(MD)No.24320/ 2016 :

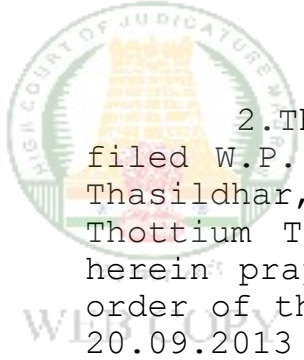
Writ Petition is filed under Article 226 of the Constitution of India, praying this Court To issue a Writ of Certiorarified Mandamus to call for the records in pursuant tot the impugned order passed by the 1st respondent in O.Mu.A.Ka.Ma.4792/2016 dated 09.11.2016 and quash the same and directing the respondents to survey the land in Survey No.245/29,11 and earmark the boundaries of the land as per the patta.

For Appellant : Mr.C.Meenakshirama Prabhu
For 1st Respondent : Mr.A.N.Ramanathan
For Respondents 2 & 3 : Mr.A.Muthukaruppan
Additional Government Pleader

JUDGMENT

(Judgment of this Court was delivered by M.SATHYANARAYANAN, J.)

The appellant is a thirty party and aggrieved by the impugned order dated 09.06.2017, made in W.P.(MD) No.24320 of 2016, in and by which the impugned communication of the second respondent dated 09.11.2016 came to be quashed, has filed this Writ Appeal.



2. The first respondent/writ petitioner on an earlier occasion filed W.P.(MD) No.16667 of 2013 against the Executive Magistrate & Thasildhar, Thottium Taluk and Revenue Inspector, Kattuputhur Part, Thottium Taluk, Trichy District as well as against the appellant herein praying for issuance of a writ of certiorari to quash the order of the Executive Magistrate & Thasildhar, Thottium Taluk dated 20.09.2013 in Na.Ka.A1-5598-2013 and this Court while dealing with the facts has found that the first respondent herein filed suit in O.S.No.61 of 2007 on the file of the Court of District Munsif, Musiri praying for declaration and permanent injunction, which includes the land in S.No.245/23, Unniyur Village, Thottiyam Taluk and which according to the first respondent is his exclusive way to reach his property and similarly the appellant herein and another also filed a suit in O.S.No.217 of 2009 on the file of the District Munsif, Musiri, praying for permanent injunction against the first respondent herein, restraining him from interfering with their right to use the disputed lane and in the plaint schedule the said lane is shown as a common pathway. This Court recording the facts that the suit filed by the first respondent came to be dismissed and the suit filed by the appellant came to be decreed, against which, A.S.Nos.133 and 134 of 2015 have been filed by the first respondent and the same are pending before the II Additional Sub Court, Tiruchirappalli, dismissed the Writ Petition vide order dated 07.09.2016 and no appeal has been filed against the said order. However, the first respondent in the affidavit filed in support of W.P.(MD) No.24320 of 2016 has not disclosed the said facts and appears to have made a prayer to quash the order of the 3rd respondent dated 09.11.2016, in and by which his request for measuring and surveying the land in Survey No.245/11 and 29, Unniyur Village, Tottiyam came to be rejected on the ground that civil suit is pending with regard to the northern side lane in S.No.245/23. It is also to be noted at this juncture that the first respondent did not array the appellant herein as a party, though in the earlier round of litigation in W.P.(MD) No.16667 of 2013, he was arrayed as third respondent.

3. The learned counsel for the appellant would submit that the first respondent/writ petitioner has encroached upon the common lane in S.No.245/23, Unniyur Village and also started putting up construction and efforts are being taken by the revenue authorities to remove the encroachment made by the first respondent/writ petitioner upon the public lane. In the circumstances, suppressing the said material facts, the first respondent/writ petitioner got the impugned order and hence, prays for interference.

4. Per contra, the learned counsel appearing for the first respondent/writ petitioner would submit that whether the lane in S.No.245/29, Unniyur Village is a common lane or exclusively belongs to the first respondent/writ petitioner is the subject matter of adjudication in the pending appeal suits in A.S.Nos.133 and 134 of 2015 on the file of the II Additional Sub Court, Tiruchirappalli and by merely surveying and measuring his own land, no prejudice would



be caused to the appellant and prays for dismissal of this Writ Appeal.

5.This Court heard the learned Additional Government Pleader appearing for the official respondents also.

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6.The fact remains that the first respondent/writ petitioner has suppressed the order dated 07.09.2016, made in W.P.(MD) No.16667 of 2013, which would have a definite bearing while deciding W.P.(MD) No.24320 of 2017. The finding recorded by the Civil Court in O.S.Nos.61 of 2007 and 217 of 2009 are yet to be set aside and till the appeal suits filed by the first respondent/writ petitioner are allowed, the lane in S.No.245/23, Unniyur Village is to be treated as a common lane, upon which, the first respondent/writ petitioner has no right to put a construction.

7.The first respondent/writ petitioner very well could have availed the said remedy in the pending appeal suits, wherein the appellant herein is arrayed as a party. However, adopting ingenious method, first respondent filed the writ petition and that too without impleading the appellant as a party respondent. In the light of the conduct exhibited by the first respondent/writ petitioner, coupled with the reasons assigned above, this Court is of the view that the impugned order dated 09.06.2017, passed in W.P.(MD) No.24320 of 2016 warrants interference.

8.In the result, the Writ Appeal is allowed and the order dated 09.06.2017 made in W.P.(MD) No.24320 of 2016 is set aside, consequently, W.P.(MD) No.24320 of 2016 stands dismissed. Consequently, connected Miscellaneous Petitions are closed. However, in the circumstances of the case, there shall be no order as to costs.

Sd/-

Assistant Registrar (W)

/True Copy/

Sub Assistant Registrar

To

- 1.The Tahsildar,
Thottiyam Taluk,
Trichy.
- 2.Head Taluk Surveyor,
Thottiyam Taluk,
Trichy District.

- + 1 CC TO SPECIAL GOVERNMENT PLEADER IN SR No. 51909
- + 1 CC TO Mr.V.KARUNA, ADVOCATE IN SR No. 51741
- + 1 CC TO Mr.AN.RAMANATHAN, ADVOCATE IN SR No. 51817

SJ

TE/KKR/SAR-2 : 08/03/2018 : 3P/6C

W.A(MD)No.1263 of 2017

<https://hcservices.ecourts.gov.in/hcservices/>

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