

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.12.2019

CORAM:

THE HON'BLE MR. JUSTICE ABDUL QUDDHOSE

W.P.No.12353 of 2017
and W.M.P.No.13115 of 2017

1.R.Rajendaran

2.R.Ravichandran

...Petitioners

vs.

1.The District Collector,
Namakkal District.

2.The Tahsildhar,
Namakkal.

3.The Surveyor,
Namakkal.

4.The Village Administrative Officer,
Periyapatti,
Namakkal.

5.D.Subramaniyan

6.Parvathi

...Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, seeking for the issuance of a writ of mandamus, forbearing the respondents from surveying the lands in S.F.No.22 of Periyapatti Village, Namakkal District without following the due process of law.

For Petitioners : Mr.K.Sudhakar

For Respondents : Mr.R.S.Selvam for R1 to R4
Government Advocate

Mr.K.V.Dhanapalan for R5 & R6

ORDER

This writ petition has been filed by the petitioner seeking for a direction to forbear the respondents from surveying the lands in S.F.No.22 of Periyapatti Village, Namakkal District without following the due process of law.

2.It is the case of the petitioner that his father
<https://hcservices.ecourts.gov.in/hcservices/>
Mr.Ramasamy and his brothers viz., Veerapa Gounder and

Karuppaiya are the descendants of one Vathappa Gounder. According to the petitioner, his father and his brothers shared the common property in the year 1964 by virtue of the partition deed dated 25.10.1964 in Document No.156 of 1965. According to the petitioner, his mother Angammal signed the partition deed on behalf of his father since he was in Singapore at that point of time. In the said partition deed, A schedule of property was allotted to Veerapa Gounder, B schedule of property was allotted to Karuppaiya and C schedule of property was allotted to his father Ramasamy. According to the petitioner, all the three were given common share and enjoyment in respect of the well, pathway and the water channel.

3. According to petitioner, Veerapa Gounder, legal heir of Sellappan had sold A schedule property to one K.P.Muthukumar on 27.05.2008 vide document No.1867 of 2008 and the same was registered before the concerned Registrar's Office. According to the petitioner, K.P.Muthukumar had sold the above said property to the fifth and sixth respondents without mentioning the pathway as well as the common area.

4. It is the case of the petitioner that the fifth and sixth respondents are making attempts to fence the property which includes the common pathway and the well by surveying their land.

5. According to the petitioner, he has filed a suit O.S.No.199 of 2008 seeking relief of permanent injunction against the vendors of the fifth and sixth respondents. According to him, the said suit was decreed in his favour on 02.10.2009 and the trial Court has restrained the vendors of the fifth and sixth respondents from interfering with enjoyment of the well, water channel and the pathway.

6. It is the case of the petitioner that the fifth and sixth respondents have approached the official respondents to measure their property. According to the petitioner, the fifth and sixth respondents have also lodged a complaint against the petitioner before the Inspector of Police, Land Grabbing Cell for fencing the property.

7. It is also the case of the petitioner that the fifth and sixth respondents are bound by the Civil Court decree and to circumvent the order of the Civil Court they are trying to fence the common pathway, well and the water channel with the aid of the official respondents. According to the petitioner, the official respondents are duty bound to give notice to the interested persons as per the Survey and Boundaries Act before measuring the disputed lands. According to the petitioner, since the subject land is a disputed land, the official respondents will have to give notice to the petitioner before measuring the subject land.

8. According to the petitioner, the official respondents are attempting to measure the land which includes the pathway, well and the common area without giving notice to the petitioner.

9. In such circumstances, this writ petition has been filed by the petitioner seeking for a direction to forbear the respondents from surveying the lands in S.F.No.22 of Periyapatti Village, Namakkal District without following the due process of law.

10. Heard Mr.K.Sudhakar, learned counsel for the petitioners Mr.R.S.Selvam, learned Government Advocate for the respondents 1 to 4 and Mr.K.V.Dhanapalan, learned counsel for the fifth and sixth respondents.

