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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.03.2022

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THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.No.13154 of 2011

and

M.P.No.1 of 2011

K.Kuppusamy Naidu

... Petitioner

Vs.

1.The Tahsildar,
Kallakurichi,
Villupuram District.

2.The Head Surveyor,
Taluk Office,
Kallakurichi,
Villupuram District.

3.The Inspector of Police,
Chinnasalem Police Station,
Chinnasalem,
Kallakurichi,
Villupuram District.

4.Malathi

5.Vijayasamundeswari

6.Sathishbabu

7.Sharmila

... Respondents

PRAYER: The Writ Petition filed under Section 226 of Constitution of India, pleaded to issue a Writ of Mandamus, forbearing the respondents 1 and 2 from demarcating or subdividing the properties which are the subject matter in the Partition Suit in O.S.No.79 of 1997 on the file of the Sub-Court, Kallakurichi till the final decree is passed in the suit.



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For Petitioners: Mr.S.Rajendiran

For RR1 to 3 : Mr.A.Anandan
Government Advocate

For RR4 to 7 : M/s.Sarvabhauman Associates

O R D E R

The petitioner has filed this petition for Writ of Mandamus, forbearing the respondents 1 and 2 from demarcating or subdividing the properties which are the subject matter in the Partition Suit in O.S.No.79 of 1997, on the file of the Sub-Court, Kallakurichi till the final decree is passed in the suit.

2. The case of the petitioner is that the suit properties were purchased from the joint earnings of the petitioner and his father and it comprises of 12 items of lands including one terraced house and the suit land is about 1 acre and 52 cents. After the death of the father, his younger brother executed a Release Deed dated 17.03.1972 in respect of the Suit Properties in favour of the petitioner. While so, the 4th respondent who is the wife of his younger brother and respondents 5 and 7 who are the daughters and the 6th respondent who is the son of his brother, had instituted a suit for partition against the petitioner and his wife before the Sub Court, Kallakuruchi, in O.S.No.79/1997 and in the said Suit, a preliminary decree was passed in favour of the respondents 4 to 7. Hence, the petitioner has preferred first appeal in A.S.No.80/2003, before the Principal District Judge, Villupuram, which was dismissed on 12.07.2006 and the Second Appeal preferred against the first appeal order, in S.A.No.375/2007 was also dismissed on 27.03.2007 and subsequently the petitioner approached the Apex Court by way of Special Leave Petition in SLP (Civil) No.18318/2007 and the said petition was also dismissed. Thereafter, the petitioner and his wife were constrained to file a Review Petition and it is still pending. While so, on 25.05.2011, the respondents 1 and 2 along with the S.I. Of Police attached to the 3rd respondent Police Station visited the properties in question without any prior intimation and measured the suit properties. On enquiry, it was informed that they were under political pressure to demarcate / sub divide the suit properties, despite pending court proceedings and in that regard, the petitioner gave a written objection to the respondents 1 to 3, who refused to receive the same. Hence, the petitioner left with no other option, except to approach this Court by filing this Writ Petition.



3. The learned counsel appearing for the petitioner submitted that the respondents 4 to 7 have decided to sell the half portion of the suit properties to a person who belongs to the ruling political party and the official respondents have known pretty well that the pattas in respect of the suit properties stand in the petitioner's name and also about the pending partition suit at the instance of the respondents 4 to 7 over the properties and the final decree has not yet been passed, yielding to the pressure of the political persons, has decided to demarcate / sub divide the suit properties and therefore prays for appropriate orders to forbear the respondents 1 and 2 from demarcating or sub-dividing the properties which are the subject matter in the Partition Suit.

4. The learned counsel appearing for the private respondents submitted that the respondents have no objection to hear the petitioner and pass appropriate order for measuring the property.

5. The respective learned counsel for the petitioner and the private respondents have not obtained any information as to whether the final decree in the pending Suit is passed or not and reported no instructions to that effect.

6. Considering the above facts and circumstances, this Court is of the opinion that admittedly the Partition Suit was pending between the petitioner and the private respondents and the preliminary decree was passed in favour of the private respondents. Pursuant to which, the private respondents merely made application for measurement and sub division of the properties in question, however the same was stopped by the petitioner on the ground that the final decree has not yet been passed and the petitioner also claims that he made objections before the revenue officials.

7. Further, this Court is of the considered opinion that moreover mere measurement and sub division of the properties will not cause any prejudice to the petitioner and therefore, before passing final decree, the petitioner on apprehension, at the threshold has filed the present petition and hence the prayer sought for by the petitioner in this petition cannot be granted and hence it is liable to be set aside.

8. For the reasons aforesaid, this Writ Petition is dismissed. However the official respondents are directed to hear the petitioner and the private respondents and decide the matter



in accordance with law and pass appropriate orders, if not passed, in accordance with law, within a period of twelve weeks from the date of receipt of a copy of this order. Consequently connected miscellaneous petition is closed.

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SD/-
ASSISTANT REGISTRAR

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SUB ASSISTANT REGISTRAR

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To

1.The Tahsildar,
Kallakurichi,
Villupuram District.

2.The Head Surveyor,
Taluk Office,
Kallakurichi,
Villupuram District.

3.The Inspector of Police,
Chinnasalem Police Station,
Chinnasalem,
Kallakurichi,
Villupuram District.

+1cc to Mr.S.Rajendiran, Advocate Sr.14681
+1cc to M/s.Sarvabhauman Associates Sr.14284
+1cc to the Government Pleader Sr.14590

W.P.No.13154 of 2011

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srg 20/04/2022