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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.09.2021

CORAM:

THE HONOURABLE Mr.JUSTICE N.ANAND VENKATESH

W.P. No.13697 of 2020
and WMP No.17033 of 2020

R.Ponnusamy

.. Petitioner

Vs

1.The District Collector,
Collectorate,
Tiruppur,
Tiruppur District.

2.The Revenue Divisional Officer,
O/o.The Revenue Divisional Officer,
Tiruppur.

3.The Tahsildar,
O/o. The Tahsildar,
Avinashi
Tiruppur District.

4.S.Vijayakumari

5.K.Suseela

6.R.Subramaniam

7.R.Kuppusamy

8.A.Kavitha

9.R.Chandrasekar

..Respondents

Prayer: Writ petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Certiorari to call for the records in proceeding Na.Ka.2090/2020/A2 dated 14.09.2020 of the 2nd respondent and quash the part of the impugned order "directing the 3rd



respondent, Taluk Assistant Inspector and VAO to measure the land to execute the order passed by the Madras High Court case No.6819 of 2020 order dated 17.03.2020 and submit the report within a week.

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For Petitioner : Mr.T.Mohan

For Respondents : Mr.P.Wilson
Senior counsel for
Mr.G.Dhinesh for R4, R5, R7 to R9
Mr.A.Selvendran for R1 to R3
Government Advocate

ORDER

The subject matter of challenge in the present writ petition pertains to the impugned proceedings of the second respondent dated 14.09.2020.

2. The case of the petitioner is that the subject property, namely, the property situated in S.No.106/1 belongs to him absolutely. The further case of the petitioner is that the 6th respondent had created a void sale deed dated 21.06.2006 and conveyed the property in favour of the 7th respondent, 4th respondent and one A.Chidambaram. According to the petitioner, this sale deed is not binding on him and hence, a suit was filed in O.S.No.242/2016 seeking for the relief of declaration that the sale deeds are null and void and not binding on the petitioner and for other consequential reliefs. The said suit was dismissed for default and the petitioner filed an application for restoration of the suit and this application also came to be dismissed for default. According to the petitioner, one more application was filed to restore the restoration application and the same is pending.

3. In the meantime, the petitioner filed yet another suit in O.S.No.137/2020 before the District Munsif Court, Avinashi. In the said suit, the respondents 4 to 9 herein are shown as the defendants 1 to 6. That apart, there are also four official defendants in the said suit. This suit was filed by the petitioner seeking for various reliefs and this suit is pending.

4. In the meantime, the 4th respondent approached this Court and filed a writ petition in W.P.No.6819/2020 for a direction to the second and third respondents herein to consider the representation made by the 4th respondent, wherein, the 4th respondent had sought for measurement and demarcation of the



property situated at S.No.106/1. This writ petition came up for hearing on 17.03.2020 and it was represented on the side of the official respondents that the third respondent had already called the parties for an enquiry and a decision will be taken with regard to the inspection and demarcation of the property within the time stipulated by this Court. Recording the same, the writ petition was disposed of by an order dated 17.03.2020 by fixing four weeks time for completion of this process.

5. The petitioner herein filed W.P.No.11229/2020 before this Court and complained that the objections given by the petitioner are not being considered, in view of the earlier orders passed by this Court in W.P.No.6819/2020. Considering the grievance of the petitioner, this Court directed the third respondent herein to consider the objections given by the petitioner, while deciding the request made by the fourth respondent herein and to take a decision within a period of eight weeks.

6. Pursuant to the above order, the second respondent through proceedings dated 14.09.2020 took a decision that the subdivision that was undertaken through proceedings dated 04.10.2004 is cancelled and further directed the Tahsildar to inspect and measure the property with the help of the Surveyor and to submit a report. Aggrieved by the same, the present writ petition has been filed before this Court.

7. Heard the learned counsel for the petitioner, the learned counsel for the respondents 1 to 3 and the learned senior counsel appearing on behalf of the respondents 4,5,7,8 and 9.

8. The learned Senior counsel appearing on behalf of the private respondents basically raised the issue of locus standi of the petitioner on the ground that the petitioner, after having parted with the property as early as in the year 2001, cannot maintain a suit after more than 12 years and therefore, the very claim made by the petitioner is not maintainable. The learned Senior counsel further submitted that the earlier suit that was filed by the petitioner was dismissed for default and it was not restored and the petitioner by giving it a go by has chosen to file one more suit and the same is pending. It was submitted that the suit is not maintainable, since it is barred by limitation. The learned Senior counsel submitted that the petitioner wanted the subdivision to be cancelled and accordingly, the second respondent has cancelled the subdivision and therefore, consequently, the property has to be necessarily measured and demarcated in line with the title documents of the parties. The learned Senior counsel submitted that there are absolutely no grounds to interfere with the order passed by the second respondent.



