



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED :28.09.2020

CORAM

WEB COPY

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

W.P. (MD) No.12800 of 2020

P.Vijaya

... Petitioner

Vs

- 1.The Tahsildar,
Uthamapalayam Taluk,
Uthamapalayam,
Theni District.
- 2.Deputy Tahsildar,
Uthamapalayam Taluk,
Uthamapalayam,
Theni District.
- 3.The Taluk Surveyor,
Office of the Tahsildar,
Uthamapalayam Taluk,
Uthamapalayam,
Theni District.

4.Ramsamy

... Respondents

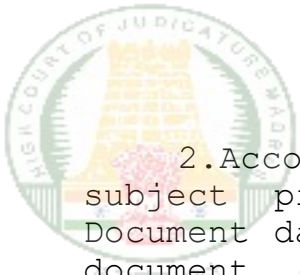
PRAYER: Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus, to direct the respondents 2 and 3 to remove the fencing around the property comprised in survey No. 116/2 and allow Petitioner to enter into her farming land which is next to the suit property.

For Petitioner : Mr.S.Vidhya Sagar

For R1 to R3 : Mr.P.Kannidevan,
Additional Government Pleader

ORDER

This Writ Petition is filed to direct the respondents 2 and 3 to remove the fence around the property in S.No.1116/2 situated at Devaram Village, Theni and to allow the petitioner to enter into her land.



2. According to the petitioner, her husband had purchased the subject property from one Chandrasekaran, vide General Power Document dated 29.05.2008 and thereafter, vide registered sale deed document dated 06.06.2008, the petitioner had succeeded the aforesaid property, for which, the petitioner was issued with patta in patta No.3171 by the 2nd respondent.

3. At this juncture, the 4th respondent herein had put up a fence around the subject property, for which, the petitioner was constrained to move the suit in O.S.No.45 of 2013 on the file of the District Munsif Judicial Magistrate Court, Bodinayakkanur for recovery of possession and permanent injunction to restrain the 4th respondent herein to enter into the petitioner's property. After trial, the aforesaid suit has been dismissed by the trial Court and challenging the same, the petitioner had filed an appeal in A.S.No.24 of 2017 before the Subordinate Court, Uthamapalayam and the same has also been dismissed for default by the appellate Court. Thereafter, the petitioner has filed an interlocutory application in I.A.No.1 of 2020 to restore the aforesaid appeal before the appellate Court and the same is pending now.

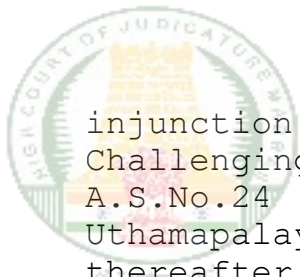
4. In the meantime, the 4th respondent had filed a writ petition in W.P.(MD) No.9366 of 2020 before this Court and this Court, by order dated 17.08.2020, directed the respondents 2 and 3 only to survey the subject property after issuing notice to the interested parties and not for fencing the same. Taking advantage of the aforesaid order, the 4th respondent had put up fence and refused to remove the fence, which is the subject matter of the property. Therefore, the petitioner has filed the present writ petition for the relief stated supra.

5. The learned counsel appearing for the petitioner would submit that without affording sufficient opportunity to the petitioner, the official respondent had surveyed the subject matter of the property behind the back of the petitioner.

6. In reply, the learned Additional Government Pleader appearing for the respondents 1 to 3 would submit that though sufficient opportunities have been given to the petitioner to raise her objections, if any, to survey the subject matter of the property, she did not appear on the date of survey. Hence, the official respondents have conducted the survey in accordance with rules.

7. Heard the learned counsel on either side and perused the materials available on records carefully.

8. Admittedly, the petitioner has filed the suit in O.S.No.45 of 2013 on the file of the District Munsif cum Judicial Magistrate Court, Bodinayakkanur for recovery of possession and permanent



injunction and the same has been dismissed by the trial Court. Challenging the same, though the petitioner had filed an appeal in A.S.No.24 of 2017 on the file of the Subordinate Court, Uthamapalayam, the same has been dismissed for default and thereafter, the petitioner has filed an interlocutory application in I.A.No.1 of 2020 to restore the aforesaid appeal before the appellate Court and the same is pending now. At this juncture, the petitioner has filed the present writ petition for the relief stated supra.

9.The main contention of the petitioner is that without providing sufficient opportunities, the official respondents had surveyed the subject property. On the aforesaid fact, the petitioner has filed the aforesaid suit for recovery of possession and the same has been dismissed. Challenging the same, though the petitioner has filed A.S.No.24 of 2017, the same has been dismissed for default by the appellate Court and thereafter, the petitioner has filed I.A.No.1 of 2020 to restore the aforesaid appeal and as on today, the same is pending. Therefore, pending I.A., it is for the petitioner to approach the civil Court to seek her remedy for restoration of possession for the subject matter of the property or to approach the appellate authority by way of filing an appeal as provided under the Act. *prima facie*, no case is made out to entertain the writ petition. Thus, the Writ Petition fails and the same is liable to be dismissed.

10.With the above observation, the Writ Petition stands dismissed with such liberty. No costs.

Sd/-

Assistant Registrar ()

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

1.The Tahsildar,
Uthamapalayam Taluk,
Uthamapalayam,
Theni District.

<https://hcservices.ecourts.gov.in/hcservices/>



2. Deputy Tahsildar,
Uthamapalayam Taluk,
Uthamapalayam,
Theni District.

3. The Taluk Surveyor,
Office of the Tahsildar,
Uthamapalayam Taluk,
Uthamapalayam,
Theni District.

+1 CC to M/s. Special Govt. Pleader (SR-18404[F] dated 29/09/2020)

+1 CC to M/s. S. VIDHYA SAGAR, Advocate (SR-18432[F] dated
30/09/2020)

W.P. (MD) No.12800 of 2020
28.09.2020

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SDS (07.10.2020) 4P-6C