



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.03.2021

CORAM

THE HONOURABLE Mr. JUSTICE S.S.SUNDAR

W.P. No. 11914 of 2018

K.Kandasamay

.. Petitioner

Vs.

1.The District Collector,
Office of the Collectorate,
Villupuram & District.

2.The Thasildar,
Kallakurichi Taluk,
Villupuram District.

3.The Head Surveyor (Land),
Taluk Office,
Kallakurichi Taluk, Villupuram District.

.. Respondents

(R3 impeladed vide order dated 12.03.2021 made in W.M.P.
No.16537 in W.P. No.11914 of 2018)

Writ Petition filed under Article 226 of the Constitution of India, praying to issue a Writ of mandamus directing the respondents to consider and pass orders on the representation dated 24.02.2018 seeking to measure and de-mark the land in S.No.38/3 by fixing the boundaries to the petitioner's property to an extent of One acre and 84 Cents in patta No.546 at Perumangalam Village, Kallkurichi Taluk, Villupuram District within a time frame.

For Petitioner : Mr. R.Diwakaran

For Respondents : No appearance

O R D E R

This writ petition is filed for issuing a writ of mandamus directing the respondents to consider and pass orders on the representation of the petitioner dated 24.02.2018 seeking for measurement and demarcation of land in Survey No.38/3 by fixing the boundaries to the petitioner's property to an extent of 1 Acre and 84 Cents in patta No.546 at Perumangalam Village,



Kallkurichi Taluk, Villupuram District within a time frame.

2. The petitioner, in the affidavit filed in support of the writ petition, states that the property measuring an extent of 1 Acre 84 Cents in Survey No.38/3 at Perumangalam Village, Kallkurichi Taluk, Villupuram District, originally belonged to his father and that his father executed a gift deed on 27.04.1992 in favour of the petitioner. It is also the case of the petitioner that there was some dispute after the death of his father and that the petitioner was constrained to file a Civil Suit as against his brothers for declaration that the property belongs to the petitioner and for consequential injunction. The decree obtained in the suit in O.S. No.447 of 1992 on the file of Principal District Court, Kallakurichi, is filed before this Court. It is the case of the petitioner that patta was also transferred in the name of the petitioner in patta No.546 and that the petitioner is in possession and enjoyment of the property. It is stated that the petitioner has also executed a gift deed in favour of his own son by name Prabudevan. It is further stated by the petitioner that the petitioner applied to the second respondent to measure the property and mark the boundary line of the property. Since the respondents have not measured the property of the petitioner, the petitioner filed the present writ petition after submitting a representation to the respondents.

3. Having regard to the facts narrated in the affidavit filed in support of the petition, this Court is able to see that the petitioner has failed to furnish the convincing documents to establish his absolute title over the said property. There was no revenue record prior to the judgment and decree of the Civil Court in O.S. No.447 of 1992. The decree obtained in the suit is ex-parte. The defendants in the suit are none other than the petitioner's brothers. The petitioner, without proper documents particularly Patta, Chitta and Adangal, cannot seek survey of the property. The petitioner cannot use this Court or civil Court to collect evidence. Since this Court entertained a bonafide doubt as to the genuineness of the petitioner's claim, this Court granted sufficient time to the petitioner to produce prior documents of title or revenue records to confirm whether the computer generated patta produced by the petitioner is in fact based on the long continuous title and enjoyment of the petitioner or first on the basis of the settlement deed and the ex-parte decree obtained by the petitioner.

4. A Civil Suit was filed against two individuals who are none other than the petitioner's brothers. There was no lis and this Court is unable to find any justification for the petitioner to rest his claim over title based on the Civil Court's decree. The Adangal issued under Section 10(1) gives an



indication that the names of Kullan and Kandasamy are found in it. In the absence of any further documents to prove the right or title prior to the ex-parte Civil Court's decree, this Court cannot grant relief to the petitioner. However, considering the fact that the petitioner may produce relevant documents to the respondents, this Court without expressing any opinion on the petitioner's representation or the case pleaded before this Court, directs the respondents to consider and pass orders on the petitioner's representation dated 24.02.2018 within a period of twelve weeks from the date of receipt of a copy of this order. It should be noted that unless the petitioner produces before the respondents, the prior documents of title and revenue records showing the indisputable title and enjoyment of the property, the petitioner's representation for demarcation of land cannot be considered. If there are rival claims by persons who are not bound by the Civil Court's decree in O.S. No.443 of 1992, the respondents may relegate the parties to the Civil Court to establish their title and then to approach the Revenue Officials for survey and demarcation of the property. Notice shall be given to all persons interested before passing final order.

5. Accordingly, this writ petition is disposed of. No costs.

Sd/-

Assistant Registrar(CS-VII)

//True Copy//

Sub Assistant Registrar

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To

1.The District Collector,
Office of the Collectorate,
Villupuram & District.

2.The Thasildar,
Kallakurichi Taluk,
Villupuram District.

3.The Head Surveyor (Land),
Taluk Office,
Kallakurichi Taluk, Villupuram District.

+1cc to the Government Pleader, S.R.No.17588

W.P. No. 11914 of 2018

PL(CO)
CB(22/07/2021)