



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 02.03.2020
CORAM:

WEB COPY

THE HONOURABLE MR.JUSTICE S.S.SUNDAR
and
THE HONOURABLE MR.JUSTICE C.SARAVANAN

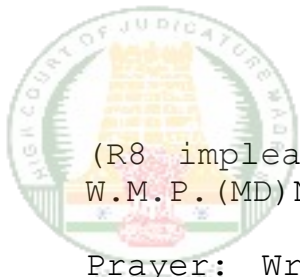
W.P(MD)Nos.15888 of 2018 and 20856 of 2019
and
W.M.P. (MD)Nos.14219 and 15589 of 2019
in
W.P. (MD)No.15888 of 2018

W.P(MD)No.15888 of 2018:-

Annapottu : Petitioner
Vs.

- 1.The District Collector,
Thanjavur District.
- 2.The Superintendent of Police,
Thanjavur District.
- 3.The Tahsildar,
Orathanadu & Taluk,
Tanjore District.
- 4.The Sub Inspector of Police,
Vallathikotai Police Station,
Orathanadu Taluk,
Tanjore District.
- 5.The Revenue Inspector,
Kollakkadu,
Orathanadu Taluk,
Tanjore District.
- 6.The Village Administrative Officer,
Kollakkadu, Orathanadu Taluk,
Tanjore District.
- 7.The Firka Surveyor,
Orathanadu Taluk,
Tanjore District.

8.Shanmuganathan : Respondents



(R8 impleaded vide order of this Court, dated 08.08.2019 made in W.M.P. (MD)No.11816 of 2019)

Prayer: Writ Petition filed under Article 226 of Constitution of India, to issue a Writ of Mandamus, to forbear the respondents from forming a road in Survey No.297/14 with an extent of 0.03.0 hectares of land at Venkarai Village, Orathanadu Taluk, Tanjore District without following the due process of law.

For Petitioner : Mr.N.Balakrishnan
For R1 to R7 : Mr.Mr.VR.Shanmuganathan
Special Government Pleader
For R8 : Mr.K.Kannan

W.P(MD)No.20856 of 2019:-

Shanmugasundaram ... Petitioner

Vs.

- 1.The District Collector,
Thanjavur District,
Thanjavur.
- 2.The Revenue Divisional Officer,
Thanjavur Revenue Division,
Thanjavur.
- 3.The Tahsildar,
Orathanadu Taluk,
Orathanadu, Tanjore District.
- 4.The Sub-Inspector of Police,
Vallathikottai Police Station,
Orathanadu Taluk,
Tanjore District.

5.Annapottu ... Respondents

Prayer: Writ Petition filed under Article 226 of Constitution of India, to issue a Writ of Mandamus, to direct the first respondent herein to issue necessary direction to the respondents No.2 to 4 to stop the illegal act of the fifth respondent herein by destroying the cart pathway existing in the land bearing S.No.297/14 measuring to an extent of 7 cents situated at Vannankadu, Venkarai Village, Orathanadu Taluk, Tanjavur District based on the petitioner's representation, date 20.09.2019 made to the first respondent.

For Petitioner : Mr.K.Kannan
For R1 to R4 : Mr.Mr.VR.Shanmuganathan
Special Government Pleader
For R5 : Mr.N.Balakrishnan



COMMON ORDER

(Order of the Court was delivered by **S.S.SUNDAR, J.**)

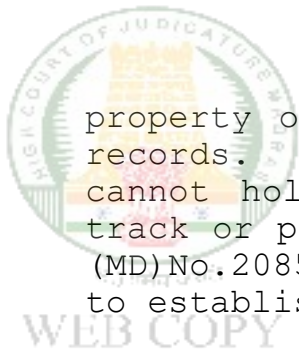
The petitioner in W.P.(MD)No.20856 of 2019 has filed the Writ Petition to direct the respondents 2 to 4 to stop the 5th respondent from destroying the cart pathway existing in the land in S.No. 297/14 situated at Vannankadu, Venkarai Village, Orathanadu Taluk, Tanjavur District.

2.The fifth respondent in W.P.(MD)No.20856 of 2019 has earlier filed the Writ Petition in W.P.(MD)No.15888 of 2018 to forbear the respondents from forming a road in S.No.297/14 at Vannankadu, Venkarai Village, Orathanadu Taluk, Tanjavur District measuring to an extent of 0.03.0 Hectares of land.

3.It is not in dispute that the property in S.No.297/14 originally belongs to one Meenakshi Achi. Several items of properties, including S.No.297/14, were purchased by the mother of petitioner in W.P.(MD)No.15888 of 2018 by a registered sale deed, dated 07.02.1952. The transfer of title from Meenakshi Achi to the petitioner's mother is not in dispute. However, the petitioner in W.P.(MD)No.20856 of 2019 has stated that the vendor of petitioner's mother, Meenakshi Achi, has donated the property for the purpose of laying a road, so that the villagers can use the same.