9. The learned counsel for the petitioner submitted that the civil rights between the parties can be left open to be agitated before the competent civil Court, where the suit is pending and it is not necessary to render a finding on the same in the present writ petition. The learned counsel submitted that the measurement of the property will not have any meaning once the subdivision itself has been cancelled. The learned counsel therefore, submitted that the second respondent has misconstrued the order passed by this Court in W.P.No.6819/2020 and has directed for the inspection and the measurement of the property. The learned counsel also brought to the notice of this Court an application that was filed by the private respondents before the civil Court, where the suit is pending in O.S.No.137/2020 and the learned counsel submitted that the private respondents themselves have sought for appointment of an Advocate Commissioner to inspect and measure the property with the help of a Surveyor. Therefore, the learned counsel submitted that the private respondents, having taken such an application before the Court below, should work out their remedy only in the pending suit and there is no requirement for the second respondent to independently direct the Tahsildar to measure the property and to submit a report.

10. The learned Government counsel appearing on behalf of the respondents 1 to 3, based on written instructions, submitted that the second respondent has cancelled the subdivision that took place in the year 2004 and has directed for the measurement/survey of the subject property in S.No.106/1 and in view of the interim orders passed by this Court, survey has not been undertaken by the Tahsildar. The learned Government counsel submitted that whatever directions are issued by this Court will be complied with by the Tahsildar. The learned Government counsel concluded his arguments by submitting that there are absolutely no grounds to interfere with the impugned proceedings of the second respondent, since the second respondent has cancelled the subdivision based on the request made by the petitioner and as a consequence, the subject property requires to be surveyed by the Tahsildar with the help of the Surveyor.

11. This Court has carefully considered the submissions made on either side and the materials available on record.

12. At the outset, it is made clear that this Court does not want to go into the inter se rights between the parties. The same has to be worked out by the parties in the pending proceedings in the manner known to law. For the purpose of this writ petition, this Court is more interested in assessing the impugned proceedings of the second respondent dated 14.09.2020.



13. A careful reading of the impugned proceedings of the second respondent shows that the second respondent had proceeded further to consider the claim made on either side and had come to the conclusion that the subdivision that took place through proceedings dated 04.10.2004 requires to be cancelled. There seems to be no serious dispute with regard to this decision taken by the second respondent. The only issue where the controversy has arisen is with regard to the directions given by the second respondent to the Tahsildar to conduct a survey in the subject property situated at S.F.No.106/1.

14. The private respondents have moved a very detailed application before the District Munsif Court, Avinashi in I.A.No.24 of 2020 in O.S.No.137 of 2020 for appointment of an Advocate Commissioner in order to conduct a survey and measure the subject property with the help of a Surveyor. It is seen from the application that the private respondents have sought for the survey of both S.F.Nos.106/1 and 115/1. The private respondents thought it fit to file such an application since they wanted to identify the property correctly based on the title documents. According to the private respondents, the report of the Advocate Commissioner, after conducting the survey, will have a lot of bearing while deciding the pending suit.

15. In view of the above development, it will be fit and proper to issue appropriate directions to the District Munsif, Avinashi to consider the said application. Ultimately, the report submitted by the Advocate Commissioner, after conducting the survey with the help of a Surveyor, will be treated as a piece of evidence, while deciding the suit and the same will be dealt with by the Court below in accordance with law. Once such a survey takes place, it will have more authenticity, since it will be subject to appreciation by the competent Civil Court. That apart, both the parties will have a right to put forth their claims based on the report of the Advocate Commissioner.

16. In view of the above discussion, this Court modifies the directions issued by the second respondent with regard to the survey of the property by the Tahsildar and instead, there shall be a direction to the District Munsif Court, Avinashi to deal with I.A.No.24/2020 in O.S.No.137/2020 and pass appropriate orders within a period of four weeks from the date of receipt of a copy of this order. It is made clear that the report of the Advocate Commissioner shall be dealt with in accordance with law, while deciding the suit. Insofar as the maintainability of the suit, it is left open to the private respondents to independently make such a claim in the pending suit.



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17. This writ petition is disposed of accordingly. No costs. Consequently connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

RR

To

- 1.The District Collector,
Collectorate,
Tiruppur,
Tiruppur District.
- 2.The Revenue Divisional Officer,
O/o.The Revenue Divisional Officer,
Tiruppur.
- 3.The Tahsildar,
O/o. The Tahsildar,
Avinashi
Tiruppur District.
- 4.The District Munsif,
Avinashi.

+1cc to M/s.Tamizh Law Firm, Sr No.50304
+1cc to Mr.G.Dinesh, Advocate Sr No.49671
+1cc to the Government Pleader, Sr No.50519

W.P.No.13697 of 2020

RLD (CO)
PR (18/10/2021)