



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 10.01.2020

CORAM:

THE HONOURABLE MR.JUSTICE S.S. SUNDAR

W.P.(MD).No.16149 of 2015

and M.P.(MD).No.1 of 2015

Shanthi

.. Petitioner

Vs.

- 1.The District Collector,
Pudukkottai District,
Pudukkottai.
- 2.The Tahsildar,
Aranthangi,
Aranthangi Post & Taluk,
Pudukkottai District.
- 3.The Panchayat President,
Thanthani Village Panchayat,
Thanthani Post,
Aranthangi Taluk,
Pudukkottai District.

4.Karuppaiah

.. Respondents

Prayer: Writ Petition filed under Article 226 of the Constitution of India, for the issuance of Writ of Mandamus, forbearing the respondents 2 and 3 to form any road or pathway in Old Survey No.101/8A, New Survey No.101/20 in Thevarpatti Kudiyeri, Thanthani Revenue Village, Aranthangi Taluk.

For Petitioner : Mr.K.Baalasundharam

For Respondents: Mr.A.Thiyagarajan for R1 and R2

Government Advocate

Mr.J.Gunaseela Muthiah for R3

Mr.N.Balakrishnan for R4

ORDER

This writ petition has been filed for issuance of Writ of Mandamus, forbearing the respondents 2 and 3 to form any road or pathway in Old Survey No.101/8A, New Survey No.101/20 in Thevarpatti Kudiyeri, Thanthani Revenue Village, Aranthangi Taluk.

2.It is the case of the petitioner that he purchased an extent of 12 cents of land in old S.No.101/8A which is corresponding to the new S.No.101/20 in Thervarpatti, Kudiyeri, Thanthani Village, Aranthangi Taluk. By virtue of a registered sale deed, dated 30.05.1994 from one Ayyathal. The petitioner states that one Chandra instituted a suit against the petitioner and his father-in-law regarding the said property, in O.S.No.55/1997, on the file of District Munsif Court, Aranthangi and the said suit was dismissed.



3.It is case of the petitioner that the settlement Tahsildar directed to issue patta in favour of petitioner and that a revision petition by an individual by name Mariyappan was also dismissed, by order dated 29.07.1996. Despite order is being passed by the settlement officer, it is contended by the petitioner that his name was not included in the revenue records, as per the order passed by the Assistant settlement officer. Thereafter, the Tahsildar appears to have sent a communication to the petitioner, stating that an error had occurred in Natham settlement and hence, the petitioner should approach the Revenue Divisional Officer, Aranthangi. Thereafter, it is stated that respondents 2 and 3 came to the petitioner's property in old S.No.101/8A corresponding to new S.No.101/20 and demarcated a portion as a pathway. It is stated that the revenue officials have demarcated the portion of his property as a pathway at the instance of villagers. Thereafter, the petitioner's father-in-law submitted a representation to the first respondent on 31.08.2015 to take action for making unlawful markings in the petitioner's property for the purpose of forming a road. Stating that the respondents are taking hasty and hectic efforts to form the road in the petitioner's property, the petitioner has come by way of the present writ petition.

4.The learned Government Advocate on instructions submitted that the contention of the petitioner in the writ petition are false. It is stated by the respondents that a pathway runs across the land in the disputed property and that the said pathway is in enjoyment of public. It is further stated that the pathway is used by the public. The learned Government Advocate has not stated anything regarding the title of the petitioner. It is not known as to how and on what basis the learned Government Advocate says that a portion of the property is being enjoyed as a pathway. No revenue record is also produced by the respondent. However, the contention of the petitioner that the disputed property belonged to the petitioner is on the basis of sale deed, dated 30.05.1994 and the order of settlement officer, dated 30.11.1995. If a property is enjoyed by the neighbours to have access, it does not mean that the original owner is preventing from exercising his right of ownership, such right to use a land belonged to another as a pathway is recognized as an easement.

5.However, this Court do not express any opinion on the merits of the present case. If the disputed property is being enjoyed by the public as a road, the same can be considered by the Tahsildar based on Revenue records and the enquiry that may be conducted by him after examining the petitioner and other villagers or public who are using the property for their free ingress and egress. The Tahsildar is directed to hold an enquiry based on documents and revenue records as to the existence of any pathway in any portion of the property in new S.No.101/8A and corresponding new S.No.101/20.

<https://hcservices.judis.gov.in/> Thevarpatti Village, Thanthani Revenue Village,



Aranthangi Taluk, and may pass appropriate orders. If the finding of the Tahsildar after full fledged enquiry reveals that the disputed property is a pathway, then the petitioner may approach the civil court in case the petitioner wants to establish his exclusive title and enjoyment. If the second respondent find that the property is petitioner's patta land and that it is not being used as a pathway as per revenue records the second respondent may pass appropriate order with liberty to approach the civil court to any one who is aggrieved by such order. This exercise shall be undertaken by the Tahsildar within a period of 12 weeks from the date of receipt of a copy of this order.

6.With the above direction, this writ petition is disposed of. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (AD-I)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)

TM
To

1.The District Collector,
Pudukkottai District, Pudukkottai.

2.The Tahsildar, Aranthangi,
Aranthangi Post & Taluk,
Pudukkottai District.

+1 CC to M/s.K.BAALASUNDHARAM, Advocate (SR-1595[F]

+1 CC to M/s.SPL.GP (SR-1927[F] dated 20/01/2020)

W.P.(MD).No.16149 of 2015

10.01.2020

SMA/06/02/2020/3P/5C