



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 07.12.2021

CORAM:

WEB COPY

THE HONOURABLE MR.JUSTICE C.V. KARTHIKEYAN

W.P(MD)No.11622 of 2020

and

W.M.P(MD)No.10123 of 2020

K.Shanmugam

... Petitioner

vs.

1.The District Collector,
Thanjavur District,
Thanjavur.

2.The Revenue Divisional Officer,
Pattukottai Sub-Division,
Thanjavur.

3.The Tahsildar,
Pervurani Taluk,
Thanjavur District.

...Respondents

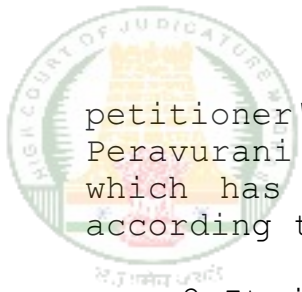
PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Mandamus, directing the respondents 1 to 3 to record his objection regarding laying of road in his property situated in S.No.166/5, Kalanivasal Village, Peravurani Taluk, Pattukottai Sub Division, Thanjavur District, which was further bifurcated into new S.Nos.166/35/0.01.0 - 44.0.01.0, which is solely in his possession by considering his representation, dated 08.09.2020, within the time stipulation as prescribed by this Court.

**(Prayer amended vide Court order dated 20.11.2020,
made in W.M.P(MD)No.13169 of 2020 in
W.P(MD)No.11622 of 2020)**

For Petitioner : Mr.N.Balasubramanian
For Respondents : Mr.N.Satheesh Kumar
Additional Government Pleader

O R D E R

<https://hcservices.ecourts.gov.in/hcservices/> The Writ Petition has been filed in the nature of Mandamus, seeking a direction against the respondents 1 to 3, to record the objection of the petitioner with respect to laying of road, in the



petitioner's property situated in S.No.166/5, Kalanivasal Village, Peravurani Taluk, Pattukottai Sub Division, Thanjavur District, which has been further bifurcated into new S.No.166/35 and which according to the petitioner, is in his possession.

2.It is seen from a perusal of the records that the petitioner had also instituted a suit as against the present respondents herein, in O.S.No.84 of 2019, which is now pending at Sub Court, Pattukottai.

3.The learned Counsel states that the respondents herein were set ex-parte. That does not automatically mean that the petitioner has the benefit of a decree. While passing a decree, whether the defendants are Ex-parte or not, there is an obligation on the learned Judge, who examines the averments made in the plaint, to see that the said averments, are proved in manner known to law and such proof is established by documentary or oral evidence which are admissible, which are relevant, which are genuine and which have been once again proved in manner known to law. These are steps which have to be taken by any Judge who presides over trial of suits and examines the case of the plaintiff even if the defendants have been set ex-parte.

4.In the instant case, counter has been filed by the third respondent. It had been very specifically stated that the petitioner herein, had encroached into the pathway in S.No.166/45 and that the particular survey number is a pathway.

5.Naturally, the petitioner cannot claim any right or interest over the pathway and if at all he seeks to establish such right, he has to do so by going through normal process. It is also seen that the S.No.166/54, is also part of the schedule in the plaint. In the plaint, the petitioner claims title, but, it has to be mentioned that the said survey number is actually a pathway.

6.I leave it open to the wisdom of the learned Sub Judge to decide on the merits of the suit, but, so far as the Writ Petition is concerned there are no merits and the learned Counsel also stated that he would press the suit for appropriate relief.

7.This Writ Petition is therefore dismissed. No costs. Consequently, the connected Miscellaneous Petition is also closed.

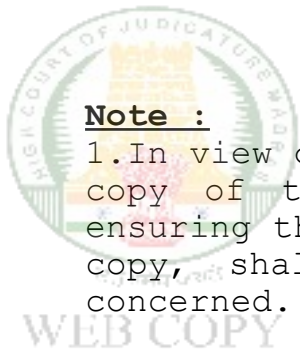
Sd/-

Assistant Registrar (CS-II)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)



Note :

1. In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate / litigant concerned.

To

1. The District Collector,
Thanjavur District,
Thanjavur.
2. The Revenue Divisional Officer,
Pattukottai Sub-Division,
Thanjavur.
3. The Tahsildar,
Pervurani Taluk,
Thanjavur District.

+1 CC to M/s.SPL GP (SR-37911[F] dated 09/12/2021)

W.P(MD)No.11622 of 2020

07.12.2021

RD(20.12.2021) 3P 5C