

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 18.12.2020

C O R A M

The HON'BLE MR. JUSTICE SENTHILKUMAR RAMAMOORTHY

Writ Petition No.20760 of 2009 &
M.P.No.1 of 2009

(Through Video Conferencing)

1. R.Arumugam (Deceased)
2. Sampooram
3. Mallika
4. Thangamani
5. Chandra
6. S.A.Subramaniam

.. Petitioners

(P2 to P6 are substituted as LRs of
deceased (P1-Arumugam) as per court
order dated 05.08.2009 in WMP.No.20862/2019
in W.P.No.20760 of 2009)

vs

1. The District Collector,
Erode District.
2. The Thasildar,
Erode & District.
3. The Village Administrative Officer,
Punjai Kalamangalam Village,
P.K.Velampalayam,
Muthayeepalayam,
Erode & District.
4. The President,
Punjai Kalamangalam Panchayat,
Erode & District

5. Lakshmi

.. Respondents

(Impleaded as per order dated 18.12.2019 made in
WMP No.26664 of 2019 in W.P.No.20760 of 2009)

PRAYER : Writ Petition filed under Article 226 of the
Constitution of India, praying to issue a writ of Mandamus
forbearing the respondents from interfering with the peaceful

possession and enjoyment of the 4 feet pathway situated in R.S.No.987 of Punjai Kalamangalam Village, Erode District.

For Petitioner :Mr.I.C.Vasudevan

For Respondents :Mr.G.K.Muthukumar, Spl. Govt. Pleader
for R1 to R3

O R D E R

I heard Mr.I.C.Vasudevan, the learned counsel for the Petitioner and Mr.G.K.Muthukumar, the learned Special Government Pleader for Respondents 1 to 3.

2. In this writ petition, the Petitioner seeks a Writ of Mandamus to forbear the Respondents from interfering with the peaceful possession and enjoyment of the 4 feet pathway situated in R.S.No.987 of Punjai Kalamangalam Village, Erode District.

3. The Petitioner is the owner of the house situated in R.S.No.987. In front of the house, there is a 4 feet pathway. According to the Petitioner., the said pathway has been in the exclusive possession and enjoyment of the Petitioner and two others. On account of the fact that it is an occupied Natham Poromboke, the Petitioner claims that no other person can exercise any right in respect thereof or claim title thereto. In view of the fact that a person called Krishnasamy disturbed the possession and enjoyment of the pathway by the Petitioner, the Petitioner filed O.S.No.437 of 2005 on the file of the District Munsif Court, Erode. The said Krishnasamy filed O.S.No.683 of 2005. The suit filed by the Petitioner herein was decreed as prayed for whereas the suit filed by the said Krishnasamy was dismissed. The matter was carried in appeal by Krishnasamy before the Principal District Court, Erode, in A.S.No.21 of 2008. But the said appeal was dismissed on 31.07.2008, thereby confirming the judgment of the court below.

4. The present writ petition is laid on the basis of the judgment and decree in O.S.No.437 of 2005 as affirmed by the appellate court. The Petitioner states that notwithstanding the aforesaid judgment and decree, the third Respondent herein, in collusion with the aforesaid Krishnasamy, has attempted to disturb the possession and enjoyment of the pathway by the Petitioner on the basis that it is Government property. After issuing the representation dated 11.09.2009 to the Respondents 1 to 3 herein, the present writ petition was filed.

5. The learned counsel for the Petitioner reiterated the above facts. In particular, he invited the attention of

the Court to the sale deed dated 04.07.1931 wherein the pathway in question is described as "Munvaasal". He also referred to the 'A' Register wherein Survey No.987/19 is described as 'Natham'. On this basis, the learned counsel submits that the pathway is classified as 'Natham' and has been in the possession of the Petitioner for a long time and is also reflected in the aforesaid sale deed. He also relies upon the report submitted by the Advocate Commissioner in the suit wherein this property has been described by demarcating it as 'AB', which is also indicated in the sketch enclosed by the Petitioner. For all these reasons, the learned counsel submits that the Petitioner is entitled to the relief prayed for in the writ petition.

6. On the contrary, the learned Special Government Pleader submits that the Government was not joined as a party in O.S.No.437 of 2005 and, therefore, the judgment and decree obtained in the said suit is not binding on the Government. He also points out that no issue was framed in the said suit as regards the title of the Petitioner to the pathway. For this purpose, he invited the attention of the court to the issues framed in the said suit as reflected in paragraph 4 of the judgment. Although a finding is recorded with regard to the ownership of the pathway, he submits that the said finding was recorded in the absence of the Government and without considering as to whether the Government has title to the pathway. On account of the fact that it is classified as 'Arasu Poromboke Natham' in the 'A' Register, Mr.Muthukumar contends that it is owned by the Government in contrast to land which is classified as Grama Natham. In any event, he contends that these are disputed questions of fact which cannot be adjudicated in proceedings under Article 226 of the Constitution. Mr.Muthukumar also adverted to the photographs which are annexed to the counter affidavit of the second Respondent and with reference thereto, he points out that the pathway has clearly been encroached upon by the Petitioner. In these circumstances, he submits that it is open to the official Respondents to initiate proceedings by following due process so as to evict the Petitioner and clear the encroachment.

7. I considered the submissions of the learned counsel for the respective parties and examined the materials placed on record.

8. It is undisputed that the Government was not made a party in O.S.No.437 of 2005. Accordingly, the contentions of the learned Special Government Pleader that the judgment and decree is not binding on the Government is liable to be accepted. Upon perusal of the judgment, it is clear that the suit is laid for a permanent injunction and for consequential relief. Although a finding is recorded therein with regard to

the title to the pathway, the said finding is certainly not binding on the Government which was not joined as a party to the suit.

9. As regards title to the pathway, the Petitioner contends that the said pathway is classified as 'Natham' and on account of the fact that it is referred to in the sale deed of the year 1931, the Petitioner has title over the same. This contention is strongly refuted by the learned Special Government Pleader on the ground that it is classified as Arasu Poromboke Natham and, therefore, the Petitioner cannot claim title over it. The settled legal position is that such disputed questions of fact and particularly questions relating to title cannot be adjudicated in proceedings under Article 226. Consequently, I am not inclined to record findings in respect of the rival claims to title over this pathway. Nonetheless, this Court cannot lose sight of the fact that the Petitioner filed a suit before the District Munsif Court, Erode and obtained a judgment and decree, which is the foundation of the present writ petition. In the facts and circumstances, I am inclined to dispose of the writ petition by leaving it open to the Petitioner herein to initiate appropriate proceedings before the competent Civil Court so as to establish the Petitioner's right, title and interest over the disputed pathway. In such proceedings, it shall be open to the Government to raise all available defences so as to oppose the Petitioner's claim over the property. If so intended, it is also open to the Government to initiate appropriate proceedings to evict the Petitioner by complying with the procedures in the applicable enactments for such purpose.

10. This writ petition stands disposed of on the above terms. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

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To

1. The District Collector,
Erode District.
2. The Thasildar,
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4. The President,
Punjai Kalamangalam Panchayat,
Erode & District

+1cc to M/s.I.C.Vasudevan, Advocate SR.41940
+1cc to the Government Pleader SR.42246

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SR II(CO)
CB(20/01/2021)



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