4.It is the case of the petitioner in W.P.(MD)No.20856 of 2018 that the original owner, Meenakshi Achi had donated the land in favour of public for the purpose of public to use the same as cart track / pathway to reach the burial ground. It is the further case of the petitioner in the latter writ petition that the mother of petitioner in W.P.(MD)No.15888 of 2018 purchased the property from Meenakshi Achi accepting the fact that the property had been donated by Meenakshi Achi. No document is produced before this Court to show that Meenakshi Achi had executed a gift deed or donated the land in S.No.297/14 for the purpose of formation of a pathway or cart track for the benefit of public. In the absence of any document of conveyance, this Court cannot assume that there was a gift deed executed by original owner, Meenakshi Achi in favour of the predecessor-interest of the petitioner in W.P.(MD)No.15888 of 2018. The documents produced by the petitioner in W.P.(MD)No.15888 of 2018 prompt this Court to conclude that the petitioner's mother had purchased the property way back in 1952 without any encumbrance. The claim of the petitioner in W.P.(MD) No.20856 of 2019 that the property was detailed as cart track in revenue records is also not supported by any revenue records.

5.The official respondents have filed a counter affidavit specifically denying the averments with regard to demarcation of



property or detailing the property as a cart track in the revenue records. Therefore, this Court, based on the document available, cannot hold that the property in S.No.297/14 was used as a cart track or pathway for the benefit of public. The petitioner in W.P.(MD)No.20856 of 2019, having claimed right to use the pathway, has to establish such right by acceptable evidence.

6.Having pleaded that the original owner has donated the land for the purpose of public to use the same as a common cart track or pathway, the petitioner has to prove. This Court sitting in Article 226 of Constitution of India, cannot decide the disputed questions of fact whether the property is used as a cart track or donated by the predecessor-in-interest of the petitioner in W.P.(MD)No.15888 of 2018 about several decades ago. Hence, this Court is unable to grant any relief to the petitioner in W.P.(MD)No.20856 of 2019 in the absence of any documentary evidence to show the enjoyment of property as a public cart track, especially when the title of fifth respondent in this Writ Petition is supported by document and the title of predecessor-in-interest of the petitioner in W.P.(MD)No.15888 of 2018 is admitted.

7.The prayer in W.P.(MD)No.15888 of 2018 is to forbear the respondents from forming a road in the property in S.No.297/14. Since this Court has already held that the title of petitioner in S.No.297/14 is supported by documents, the petitioner is entitled to the relief as prayed for. Accordingly, the Writ Petition in W.P.(MD)No.15888 of 2018 is allowed.

8.Since the claim of petitioner in W.P.(MD)No.20856 of 2019 is not entertained, having regard to the scope of jurisdiction of this Court under Article 226 of Constitution of India, this Court is of the view that liberty should be given to the petitioner in W.P.(MD)No.20856 of 2019 to establish his case before the Civil Court, if the contention that the portion of the property in S.No.297/14 was donated or it is used as cart track or pathway conferring the right of easement. Reserving such liberty to the petitioner, W.P.(MD)No.20856 of 2019 is dismissed. If the Civil Court hold in favour of petitioner in W.P.(MD)No.20856 of 2019, it is open to the petitioner to seek assistance of revenue to form cart track / pathway, despite the order of this Court passed in W.P(MD)No.15888 of 2018. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CO)

// True Copy //

/ /2020

Sub Assistant Registrar(CS)



To

- 1.The District Collector,
Thanjavur District.
- 2.The Superintendent of Police,
Thanjavur District.
- 3.The Tahsildar,
Orathanadu & Taluk,
Tanjore District.
- 4.The Sub Inspector of Police,
Vallathikotai Police Station,
Orathanadu Taluk,
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- 5.The Revenue Inspector,
Kollakkadu,
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- 6.The Village Administrative Officer,
Kollakkadu, Orathanadu Taluk,
Tanjore District.
- 7.The Firka Surveyor,
Orathanadu Taluk,
Tanjore District.
- 8.The Revenue Divisional Officer,
Thanjavur Revenue Division,
Thanjavur.

+1 CC to SPL GP (SR-9775[F] dated 03/03/2020)
+1.CC. To Mr.N.Balakrishnan, Advocate in SR No.9929
+1.CC. To Mr.K.Kannan, Advocate in SR No.9660

W.P(MD)Nos.15888 of 2018 and 20856 of 2019
02.03.2020

MK (12.03.2020) 5P 12C