



WEB COPY



W.P. No. 30330 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 28.08.2022

CORAM

THE HON'BLE MR. JUSTICE M.DHANDAPANI

W.P. No. 30330 of 2018

and

W.M.P. Nos. 35397 and 35400 of 2018

1. R.Senthil Kumar

2. Udhaya Shankar

... Petitioners

-VS-

1. The Thasildar

Madhukarai

Coimbatore District.

2. Kuppusamy Gounder

... Respondents

Prayer:- Writ Petition is filed under Article 226 of the Constitution of India, praying to issue a Writ of Certiorarified Mandamus, to call for the records in O.Mu. FL. 169/2016 dated 23.10.2017 on the file of the First Respondent and quash the same and further to direct the First Respondent to survey and earmark the boundaries in respect to property bearing in S.No. 101, Pichanur Village, Madhukarai Taluk, Coimbatore District.

For Petitioner : Mr. P.Anandakumar

For Respondents : Mr. G.Krishnaraja (For R1)
Additional Government Pleader
Mr. G.Arivarasan (For R2)



W.P. No. 30330 of 2018

ORDER

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169/2016 dated 23.10.2017 on the file of the First Respondent and consequently, direct the First Respondent to survey and earmark the boundaries in respect to property bearing in S.No. 101, Pichanur Village, Madhukarai Taluk, Coimbatore District.

2. It is the case of the petitioners that the petitioners are the owner of the property in S.No.101 of Pichanur Village, Madhukarai Taluk, Coimbatore District measuring to an extent of 25 cents of the land and they are in possession and enjoyment of the property and revenue records were stand in their name jointly with the second respondent. There was an family arrangement and partition in the second petitioners family. After dividing the property, the first petitioner made an application to the first respondent on 17.10.2016 to survey the land as per document No.1110/2002 and the same was rejected vide proceedings dated 23.10.2017. Challenging the said rejection order, the present writ petition has been filed.

3. The learned counsel for the petitioner submitted that the petitioner along with his brother filed a suit in O.S.No.1469 of 2016 against the second



W.P. No. 30330 of 2018

respondent before the District Munsif Court, Coimbatore for permanent injunction. Pending suit, the petitioner filed an interlocutory application in I.A.No.746 of 2016 for measuring the disputed property and the same was ordered. Though the trial Court had granted interim order not to disturb the peaceful possession and occupation of the petitioners herein, the second respondent was repeatedly encroaching and disturbing the peaceful possession of the same. Therefore, this Court may quash the impugned order and issue a direction to the first respondent to survey the aforesaid land and fix boundaries within the reasonable time as fixed by this Court.

4. The learned Special Government Pleader appearing on behalf of the first respondent submitted that it is admitted fact that the petitioner has filed a suit and also obtained interim order. However, subsequently, the said suit was dismissed for default. Further, the entire dispute is civil in nature. There exists a dispute with regard to subject property between the parties, this Court cannot interfere into the matter by exercising its jurisdiction under Article 226 of the Constitution as the Court cannot enter into disputed questions of fact and they have to approach the competent civil Court to dissolve the issue. Therefore, the first respondent has rightly passed the impugned, which does not warrant any interference. Hence, the writ petition is liable to be dismissed.



W.P. No. 30330 of 2018

WEB COPY 5. Heard both sides and perused the materials available on record.

6. It is admitted case of the petitioners that the petitioners along with the second respondent have jointly purchased the property measuring about 25 cents in S.No.101 and the revenue records were stands in the name of the petitioner as well as the second respondent. After partitioning the property, the petitioners filed a suit against the second respondent for permanent injunction and obtained an interim order not to disturb the petitioners' possession. In the meanwhile, the petitioners made an application before the first respondent to survey the above said subject property and fix the boundaries. But, the first respondent has rejected the petitioners' request and issued a direction to approach the competent civil Court. However, as against the order passed by the original authority, there is an appeal remedy available before the RDO. Without filing an appeal, the petitioners have filed a writ petition before this Court.

7. As rightly submitted by the learned Special Government Pleader that since it is a dispute with regard to the subject properties in question between the parties, which is purely civil in nature. In view of the above disputed question



W.P. No. 30330 of 2018

of fact, this Court cannot be decided the issue. If the petitioners are aggrieved, they have to file appropriate a suit/petition either before the competent civil court or before the appellate authority.

8. Considering the fact and circumstances of the case, this Court, without going into the merits of the case, permit the petitioners to file a suit against the private respondent before the competent forum for establishment of their right over the subject properties. If the petitioners file a suit, the concerned Judge, shall decide the issue independently on merits and in accordance with law.

9. With the above directions, the writ petition is disposed of. No costs. Consequently, connected miscellaneous petitions are also closed.

28.08.2022

Rli

Index: Yes/No

To

The Thasildar
Madhukarai
Coimbatore District.



WEB COPY



W.P. No. 30330 of 2018

M.DHANDAPANI, J.

Rli

W.P. No. 30330 of 2018

28.06.2022