

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 04.07.2019

CORAM:

THE HON'BLE MR. JUSTICE P.D.AUDIKESSAVALU

W.P. No. 6112 of 2019

A. Mohamed Zakaria
rep by his power Agent S.Janakiraman

... Petitioner

-vs-

1. The Thasildar
Sriperumbudur Taluk,
Kanchipuram District.
2. The District Surveyor,
Sriperumbudur Taluk,
Kanchipuram District.
3. The Inspector of Police,
C-1 Sriperumbudur Police Station,
Sriperumbudur,
Kanchipuram District.
4. P. Geetha
5. Palani

... Respondents

Prayer :- Writ Petition filed under Article 226 of Constitution of India, seeking for a Writ of Mandamus, directing the First and Second Respondents to survey with the assistance of the Third Respondent and fix boundaries for the properties measuring an extent of 3300 sq.ft bearing Plot No. 417 comprised in Survey Nos. 231 / 10 and 231 / 11 as per Patta Survey No. 231 / 8A2 and the property measuring an extent of 1900 sq.ft, out of the total extent of 2760 sq.ft comprised in Survey No. 231 / 11, Patta No. 1879, and as per Patta Survey No. 231 / 8A3A the Northern Side Portion of the Shop site both situated in 'Happy Land Colony', Mevalur Kuppam Village, Sripermbudur Taluk, Kanchipuram District in time bound manner.

For Petitioner : Mr. R. Chandrasudan

For Respondents: Mr. R. Venkatesh for R1 to R3
Government Advocate

Mr. D. Magesh for R4 and R5

O R D E R

Heard Mr. R. Chandrasudan, Learned Counsel appearing for the Petitioner and Mr. R. Venkatesh, Learned Government Advocate appearing for the First to Third Respondents and Mr. D. Magesh, Learned Counsel appearing for the Fourth and Fifth Respondents and perused the materials placed on record, apart from the pleadings of the parties.

2. The Fourth and Fifth Respondents have filed Counter Affidavit dated 04.07.2019 stating that the Fourth Respondent has already instituted a suit in O.S. No. 301 of 2017 before the Sub-Court, Kanchipuram against the Petitioner and certain others, viz., Thandavarayan and Wilson, for bare injunction to protect the possession of his property and in that suit he has made an application in I.A. No. 1255 of 2017 to appoint an Advocate Commissioner for measuring the property and fix boundary with metes and bounds and that the Petitioner has opposed the same in his Counter Affidavit filed in that application, while he seeks to survey his adjacent land in this Writ Petition.

3. Though it is contended by the Learned Counsel for the Petitioner that the lands sought to be surveyed in the aforesaid suit is different from that of the lands sought to be surveyed in this Writ Petition, it cannot be lost sight of the fact that the suit filed by the Fourth and Fifth Respondents is prior in time and as such, the survey of the lands have to be done to both properties either simultaneously or if the Petitioner opposes the same in the application in I.A. No. 1255 of 2017 in O.S. No. 301 of 2017 before the Sub-Court, Kanchipuram, it has to be decided before permitting the land of the Petitioner to be surveyed.

4. In that view of the matter, the First and Second Respondents cannot be directed to survey the land of the Petitioner before deciding the application in I.A. No. 1255 of 2017 in O.S. No. 301 of 2017 on the file of the Sub-Court, Kanchipuram, relating to the neighbouring land of the Fourth and Fifth Respondents, inasmuch as the Petitioner would have unfair advantage if the same is permitted.

5. In the aforesaid circumstances, there does not appear to be any justification to exercise the discretionary powers of this Court under Article 226 of the Constitution to grant the relief sought by the Petitioner at this stage. However, it is made clear that it is open to the Petitioner to seek for survey of his lands after the disposal of the application in I.A. No. 1255 of 2017 in O.S. No. 301 of 2017 on the file of the Sub-Court, Kanchipuram, or if the Petitioner agrees for simultaneous survey of the land of the Fourth and Fifth Respondents, which is the subject matter of I.A. No. 1255 of 2017 in O.S. No. 301 of 2017 along with his lands.

6. Accordingly the Writ Petition is dismissed with the aforesaid observations. No costs.

Sd/-
Asst.Registrar (CS V)

/true copy/

Sub Asst. Registrar

To

1. The Thasildar
Sriperumbudur Taluk,
Kanchipuram District.
2. The District Surveyor,
Sriperumbudur Taluk,
Kanchipuram District.
3. The Inspector of Police,
C-1 Sriperumbudur Police Station,
Sriperumbudur,
Kanchipuram District.

4. The Subordinate judge
Kancheepuram

+1 cc to M/s.T.Ganesan advocate sr56028
+1 cc to Mr.R.Chandrasudan Advocate sr56263
+1 cc to government Pleader sr56884

W.P. No. 6112 of 2019

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