



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 28.10.2021

CORAM:

THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN

W.P.NO.2946 OF 2014

AND

M.P.NO. 1 OF 2014

Kalimuthu
S/o.Veeramuthu

...Petitioner

Vs

1. The District Revenue Officer,
Cuddalore District, Cuddalore.

2. The Tahsildar,
Virudhachalam Taluk,
Cuddalore District.

3. Arumugam

...Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India to issue a writ of certiorari, calling for the records relating to the order dated 16.08.2013 in Na.Ka.V.2/6590/2013 of the first respondent herein and quash the same.

For Petitioner : Mr.AL.Ganthimathi

For R1 & R2 : Mr.M.R.Gokul Krishnan
Government Advocate

For R3 : Mr.C.Arun Kumar



However, the third respondent encroached some portion of the common pathway. Therefore, the petitioner was constrained to file a suit in O.S.No.578 of 2006 on the file of the Principal District Munsif, Virudhachalam, for declaration of the said pathway as a common pathway and also permanent injunction restraining the defendants from in any manner interfering with the plaintiff's usage of his share through the common pathway. The petitioner also sought for mandatory injunction to remove the encroachments made in the "C" schedule property. The said suit was decreed in favour of the petitioner by a Judgment and Decree dated 19.01.2010 and aggrieved by the same, the third respondent preferred an appeal in A.S.No.21 of 2010 on the file of the Principal Sub Court, Virudhachalam and the same was also dismissed by a Judgment and Decree dated 08.09.2010. Against the said Judgment and Decree, the third respondent had filed second appeal before this Court in S.A.No.1569 of 2010 and it is pending.

7. Pending second appeal, the third respondent straight away made a representation before the first respondent for cancelling the sub-division as a common pathway in survey No.389/21 and issued house site patta in his favour. The first respondent issued notice and the petitioner appeared for enquiry and submitted his counter by citing the Judgment and Decree passed in his favour. Further, without considering the same, the first respondent directed the second respondent to sub-divide the same and to issue patta in favour of the third respondent herein.

8. The impugned order dated 16.08.2013 reveals that the subject land is not a common pathway at any point of time and wrongly entered into the register as "Sarkkar Poramboke land". The first respondent failed to see the Judgment and Decree passed by the Civil Court. In fact, the third respondent filed the second appeal in S.A.No.1569 of 2010 and it is pending before this Court for adjudication. The first respondent is not a competent authority to decide the title over the property. Therefore, the impugned order cannot be sustained and it is liable to be set aside.

9. In view of the above, the impugned order dated 16.08.2013 passed by the first respondent is hereby set aside. However, the third respondent is at liberty to approach the



second respondent for issuance of patta for the subject land, if he succeeds in the second appeal No.1569 of 2010.

10. In the result, the Writ Petition stands allowed. Consequently, connected Miscellaneous Petition is closed. No costs.

Sd/-
Assistant Registrar(CS-III)

// True Copy //

Sub Assistant Registrar

Lpp

To

1. The District Revenue Officer,
Cuddalore District, Cuddalore.
2. The Tahsildar,
Virudhachalam Taluk,
Cuddalore District.

+1cc to M/s.AL.Ganthimathi, Advocate, S.R.No.56249

+1cc to the Government Pleader, S.R.No.56664

W.P.No.2946 of 2014
and
M.P.No. 1 of 2014

PMK(CO)
RLP(17/11/2021)