



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 23.11.2020

CORAM

THE HON'BLE MR.JUSTICE S.VAIDYANATHAN

W.P. (MD)No.16540 of 2020

Pandiammal

... Petitioner

Vs.

1. The Collector,
Collectorate, Theni District.

2.Tahsildar,
Taluk Office, Thengarai Periyakulam,
Theni District.

3.Taluk Surveyor,
Taluk Office,
Thengarai Periyakulam,
Theni District.

4.R.Ramasamy
5.R.Rengammal

... Respondents

Prayer: Writ Petition is filed under Article 226 of Constitution of India, to issue a writ of Mandamus, directing the 1st respondent to issue suitable instruction to 3rd respondent to survey and measure and fix boundaries for the lands measuring 52 cents in S.No.1205/1 and 1.64 acres in S.No.1206 both situated at Tamaraikulam Village, Periakulam Taluk, Theni District.

For Petitioner : Mr.M.V.Venkatashesan

For Respondents 1 to 3 : Mr.M.Muniyasamy

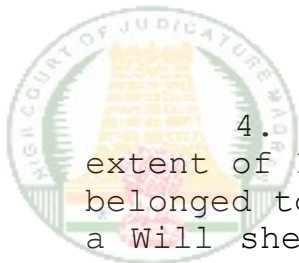
Additional Government Pleader

ORDER

The petitioner has come forward with this Writ Petition, seeking a direction to the 1st respondent to issue suitable instruction to 3rd respondent to survey and fix boundaries for the petitioner's lands to an extent of 52 cents in S.No.1205/1 and an extent of 1.64 acres in S.No.1206 both situated at Tamaraikulam Village, Periakulam Taluk, Theni District.

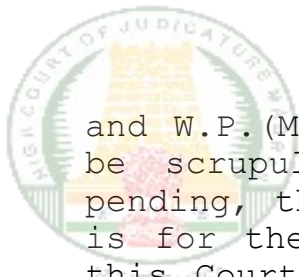
2. By consent of both parties, this Writ Petition is taken up for final disposal at the stage of admission itself.

3. Mr.M.Muniyasamy, learned Additional Government Pleader accepts notice on behalf of the respondents. Since no adverse order is going to be passed against the respondents 4 and 5, notice to them is dispensed with.



4. The case of the petitioner is that the land measuring an extent of 1.64 acres comprised in S.No.1206 of Thamaraiikulam Village belonged to the petitioner's maternal grandmother Karupayeeammal, by a Will she had bequeathed the said property to the petitioner. And another property to an extent of 1.04 acres comprised in S.No.1205/1 belonged to the petitioner's maternal grandfather, by name, Vellaichamy Thevear. Incidentally the petitioner's mother, Rajamani Ammal sold both the properties to one Allagappan. As per the Will of the petitioner's grandmother, the petitioner is entitled for entire 1.64 acres in S.No.1206 and 52 cents that is half share in S.No.1205/1. So She filed a suit in O.S.No.103 of 2006 on the file of District Munsif Court, Periyakulam for declaration and recovery of possession of above mentioned survey numbers to an extent of 1.64 acres and for partition of 52 cents. After serious contest, the suit was decreed on 25.06.2015 in favour of the petitioner. The petitioner filed E.P.No.9 of 2016 for delivery of 1.64 acres in S.No.1206 and by order dated 03.02.2020, she took possession of the property. For the extent of 52 cents, she filed E.P.No.9 of 2019, for partition, a commissioner was appointed and a final decree was passed and thereafter the petitioner took possession of the property through Court. Since both the properties are adjacent, the petitioner sought assistance of the Taluk Surveyor to measure the land. One Alagappan, who is no way connected with the subject property instigated 4th and 5th respondents to file a suit in O.S.No.55 of 2010 on the file of the Sub Court, Periyakulam, in which the petitioner and her family members are impleaded as party to the proceedings. Since no interim order was obtained by them, the petitioner sent a representation dated 22.09.2020 to the first respondent to issue suitable direction to the third respondent to measure the land and fix the boundaries. In her representation, the petitioner mentioned that she has taken the possession in E.P.No.9 of 2016 and E.P.No.19 of 2019. But till date no orders has been passed by the respondents. Hence, the petitioner approached this Court with the aforesaid prayer.

5. Since the petitioner has already got a judgment and decree in favour of her, no prejudice will be caused to the respondents 4 and 5 in surveying the said land and fixing the boundaries. Hence, this Court, without going into the merits of the case, directs the third respondent to survey the property of the petitioner, after affording opportunity to the petitioner as well as the respondents 4 and 5 and the persons, who are interested and the persons, who are likely to be affected. In case of issuance of patta, survey needs to be conducted and the said survey shall be photographed and videographed in the presence of the petitioner and the costs of Photograph and Videograph to be borne by the petitioner. Such an exercise shall be completed, within a period of three (3) months from the date of receipt of a copy of this order. At the time of conducting survey and in case of issuance of patta, the guidelines issued by this Court in W.P.(MD)No.13465 of 2020, dated 13.10.2020



and W.P.(MD)Nos.7746 of 2020 etc., batch dated 23.09.2020, have to be scrupulously followed. In case any Civil Suit is already pending, there is no need for measuring the land in question, as it is for the Civil Court to decide the matter. After the order of this Court any suit is filed, the officials hands are not tied to carry out the directions mentioned in the aforesaid two orders, as there is a possibility of one or other party to move the Court later and to stall the proceedings before the revenue authorities. Only exception is if an interim order operates against the authorities.

6. If the persons like the present petitioner, who are seeking to survey the land do not disclose the other persons, who are interested, they must file an affidavit that there are no third parties involved in the issue concerned and also there are no interested parties. In case, at a later point of time if the fact came to light that there is any interested parties, the decision taken by the authority in favour of the petitioner will stand automatically cancelled. Further, the averments made in the affidavit shall be reflected in their order so that the officer will not face any problem at a later point of time. More over, for filing a false affidavit, if appropriate action is taken, the person concerned will have to face imprisonment rather than fine.

7. Accordingly, this Writ Petition is disposed of. No costs.

Sd/-

Assistant Registrar (Records)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

PJL

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 Collector,
Collectorate, Theni District.

2.Tahsildar,
Taluk Office, Thengarai Periyakulam,
Theni District.



3.Taluk Surveyor,
Taluk Office,
Thengarai Periyakulam,
Theni District.

+1CC to M/s.V.Venkateseshan, Advocate, SR.No.22447 dated 23.11.2020

+1CC to M/s.SP1 GP, SR.No.22626 dated 24.11.2020

W.P. (MD) No.16540 of 2020
23.11.2020

DKS (CO)
KB (05.01.2021) 4P 6C