



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 02.02.2021

CORAM:

THE HONOURABLE MR.JUSTICE **M.M.SUNDRESH**

AND

THE HONOURABLE MRS.JUSTICE **S.ANANTHI**

W.A. (MD) No. 700 of 2020

and

C.M.P. (MD) No. 4158 of 2020

1.Velathaal
2.Valliathaal
3.Palaniammal

: Appellants / Respondents 3 to 5
Vs.

1.K.Velusamy

: 1st Respondent/Petitioner

2.The Tahsildar,
Palani Taluk,
Dindigul District.

3.The Firka Surveyor,
Thoppampatti,
Palani Taluk,
Dindigul District.

: Respondents 2 and 3/ Respondents
1 and 2

PRAYER: Writ Appeal filed under Clause 15 of the Letters Patent as against the order dated 07.07.2020 made in W.P.(MD) No. 4770 of 2020.

PRAYER IN WP(MD) . 4770/ 2020 :

Writ Petition is filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Mandamus directing the respondents to measure, to fix four boundaries and to erect boundary stones by surveying the property in Survey No.199/2F1 with an extent of 3.41.50 hectare of Punja land situated at Thoppampatti Village, Palani Taluk, Dindigul District.

For Appellants : Mr.S.Siva Thilakar

For Respondents : Mr.D.Venkatesh
for R.1
Mr.K.P.Krishnadoss
Special Government Pleader
for R.2 & R.3

JUDGMENT

(Judgment of the Court was delivered by **M.M.SUNDRESH, J.**)

This appeal is preferred by the appellants, being aggrieved against the order of the learned Single Judge, by which, a direction was issued to the official respondents to dispose of the application made by the first respondent / writ petitioner, in accordance with



law, after affording an opportunity of hearing to the parties concerned.

2. The learned Counsel appearing for the appellants submitted that without affording an opportunity, the measurement was done and the standing trees were uprooted. It is further submitted that the first respondent / writ petitioner has suppressed the factum of the suit decreed in O.S.No.386 of 2010, on the file of the District Munsif Court, Palani and the pendency of the appeal in A.S.No.31 of 2018, on the file of the Sub Court, Palani.

3. The learned Counsel appearing for the first respondent / writ petitioner submitted that the Writ Court merely directed the official respondents to consider the representation of the petitioner.

4. The writ petitioner has admittedly suppressed the material facts. Even otherwise, the writ petition itself is not maintainable, especially after the preliminary decree was passed. The suit was filed by the appellants herein, in which, the writ petitioner was a party. He participated in the proceedings and contested the matter. He has also filed an appeal.

5. In view of the above, the order passed by the learned Single Judge in W.P.(MD)No.4770 of 2020 dated 07.07.2020 stands set aside. Consequently, the survey conducted would be *non est* in the eye of law. However, we make it clear that this order will not have any bearing in the pending appeal.

6. In fine, this writ appeal stands allowed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS III)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

gk

To

1.The Tahsildar,
Palani Taluk,
Dindigul District.

2.The Firka Surveyor,
Thoppampatti,
Palani Taluk,
Dindigul District.

<https://hcservices.eportals.gov.in/hcservices/>



+1 CC to M/s.GP (SR-3343[F] dated 04/02/2021)

+1 CC to M/s.S.SIVA THILAKAR, Advocate (SR-2697[F] dated 02/02/2021)

WEB COPY

W.A. (MD) No. 700 of 2020
02.02.2021

TP (CO)

KK (11.02.2021) 3P 5C