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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.06.2021

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THE HONOURABLE MR.JUSTICE R.MAHADEVAN

W.P.No.17558 of 2013
and MP.No.1 of 2013

M.Thangamuthu

... Petitioner

Vs

1. The Tahsildar,
Dharapuram Taluk,
Dharapuram,
Tirupur District.

2. The Inspector of Police,
Dharapuram Police Station,
Dharapuram.
Tirupur District.

3. C.P.Chinnasamy

... Respondents

Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Mandamus directing the respondents to remove the fencing made in the land of the petitioner situated in S.Nos.656/2B1 and 656/2B2 in the name of Surveying the lands in S.Nos.270/5 and 270/6 of Uthupalayam Village, Dharapura Taluk, Tirupur District.

For Petitioner : Mr.S.Doraisamy

For R1 & R2 : Mr.G.Krishnaraja Government Advocate

For R3 : M/s A.K.Sridharan

O R D E R

Heard both sides and perused the materials placed before this Court.

2.The prayer made in this writ petition is to issue a mandamus directing the respondents to remove the fencing made in



the land of the petitioner situated in S.Nos.656/2B1 and 656/2B2 under the guise of survey the lands in S.Nos.270/5 and 270/6 of Uthupalayam Village, Dharapuram Taluk, Tirupur District.

3. According to the Petitioner, he is the owner of the land in S.No.656/ 2B2 of Uthupalayam Village, Dharapuram Taluk, measuring to an extent of 4.49 acres and all the revenue records pertaining to the said land, stand in his name. The third respondent is the adjacent owner of the petitioner and his land is situated in S.No.269 etc. There are various civil suits pending between the two, with respect to the possession and enjoyment of the lands. While so, the third respondent influenced the first respondent and made arrangements to survey the lands in S.No.656/2B1 and 656/2B2 under the guise of surveying the lands in S.Nos.270/5 and 270/6. Due to the same, the first respondent issued a notice dated 25.03.2013 to the petitioner, as regards the survey of land in S.Nos.270/5 and 270/6 of Uthupalayam Village, against which, the petitioner filed WP.No.9384 of 2013. However, the first respondent along with the second respondent came to the field, surveyed the lands and marked the boundaries, thereby encroaching upon the petitioner's land to an extent of 18 cents and permitting the third respondent to put up fencing. Stating that as per the communication of the first respondent dated 12.04.2013, there was no sub division as S.Nos.270/5 and 270/6 in S.No.656/2B2, however, at the instance of the third respondent, the respondents 1 and 2 surveyed the lands on 06.04.2013 and permitted the third respondent to fence 18 cents of land belonging to the petitioner, he has come up with this writ petition for the aforesaid relief.

4. Upon notice, the first respondent filed a detailed counter affidavit, wherein, it is inter alia stated that the third respondent filed a suit in O.S.No.22 of 1987 against the petitioner and obtained a decree for declaration of the subject property on 02.11.1993 from the District munsif court, Dharapuram, against which the petitioner filed CRP.No.12078 of 2003 before this Court, which dismissed the said petition on 28.03.2012 as devoid of merits; as per the orders of the District munsif court and this court, the third respondent requested the first respondent to measure and fix boundary stones in the fields in question; pursuant to the same, the first respondent issued a notice dated 25.03.2013 to the petitioner about the survey of the fields in S.Nos.270/5 and 270/6 of Uthupalayam Village; the said act was resisted by the petitioner and his son, which resulted in registration of FIR in Cr.No.67 of 2013 for the offences under sections 294b, 323 and 506(ii) IPC against them; and thereafter, the first respondent with the assistance of the second respondent measured the area belongs to the third respondent and marked the boundaries,



consequent to which, the third respondent formed iron wire fencing for his land. Thus, according to the first respondent, suppressing the materials facts, the petitioner has filed this writ petition and hence, the same is liable to be dismissed.

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5. In the light of the averments so made in the counter affidavit filed by the first respondent and also having regard to the admitted fact that there are civil suits pending between the petitioner and the third respondent, the relief sought herein cannot be straight away granted by this Court. Hence, this writ petition stands disposed of, leaving it open to the petitioner to approach the competent authority for appropriate relief in the manner known to law. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

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To

1. The District Munsif Court,
Dharapuram.
2. The Tahsildar,
Dharapuram Taluk,
Dharapuram,
Tirupur District.
3. The Inspector of Police,
Dharapuram Police Station,
Dharapuram.
Tirupur District.

+lcc to Mr.S.Doraisamy, Advocate Sr.30472
+lcc to the Government Pleader Sr.30240

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pch[co]
srg 13/08/2021