

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.03.2019

CORAM :

THE HON'BLE MRS.VIJAYA K.TAHILRAMANI, CHIEF JUSTICE

AND

The HON'BLE MR.JUSTICE M.DURAI SWAMY

W.P. No.11082 of 2017 and

W.M.P.No.12023 of 2017

Madhavan

.. Petitioner

Vs.

1. The Sub Divisional Magistrate cum
Revenue Divisional Officer,
Sub Collectorate,
Nagapattinam District.

2. R.Murugesan

3. The Executive Officer/Joint Commissioner,
Arulmighu Vedharanneshwara Swami Temple,
Vadakattali Village,
Vedharanyam Taluk,
Nagapattinam District.

.. Respondents

(R3 suo motu impleaded as per order
dated 07.06.2017 in W.P.11082/2017)

Petition filed under Article 226 of the Constitution of India praying for issue of Writ of certiorari to call for the entire records connected with the impugned order passed by the 1st respondent in Na.Ka.No.2325/2016/A6 dated 27.02.2017 and to quash the same.

For Petitioner : Ms.Greetha Senthilkumar

For Respondents: Mr.V.Jayaprakash Narayanan,
Government Pleader (I/c) for R1

Mr.G.Nagarajan for R2

Mr.M.Venkatesh Kumar,
Government Advocate (HR & CE) for R3

O R D E R

(ORDER OF THE COURT WAS MADE BY M.DURAI SWAMY, J.)

The petitioner has filed the above Writ Petition to issue a Writ of certiorari to call for the records connected with the impugned order dated 27.02.2017 passed by the 1st respondent and to quash the same.

2.It is the case of the petitioner that he is in possession and enjoyment of the property situated at Manavari Punjai in Survey No.959/1B measuring about 0.09.5 ares situated at Vadakattalai, Vedharanyam Town, Vedharanyam Taluk, Nagapattinam District. The said property belongs to the 4th respondent. Further, it is the case of the petitioner that one Vanasundari and her men tried to interfere with his possession and enjoyment of the property. Hence, he filed a suit in O.S.No.79 of 2013 on the file of the District Munsif cum Judicial Magistrate Court, Vedharanyam for permanent injunction. However, the said suit was dismissed on 27.11.2014. As against the same, the petitioner preferred an appeal in A.S.No.4 of 2015 on the file of the Sub Court, Nagapattinam and the Lower Appellate Court also dismissed the appeal. As against the concurrent judgments of the Courts below, the petitioner preferred a Second Appeal in S.A.No.909 of 2016 before this Court and according to the petitioner, the same is pending.

3.The 2nd respondent, who is the son of the above said Vanasundari, approached the 1st respondent by way of a petition dated 31.10.2016 for evicting the encroachers viz., the petitioner and his brother Hari. The 1st respondent, by order dated 27.02.2017, which was signed on 12.03.2017, rejected the case of the petitioner and called upon the petitioner to remove the stones piled in the said property.

4.Since the dispute between the petitioner and the 2nd respondent is pending before this Court in S.A.No.909 of 2016, unless the petitioner establishes his right and possession over the suit property, he cannot succeed in the Writ Petition.

5.The 1st respondent, taking into consideration the dismissal of the suit and the First Appeal filed by the petitioner, rightly rejected the case of the petitioner and called upon him to remove the encroachment. The order passed by the 1st respondent is just and proper and we do not find any ground to interfere with the order passed by the 1st respondent. Accordingly, the Writ Petition is dismissed. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar (CCC)

//True Copy//

Sub Assistant Registrar

va

To

1. The Sub Divisional Magistrate cum
Revenue Divisional Officer,
Sub Collectorate,
Nagapattinam District.
 2. The Executive Officer/Joint Commissioner,
Arulmighu Vedharanneshwara Swami Temple,
Vadakattali Village,
Vedharanyam Taluk,
Nagapattinam District.
- +1 cc to M/s.G.Nagarajan, Advocate, S.R.No.23547
- +1 cc to M/s.S.Kingston Jerold, Advocate, S.R.No.23248
- +1 cc to the Government Pleader, S.R.No.24181

सत्यमेव जयते

W.P.No.11082 of 2017 and
W.M.P.No.12023 of 2017

RGN (CO)
SSM(03/04/2019).

WEB COPY