



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **22.11.2019**

CORAM:

THE HONOURABLE **MR. JUSTICE M. SUNDAR**

W.P(MD)No.24789 of 2019

A.Manimegalai

... Petitioner

/Vs./

1.The District Collector,
Trichy District, Trichy.

2.The Tahsildar,
Thuraiyur Taluk,
Trichy District.

3.The Land Surveyor,
Kannanur Survey Office,
Thuraiyur Taluk,
Trichy District.

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Mandamus, to direct the respondent to consider the petitioner's representation dated 30.09.2019 and to take appropriate action for surveying her land and fixing the boundary stones in Survey No.367/11 in V.A.Samuthiram Village, Thuraiyur Taluk, Trichy District, within the time frame fixed by this Court.

For Petitioner : Mr.R.Venkatesan

For Respondents : Mr.K.Mu.Muthu

Additional Government Pleader

ORDER

Mr.R.Venkatesan, learned counsel on record for writ petitioner is before this Court.

2. Mr.K.Mu.Muthu, learned Additional Government Pleader, accepts notice on behalf of all three (3) respondents.

3. Subject matter of instant writ petition is 'land comprised in S.No.367/11 in V.A.Samuthiram Village, Thuraiyur Taluk, Trichy District' (hereinafter referred to as 'said land' for the sake of brevity).

4. Writ petitioner has sent a representation dated 30.09.2019 making a plea for measuring, surveying and fixing boundaries of said land. Alleging inaction on the part of the respondents 2 and 3, instant writ petition has been filed with a prayer for mandamus qua writ petitioner's representation dated 30.09.2019.



5. Earlier, writ petitioner approached this Court by way of writ petition being W.P.(MD)No.23504 of 2019 with regard to the same issue, but writ petition was withdrawn, as the writ petitioner had not annexed the title deed. Right of the writ petitioner to file a fresh writ petition on the same issue was preserved and instant writ petition has been filed post withdrawal of earlier writ petition which was on 07.11.2019. To be noted, this Court is informed about this factual aspect without any dispute.

6. With regard to said land, issue now is, a 'suit in O.S.No.7 of 2017' (hereinafter referred to as 'said suit' for the sake of brevity) is now pending on the file of the 'District Munsif Court, Thuraiyur' (hereinafter referred to as 'aforementioned Civil Court' for the sake of brevity), with regard to S.No.367/12 in V.A.Samuthiram Village, Thuraiyur Taluk, Trichy District.

7. Learned counsel for writ petitioner submits that writ petitioner is the first defendant in the said suit (one Venkadesh being co-defendant) and said suit has been filed by one Dhanabalan and D.Jayanthi as plaintiffs 1 and 2.

8. Learned State counsel who accepted notice on behalf of all the three respondents, on instructions, submits that there is a dispute pertaining to a pathway with regard to adjacent land ie., said land as well as the land in S.No.367/12 which is suit schedule property in said suit in aforementioned Civil Court.

9. In the aforesaid backdrop, if any direction is given by this Court that will tantamount to writ petitioner being able to fence localised property, leading to certain avoidable complications in the said suit in aforementioned Civil Court. This is learned State counsel's say.

10. This Court carefully considered the submissions made on both sides.

11. This Court notices that writ petitioner has not arrayed the aforesaid two plaintiffs namely Dhanabalan and D.Jayanthi as co-respondents in the instant writ petition.

12. Be that as it may, nothing prevents the writ petitioner from taking out an application in said suit in aforementioned Civil Court *inter alia* under Order XXVI Rule 19 of 'Code of Civil Procedure, 1908' ('CPC' for brevity) with a prayer for appointment of local Commissioner to localise said land with the assistance of a surveyor. There is nothing to explain why the writ petitioner has not chosen to adopt such a course.



13. Therefore, this Court is unable to convince itself that writ petitioner has made out a case to mandamus respondents without being hit by the vice of being an attempt to derail the civil Court proceedings.

14. If the writ petitioner chooses to file a suitable Interlocutory Application in the said suit in the said Civil Court, same shall be considered on its own merits and dealt with by the said Civil Court uninfluenced by this order. What has impelled this Court to give this observation is, if the writ petitioner chooses to file a suitable Interlocutory Application in the said suit in the aforementioned Civil Court, writ petitioner has to necessarily serve on the plaintiffs and show them as respondents in the Interlocutory Application. No Interlocutory Application can be filed in a pending civil suit ie., without notice to plaintiffs who are not before this Court.

15. As far as prayer in instant writ petition is concerned, this Court is left with the considered view that there is no ground to issue a mandamus. Writ Petition is dismissed albeit with above observations. No costs.

Sd/-

Assistant Registrar ()

// True Copy //

Sub Assistant Registrar(CS)

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To

1.The District Collector,
Trichy District, Trichy.

2.The Tahsildar,
Thuraiyur Taluk,
Trichy District.

3.The Land Surveyor,
Kannanur Survey Office,
Thuraiyur Taluk,
Trichy District.

+1 CC to .SPL GP (SR-100911[F] dated 25/11/2019)

+1 CC to Mr.R.VENKATESAN, Advocate (SR-100503[F] dated 22/11/2019)

Order made in
W.P(MD)No.24789 of 2019
22.11.2019

VB(06.12.2019) 3P 6C