

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.02.2019

CORAM

THE HONOURABLE MR.JUSTICE T.S.SIVAGNANAM
and
THE HONOURABLE MR.JUSTICE V.BHAVANI SUBBAROYAN

Writ Appeal No.2046 of 2018
and CMP.No.16199 of 2018

Durairaj

... Appellant

Vs.

1.Veerammal

2. The Principal Secretary,
and Commissioner of Land Administration,
Chepauk, Chennai-5.

3. The District Revenue Officer,
Ariyalur District, Ariyalur.

4. The Tashildar,
Ariyalur, Ariyalur District.

...
Respondents

Prayer : Writ Appeal filed under Clause 15 of the Letters Patent to set aside the order passed in W.P.No.8958 of 2013 dated 05.07.2018.

W.P.No.8958/2013:

Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Mandamus directing the 3rd respondent to restore the pathway in Survey No.472/5 Kovilur Madura Chettikulam Village Ariyalur Taluk Ariyalur District in terms of the orders passed by the first respondent in his proceedings in D.Dis.(K4) 19860/2008 dated 20/05/2009.

For Appellant : Mr.Dinesh Kumar

For Respondents : Mr.S.Kamadevan
for R1.

Mr.R.Udhaya Kumar
Additional Government Pleader
for RR2 to 4.

JUDGMENT

(Order of the Court delivered by T.S.Sivagnanam, J.)

This appeal filed by the 4th respondent in the writ petition is directed against the order dated 05.07.2018 in W.P.No.8958 of 2013.

2. The said writ petition was filed by the first respondent herein praying for issuance writ of Mandamus to direct the Tahsildar, Ariyalur Taluk to restore the pathway in Survey No.472/25. The writ petition was disposed of by directing the Tahsildar to restore the pathway. Challenging the said directions, the present appeal has been filed. The claim of the appellant is that there is no pathway and it is a private land and patta was granted in his favour and the same, when challenged was sustained by the Tahsildar as well as the District Revenue Officer, against which an appeal was filed before the Commissioner of Land Administration, which was allowed and direction was issued to the Tahsildar to restore the pathway.

3. If the appellant is aggrieved by the finding of the Commissioner of Land Administration, then the remedy of the appellant is to approach the Civil Court by filing a suit to declare his title over the property. Though the appellant filed the suit in O.S.No. 257 of 2012 on the file of the District Munsif Court, Ariyalur the prayer initially sought for was only for a decree of injunction. It is only in the year 2014, the appellant had amended the prayer in the suit to one of declaration. We find that the Tahsildar, District Revenue Officer, Commissioner of Land Administration are not defendants to the suit. Thus, as on date, the order passed by the Commissioner dated 20.05.2009 holds the field and therefore the land in question should be restored as a pathway. It is the submission of the learned counsel for the first respondent/writ petitioner that only after Contempt Petition No.2561 of 2018 was filed, the pathway was restored and the Contempt Petition was closed by order dated 06.12.2018.

4. In the light of the above, we find that there is no error in the order passed by the writ Court which in fact has directed to implement the order of the Commissioner of Land Administration. We make it clear that the dismissal of this appeal will in no way prejudice the appellants right in the Civil Suit. Since, the appellant was granted liberty to file the Civil Suit in the order passed in W.P.No.14366 of 2009 dated 17.08.2012, we direct the Civil Court to decide the suit based on the oral and documentary evidence placed before it, without being in any manner, influenced by any of the observations

contained in the judgment or in the order passed in Writ Petition.

5. For the above reasons, this appeal is dismissed. No costs. Consequently, connected Miscellaneous Petition is closed.

s/d-
Assistant Registrar(CS VI)

True Copy

Sub-Assistant Registrar

mrm/ssb
To:

1. The Principal Secretary,
and Commissioner of Land Administration,
Chepauk, Chennai-5.
2. The District Revenue Officer,
Ariyalur District, Ariyalur.
3. The Tashildar,
Ariyalur, Ariyalur District.

+1 CC to Mr.S.Kamadevan, Advocate sr 12616.
+1 CC to Govt. Pleader sr 13424.

W.A.No.2046 of 2018
C.M.P.No.16199 of 2018

KS(CO)
SP(23/04/2019)

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