11. The petitioner has not disputed that the fifth and sixth respondents are the owners of the property mentioned in S.No.22 at Periyapatti Village, Namakkal District. Therefore, there is no bar for the third respondent to measure the aforementioned property owned by the fifth and the sixth respondents. The only contention raised in this writ petition is that, there is a common pathway, well and common area which is sought to be measured by the third respondent surveyor at the instance of the fifth and sixth respondents.

12. According to the fifth and sixth respondents, there is no common pathway or water channel in their property. It is their case that in order to fence their property, they want to measure the land. In the considered view of this Court, this will not in any way prejudice the interest/rights of the petitioner. This Court cannot forbear the third respondent from measuring the land owned by the fifth and sixth respondents as there is no dispute over the same.

13. Therefore, the relief sought for by the petitioner against the fifth and sixth respondents cannot be granted by this Court. This Court does not find any merit in this writ petition and accordingly, the writ petition is dismissed. However, it is made clear that the third respondent shall measure only the land belonging to the fifth and sixth respondents by following the procedure established under law. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(Insp.cell)

//True copy//

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To

1.The District Collector,
Namakkal District.

2.The Tahsildhar,
Namakkal.

3.The Surveyor,
Namakkal.

4.The Village Administrative Officer,
Periyapatti,
Namakkal.

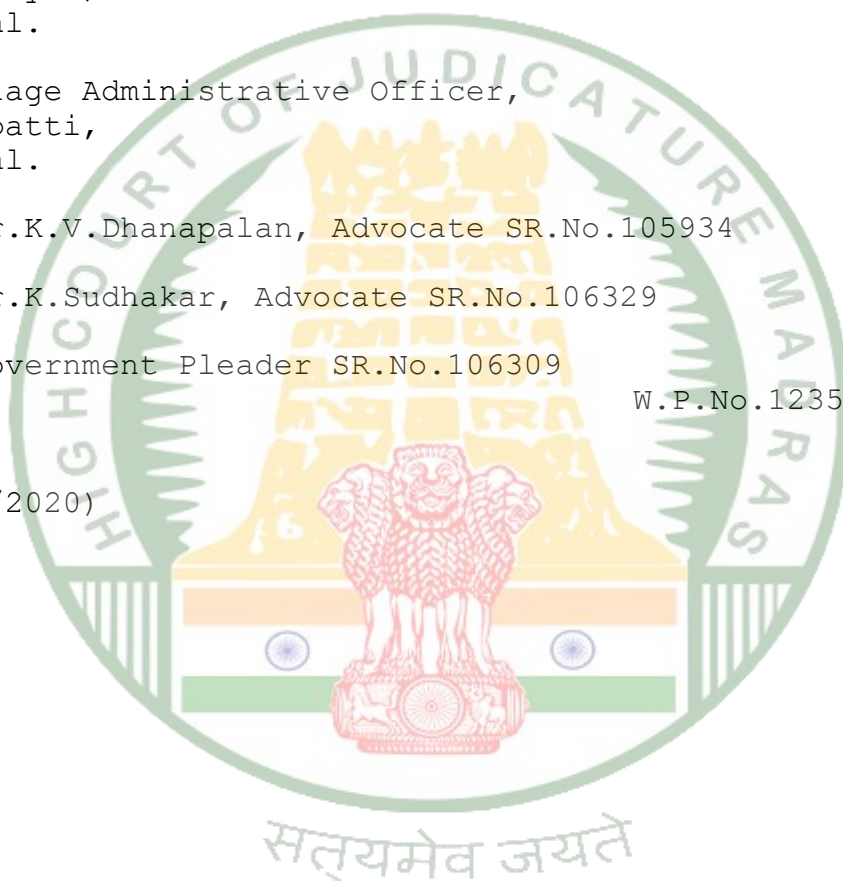
+1cc to Mr.K.V.Dhanapalan, Advocate SR.No.105934

+1cc to Mr.K.Sudhakar, Advocate SR.No.106329

+1cc to Government Pleader SR.No.106309

W.P.No.12353 of 2017

RSV(CO)
GMY(30/01/2020)



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