



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 04.03.2021

CORAM

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

W.P. (MD)No.4747 of 2021

and

W.M.P. (MD)No.3860 of 2021

Arumuga Pandi

: Petitioner

Vs.

1.The Assistant Director for Survey,
District Surveyor Office,
Tenkasi.

2.The Surveyor,
Surveyor Office,
Alankulam Taluk Office, Tenkasi District.

3.Chelladurai Pandian.

: Respondents

PRAYER :- Petition filed under Article 226 of the Constitution of India seeking a Writ of Mandamus, to forebear the second respondent from surveying the land in S.No.411/2 to an extent of 1 acre and 64 cents at Kavalakurichi Village, Thenkasi District till the disposal of the S.A.(MD)No.1056 of 2009 pending on the file of this Court.

For Petitioner

: Mrs.S.Vijayashanthi

For R1 and R2

: Mr.C.Ramesh

Special Government Pleader

ORDER

The property in S.No.411/2 to an extent of 1 acre 64 cents at Kavalakurichi Village, Tenkasi District was a joint family property purchased in the name of Arumugathevar, petitioner's paternal uncle. Later, by way of an oral partition of the joint family property, Arumugathevar had given a letter of undertaking relinquishing his right and gave consent to transfer patta in favour of petitioner's father, Shanmugathevar and his cousin brothers, namely, Seenipandi and Chellapandi,. The patta was, therefore, transferred in the name of the petitioner's father, Shanmugathevar and property was in joint possession by the other persons of the family.

2.It appears that the said Arumugathevar filed a suit in O.S.No.431 of 2003 seeking declaration of title and injunction based on the sale deed executed in his favour. The trial Court has decreed the suit on 04.06.2004 by granting the relief of declaration



and injunction. Subsequently, on 15.12.2005, the trial Court decree was also confirmed in A.S.No.85 of 2005. As against the first appellate Court judgment, a second appeal in S.A.(MD)No.1056 of 2009 was filed before this Court and the same is pending as on date.

3. According to the petitioner, pending the second appeal before this Court, the said Arumugathevar sold a portion of the said property to one Irulappa Pandi on 25.01.2010. The said Irulappa Pandi, in turn, sold the property conveyed to him to the third respondent on 09.07.2010. The petitioner's father, in the meanwhile, filed an impleading petition in the pending second appeal and notice was ordered by this Court. In the meanwhile, Arumugathevar appears to have died and that his legal heirs were sought to be brought on record.

4. It appears that the third respondent has also filed Crl.O.P.. (MD)No.12420 of 2020 before this Court seeking police protection and this Court has also vide order, dated 05.11.2020 directed to provide police protection, if necessary. Taking advantage of the order passed in his favour, the third respondent is attempting to dispossess the petitioner from the property.

5. The petitioner, on his part, also appears to have approached this Court in Crl.O.P.(MD)No.133 of 2021 seeking direction restraining the police from interfering with the civil dispute with the subject matter of the property pending in the second appeal before this Court. The said petition was disposed on 19.01.2021 recording the facts of pendency of the second appeal and other related issues and directed the parties to resolve the issue amicably before the competent Civil Court.

6. While the matter stood thus, according to the petitioner, on 26.02.2021, the second respondent with the help of the police officials visited the subject property for the purpose of surveying the land, notwithstanding the pendency of the second appeal before this Court. In order to prevent the officials from interfering with the civil dispute, the petitioner is before this Court seeking issuance of a Writ of Mandamus restraining the second respondent from carrying out the survey of the subject property.

7. From the factual narrative above, it could be seen that ultimately, the dispute, as between the petitioner and the private respondent, is to be settled by this Court in the pending second appeal in S.A.(MD)No.1056 of 2009. In fact, from the averments, it could be seen that the parties have been repeatedly approaching this Court on the criminal side and obtained directions on the civil *lis* between the petitioner and the third respondent. However, the actual *lis* is required to be settled only by this Court in the pending second appeal and therefore, unless and until, the second appeal is disposed of finally, no parties could upset the *status-quo*



in the matter.

8.In the above said circumstances, if this Court entertains this Writ Petition at the instance of the petitioner herein and passes any directions, that would unnecessarily precipitate the issue and complicate the *lis* further and also it could not be proper for this Court to pass any direction in a Writ jurisdiction, when a civil dispute is pending in the second appeal before this Court. Any intervention by a Writ Court in the pending civil dispute on the file of this Court in the second appeal stage would be grossly improper and would not be in the fitness of things, as judicial discipline has to be maintained in such matters.

9.Therefore, this Writ Petition stands dismissed as not maintainable. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS-III)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

cmr

To

1.The Assistant Director for Survey,
District Surveyor Office,
Tenkasi.

2.The Surveyor,
Surveyor Office,
Alankulam Taluk Office, Tenkasi District.

+1 CC to M/s.S.VIJAYA SHANTHI, Advocate (SR-8850[F] dated 04/03/2021)

+1 CC to M/s.SPL GP (SR-9468[F] dated 08/03/2021)

W.P. (MD)No.4747 of 2021
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sss(CO)

TR(31.03.2021) 3P 5C