



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 04.03.2021

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THE HONOURABLE MR.JUSTICE **V. PARTHIBAN**

W.P. (MD)No.4248 of 2021

and

W.M.P. (MD)No.3447 of 2021

WEB COPY

S.Chinnamuthiah : Petitioner

Vs.

1.The Tahsildar,
Tahsildar Office,
Srivilliputhur, Virudhunagar District.

2.The Surveyor,
Malli Firka,
Srivilliputhur, Virudhunagar District.

3.R.Murugan : Respondents

PRAYER :- Petition filed under Article 226 of the Constitution of India seeking a Writ of Mandamus, to forbear the first and second respondents from conducting survey, measurement and demarcation of boundaries of the property comprised in S.No.221/4 situated at Poovani Village, Virudhunagar District admeasuring an extent of 28 cents lying in the northern portion forming part of southern 70 cents out of a total extent of 93 cents pending civil dispute in O.S.No.3 of 2021 on the file of the Principal Subordinate Court, Srivilliputhur, in consonance with the guidelines issued by this Court in WP(MD).No.13465 of 2020 dated 05.10.2020.

For Petitioner

:Mr.S.I.Muthiah

For R1 and R2

:Mr.C.Ramesh

Special Government Pleader

ORDER

The case of the petitioner is that the land comprised in S.No.221/4 situated at Poovani village, Virudhunagar District, for an extent of 93 cents belongs to the petitioner and his brother Ponnusamy. The petitioner's brother, by an unregistered document, dated 07.04.1995, has made over his share in the subject property in favour of the petitioner absolutely. According to the petitioner, ever since the date of execution of the said document by his brother, the petitioner has been in peaceful possession and enjoyment of the same. According to the petitioner, he has constructed a cow shed and dump pit in the property.

2.The petitioner's brother, having parted his right over the subject property, which was settled in favour of the petitioner, in order to defraud the petitioner, has fabricated certain documents and encumbered the property in favour of third party. The



petitioner was not aware of those fraudulent transactions, which took place at the instance of his brother and on due verification, he came to know that his brother was solely responsible for all the transactions behind his back. Therefore, to protect his right, the petitioner had approached the competent Civil Court in O.S.No.3 of 2021, seeking a relief of declaration of title and permanent injunction against the third respondent and other defendants therein and the said suit is pending consideration before the Principal Subordinate Court, Srivilliputhur.

3.While the matter stood thus, the third respondent and other interested parties had approached the revenue officials for surveying and demarcating the property, which is the subject matter of the suit proceedings in O.S.No.03 of 2021 on the file of the Principal Subordinate Court, Srivilliputhur. According to the petitioner, the third respondent has also approached this Court in Crl.O.P.(MD)No.601 of 2021 seeking police protection for his illegal attempt to survey the land, notwithstanding the civil suit pending in O.S.No.03 of 2021. This Court has disposed of the said Crl.O.P.(MD)No.601 of 2021 directing the respondents therein to consider the representation of the petitioner therein seeking police protection.

4.The petitioner, having faced the repeated attempts by the third respondent, has also approached this Court in Crl.O.P.(MD) No.2097 of 2021 seeking direction against the police officials not to interfere with the civil dispute, as between him and the third respondent herein. According to the petitioner, this Court had also allowed the said Crl.O.P.(MD)No.2097 of 2021 on 11.02.2021 directing the respondent police therein not to interfere with the civil dispute, which is the subject matter of O.S.No.03 of 2021 pending on the file of the Principal Subordinate Court, Srivilliputhur.

5.The grievance of the petitioner herein is that despite the above direction by this Court on 11.02.2021, attempts have been made by the revenue officials, namely, the first and second respondents to survey the property detrimental to the petitioner's interest. In order to protect his interest in the pending civil suit, the petitioner is before this Court for issuing Writ of Mandamus.

6.This Court is unable to appreciate the relief being sought in this Writ Petition, in view of the above narrative for the simple reason that the *lis* between the petitioner and private respondent is pending in O.S.No.3 of 2021 on the file of the Principal subordinate Court, Srivilliputhur. The petitioner appears to have also obtained an order in his favour restraining the police from interfering with the civil dispute pending in O.S.No.03 of 2021 on 11.02.2021 from this very Court in Crl.O.P.(MD)No.2097 of 2021, as averred in the Writ Petition. When the petitioner is fully protected by the order of this Court and the subject matter of dispute is pending in O.S.No.03 of 2021 on the file the Principal Subordinate Court,



Srivilliputhur, the attempt by the petitioner to seek direction from this Court is absolutely unwarranted and uncalled for.

7.The petitioner has attempted to drag this Court's constitutional jurisdiction into a civil dispute which would amount to gross abuse of process of this Court. The petitioner cannot be allowed to indulge in forum shopping as a matter of course and invoke the jurisdiction of this Court in a private dispute between him and the third respondent.

8.When admittedly the suit is pending *qua* parties, it is always open to the petitioner to work out his remedy in the pending civil litigation including obtaining any interim direction pending finalisation of the suit. It is certainly not open to the petitioner to approach this Court under Article 226 of the Constitution of India in the interregnum and seek a direction to the revenue officials pending finalisation of the suit. If this Court were to issue a direction at the instance of the petitioner, that would amount to interference in the civil suit pending before the Civil Court and also would have a bearing on the pending *lis* between the petitioner and the third respondent. Therefore, this Court is of the view that the Writ Petition is liable to be rejected on that account.

9.In the above circumstances, this Writ Petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (AS)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

Cmr

To

1.The Tahsildar,
Tahsildar Office,
Srivilliputhur, Virudhunagar District.

2.The Surveyor,
Malli Firka,
Srivilliputhur, Virudhunagar District.

+1 CC to M/s.SPL GP (SR-9178[F] dated 05/03/2021)

W.P. (MD)No.4248 of 2021

04.03.2021

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AC (CO)

KK(09.04.2021) 3P 4C