



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.09.2021

CORAM:

THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN

W.P.No.11944 of 2013

and

M.P.No.1 of 2013

1. Pachamuthu Udayar (Died)
2. Kaveri
3. Arulmozhi
[P2 and P3 substituted as LR's of deceased sole petitioner
vide order dated 08.09.2021 made in WMP.No.19840
of 2021 in W.P.No.11944 of 2013]

... Petitioners

Vs.

1. The District Collector,
Cuddalore District, Cuddalore.
2. The Assistant Director,
Land Survey Department,
Cuddalore.
3. The Revenue Divisional Officer,
Vridhachalam.
4. The Tahsildar,
Vridhachalam.

5. Packiasami

... Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, to issue a writ of Certiorarified Mandamus, calling for the records of the third respondent relating to Mu.Mu (A4)/114/2013 dated 27.03.2013, quash the same and direct the third respondent to desist from taking any action pursuant to the impugned order.

For Petitioners : Mr.T.Sezhian

For Respondents : Mr.M.R.Gokul Krishnan
Government Advocate (for R-1 to R-3)
: Mr.D.Shivakumaran (for R-5)



O R D E R

This petition has been filed seeking to quash the proceedings in Mu.Mu (A4)/114/2013 dated 27.03.2013 passed by the third respondent and direct the third respondent to desist from taking any action pursuant to the impugned order.

2. The first petitioner had died and his legal heirs have been brought on record as the second and third petitioners herein. It is the case of the first petitioner that he owned the land comprised in S.No.64/2 to an extent of 12 acres 86 cents. The first petitioner sold three portions of the land and retained 4 acres 88 cents in S.No.64/2 A1A. The fifth respondent purchased 3 acres 93 cents from one of the purchasers of the first petitioner. According to the first petitioner in the year 1998, the fifth respondent encroached some portion of the first petitioner's land and formed a ridge. Therefore, the first petitioner was constrained to file a suit in O.S.No.581 of 1998 as against the fifth respondent on the file of the Additional District Munsif Court, Vridhachalam for declaration and recovery of possession. The suit was dismissed and the first petitioner preferred an appeal in A.S.No.3 of 2011 on the file of the Sub Court, Vridhachalam and the same was allowed. In the meanwhile, the fifth respondent filed a petition requesting the third respondent to correct the revenue records as per the sale deed, since the extent of the property mentioned in the revenue records is less than the extent mentioned in the sale deed. The said request was considered by the third respondent and the fourth respondent was directed to survey and measure the land and accordingly, make corrections in the revenue records. If any encroachment is made in the first petitioner's land, the said encroachment also shall be removed. Aggrieved by the same, the first petitioner filed this Writ Petition challenging the order passed by the third respondent.

3. The learned counsel for the petitioners submitted that as against the judgment and decree passed in A.S.No.3 of 2011 on the file of the Sub Court, Vridhachalam, the fifth respondent filed an Second Appeal in S.A.No.1106 of 2019 and it is pending before this Court. It is seen from the impugned order, the third respondent stated that there is no suit pending between the first petitioner and the fifth respondent and passed order. However, there is dispute with regard to title in respect of the same property is pending in S.A.No.1106 of 2019 on the file of this Court. Therefore, when the third respondent passed the impugned order without application of mind and that too without giving opportunity of hearing to the first petitioner.

4. Though summon was served on the first petitioner by the communication dated 18.02.2013, the first petitioner sought time



for producing the Court order. However, the third respondent without considering the said request, passed the impugned order. Therefore, it is in clear violation of principles of the natural justice and the impugned order is liable to be set aside. That apart, when the issue in respect of title over the property is pending, the third respondent ought not to have passed the impugned order.

5. In view of the above discussion, the impugned proceedings dated 27.03.2013 is set aside. Accordingly, this Writ Petition is allowed. However, the fifth respondent is at liberty to make a fresh representation to correct the revenue records as per his sale deed subject to result of the Second Appeal in S.A.No.1106 of 2019 on the file of this Court. Consequently, the connected Miscellaneous Petition is closed. No costs.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

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To

1. The District Collector,
Cuddalore District, Cuddalore.
2. The Assistant Director,
Land Survey Department,
Cuddalore.
3. The Revenue Divisional Officer,
Vridhachalam.
4. The Tahsildar,
Vridhachalam.

+1CC to Mr.R.Meenal, Advocate, Sr.No.46793

W.P.No.11944 of 2013

MG (CO)
K.RK. (20.10.2021)