



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 08.10.2018

CORAM:

THE HONOURABLE MR.JUSTICE V.PARTHIBAN

W.P.(MD) No.21009 of 2018

and

W.M.P.(MD) Nos.18781 to 18783 of 2018

P.Saravana Kumar

... Petitioner

Vs.

1.The District Collector,
Virudhunagar District.

2.The Deputy Director,
Country and Town Planning,
Madurai Zone,
Chinna Chokkikulam,
Madurai District.

3.The Block Development Officer,
Sivakasi,
Virudhunagar District.

4.The Registrar,
District Registration Office,
Virudhunagar District.

5.V.Easwaran

6.T.Ganesan

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of writ of Certiorari calling for the records relating to the impugned principle approval dated 07.06.2018 in Na.Ka.No.2102/2018 MM4 and the final approval dated 18.09.2018 in Na.Ka.P3/2926/2018 issued by the third respondent and quash the same as illegal.

For Petitioner	: Ms.Chamundi Bose
For Respondents	: Mr.A.Muthukaruppan
1 to 3	Additional Government Pleader

For Respondent	: Mr.M.Murugan
No.4	Government Advocate

**ORDER**

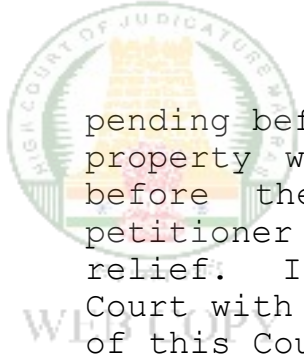
According to the petitioner, the property situated in Survey Nos.1165/2, 1164/2B, 1164/3A1, in Eenjar Village, Saminatham Union, Sivakasi Taluk, Virudhunagar District originally belonged to his paternal grandfather and after his demise, his father and his brother had inherited the property. The property was undivided and therefore, the petitioner filed a suit for partition in O.S.No.132 of 2008, on the file of the Munsif Court, Srivilliputhur. In the suit for partition, the petitioner was granted temporary injunction in I.A.No.372 of 2008 restraining the defendants such as his uncle creating any encumbrance by way of sale or mortgage. Subsequently, it appears that the suit was partially allowed on 13.04.2010.

2. Aggrieved by the decree of the trial Court, the petitioner had filed a first appeal before the learned District Judge, Srivilliputhur in 2017 and the appeal is yet to be numbered. While so, his uncle appeared to have executed a sale deed in favour of the fifth and sixth respondents on 10.09.2015 and the petitioner came to know about the transaction only after seeing the encumbrance certificate. Thereafter, it appears that the fifth and sixth respondents applied for approval for housing plots before the second respondent and the second respondent had also granted the approval.

3. In the said circumstances, the petitioner submitted his objection on 11.06.2018 stating that the respondents 5 and 6 have no right over the property in question and when the suit is pending in the first appellate Court, the property had been purchased pendente lite by the respondents 5 and 6 and applied before the second respondent for regularization. In the said circumstances the petitioner is before this Court challenging the principle approval for regularization granted by the second respondent dated 07.06.2018 and final approval dated 18.09.2018 of the third respondent.

4. From the facts as narrated above and the materials filed in support of the writ petition, it appears that there is a civil dispute between the petitioner and his uncle, in respect of which the suit has been filed. After the decree by the trial Court, the first appeal has been filed and admittedly the appeal is yet to be numbered. While the appeal is pending, in the interregnum, the petitioner is approaching this Court by invoking its extraordinary jurisdiction under Article 226 of the Constitution of India seeking remedy as stated supra.

5. This Court is unable to appreciate as to how the petitioner can seek remedy before this Court by invoking its writ jurisdiction, when admittedly the civil case is pending between the petitioner and his uncle and it appears that his uncle had sold the property to the respondents 5 and 6. The petitioner's uncle has not been shown as party in the writ petition and in the absence of he being made as a party, the writ petition is not maintainable for non-joinder of necessary parties. Moreover when a dispute of this nature is



pending before the civil Court and any transaction in respect of the property which is covered under the dispute between the parties before the civil Court, the appropriate course open to the petitioner is to approach the civil Court and seek appropriate relief. Instead of doing that, the petitioner has approached this Court with the present writ petition which in the considered opinion of this Court is not maintainable per se. Any order to be passed in the writ petition will have serious implication on the adjudication of the civil dispute as between the petitioner and his uncle and therefore, this Court cannot in the interregnum pass any orders or maintain the present writ petition.

6. For the above said reasons, the Writ Petition is found to be not maintainable and therefore, the same is dismissed. No costs. Consequently, the connected Miscellaneous Petitions are also dismissed.

Sd/-

Assistant Registrar(P&A)

/True Copy/

Sub Assistant Registrar(CS-IV)

To

- 1.The District Collector,
Virudhunagar District.
- 2.The Deputy Director,
Country and Town Planning,
Madurai Zone,
Chinna Chokkikulam,
Madurai District.
- 3.The Block Development Officer,
Sivakasi, Virudhunagar District.
- 4.The Registrar,
District Registration Office,
Virudhunagar District.

+1CC to M/s.Chamundi Bose, Advocate, SR.No.89293

+1CC to the Special Government Pleader SR.Nos. 89182, 89411

W.P.(MD) No.21009 of 2018
and

W.M.P.(MD) Nos.18781 to 18783 of 2018
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SSL

ES/RP/SAR 4/12.11.2018/3P/7C

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