



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 17.02.2020

CORAM:

THE HONOURABLE MR.JUSTICE S.S. SUNDAR

W.P.(MD).No.3063 of 2020

Sajitha Muhammed

.. Petitioner

Vs.

1.The Tahsildar,
Vilavancode Taluk,
Kanyakumari.

2.The Inspector of Land Survey
Vilavancode Taluk,
Kanyakumari.

3.Abdul Khani

.. Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, for the issuance of Writ of Certiorarified Mandamus, calling for the records relating to the impugned LETTER in E2/4645/2019, dated 21.02.2020 and directing the 1st and 2nd respondent to resurvey and demarcate the boundaries in respect of the petitioner land measuring 7.5 cents in Survey Nos.238/3, 238/4, 238/5 in Kaliyakavilayam Village, Vilavagodhu Taluk, Kanniyakumari District.

For Petitioner : Mr.A.Joseph Jerry

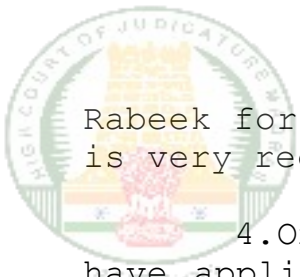
For Respondents : Mr.C.Ramar, for R1 and R2
Additional Government Pleader

ORDER

This writ petition is filed to quash the order passed by the Tahsildar, dated 21.01.2020 and to direct the respondents 1 and 2 to resurvey and demarcate the boundaries in S.Nos.238/3, 238/4 & 238/5 in Kaliyakavilayam Village, Vilavagodhu Taluk, Kanniyakumari District.

2.Mr.C.Ramar, learned Additional Government Pleader, takes notice for respondents 1 and 2. Notice to 3rd respondent is dispensed with. Heard both sides. Considering the facts and circumstances of this case, this writ petition is taken up for final disposal at the admission stage itself.

3.The case of the petitioner is that he is the owner of property in three survey numbers, measuring an extent of 7.5 cents and that the said property was purchased from Muhammed



Rabeek for a total consideration of Rs.51,24,717/-. The sale deed is very recent and it is dated 15.04.2019.

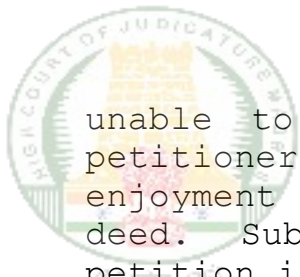
4. On the basis of the sale deed, the petitioner appears to have applied for resurvey and demarcation of land in S.Nos.238/3, 238/4 & 238/5, with reference to the four boundaries mentioned in the sale deed obtained by the petitioner. The said application was rejected by the Tahsildar by the impugned order on the ground that the said property was allotted to the third respondent pursuant to the decree passed in a suit in O.S.No.211 of 1973. It is also stated that there is no demarcation of 7.5 cents purchased by the petitioner within the property allotted to the third respondent. Therefore, the request for resurvey and demarcation of property was rejected.

5. The learned counsel appearing for the petitioner, challenging the order of Tahsildar submitted that the petitioner is entitled to the property purchased by him as per the decree that was passed by the suit which is referred to by the Tahsildar in the impugned order. The learned counsel has not produced before this Court any document to show that the petitioner's vendor in fact derived title from any one of the party to whom the property was allotted in the suit. Even there is no averment in the affidavit filed in respect of the petition connecting the petitioner or his vendor to the suit property through the parties to the suit in O.S.No.211 of 1973. In such circumstances, the reasons stated by the Tahsildar cannot be faulted. The petitioner is entitled to demarcation only if the petitioner's title and enjoyment with reference to a property which is identifiable on ground with reference to the permanent boundaries is established before a Civil court or by subdivision effected by revenue officials after issuing notice to all the joint pattadars whose rights had been determined either by order of Court or by grant of patta.

6. R.S.O. 31(13)(iii) reads as follows:

"(iii) Sub-division and separate registry of joint holdings.- Sub-division and separate registry of a joint holding may be effected at the instance of any one of the joint holders of a ryotwari holding or the persons to whom the whole or part of his share has been transferred, provided the shares are marked on the ground by well-defined boundaries. The consent of the other joint holders is not necessary."

7. So long as the petitioner's separate enjoyment with reference to defined permanent boundaries on ground is made, but, it is not possible for the petitioner to seek a prayer or file an application for demarcation of the property. Hence, this Court is



unable to entertain this writ petition. It is open to the petitioner to file a civil suit to establish his title and enjoyment with reference to any specific property as per the sale deed. Subject to the right reserved to the petitioner, this writ petition is dismissed. No costs.

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Sd/-

Assistant Registrar (CS-I)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

TM

To

1.The Tahsildar,
Vilavancode Taluk,
Kanyakumari.

2.The Inspector of Land Survey
Vilavancode Taluk,
Kanyakumari.

+1 CC to MR.A.JOSEPH JERY, Advocate (SR-6571[F] dated 17/02/2020)

+1 CC to SPL.GP (SR-6784[F] dated 18/02/2020)

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