



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 07.04.2022

CORAM:

THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

W.M.P. [MD]No.4592 of 2022

in

REV.APLW. [MD]No.SR16079 of 2022

WEB COPY

S.Balasubramani

... Review Petitioner/3rd Party/
Proposed 3rd Respondent

Vs.

1.S.Amanullah Khan

... 1st Respondent/Petitioner

2.The Tahsildar,
Dindigul East Taluk,
Dindigul District.

3.The Taluk Surveyor,
Dindigul East Taluk,
Dindigul District.

... Respondents 2 & 3/Respondents

PRAYER in W.M.P. [MD]No.4592 of 2022: Writ Miscellaneous Petition filed under Article 226 of the Constitution of India, praying to grant leave to implead the petitioner as a third respondent in the W.P.[MD]No.4603 of 2022.

PRAYER in REV.APLW. [MD]No.SR16079 of 2022: Review Petition filed under Order 47 Rule 1 r/w. Section 114 of the Civil Procedure Code, praying to review the order passed in W.P.[MD]No.4603 of 2022 dated 16.03.2022.

Prayer in WP(MD). 4603 OF 2022 :

Writ Petition filed under Article 226 of the Constitution of India, for issuance of Writ of MANDAMUS directing the Respondents to survey and demarcate the four boundaries of the petitioner's land situated in S.No.865/2A, Sirumalai Village, Dindigul East Taluk, Dindigul District in the light of application dated 25.02.2022 made by the petitioner within the time limit that may be stipulated by this Honble Court.

For Petitioner : Mr.T.S.R.Venkatramana

O R D E R

This Writ Miscellaneous Petition has been filed seeking to grant leave to the petitioner to implead himself as the third respondent in the writ petition in W.P.[MD]No.4603 of 2022.

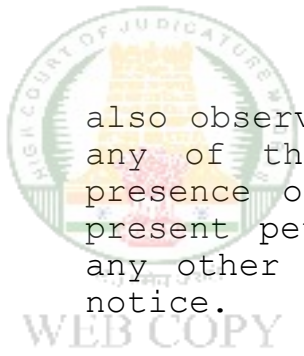


2.The petitioner has filed this Writ Miscellaneous Petition on the ground that though he was a necessary party in W.P.[MD]No.4603 of 2022, he was not added as a party respondent by the writ petitioner. It is also his contention that the prayer sought for in W.P.[MD]No.4603 of 2022 by the writ petitioner is hopelessly barred by the law of Limitation. According to him, under Section 3 r/w. 136 of the Limitation Act, the period of limitation for execution of any decree is 12 years. According to him, the writ petitioner is seeking to conduct survey and demarcation of boundaries in respect of a consent decree passed by the Hon'ble Supreme Court on 13.12.1994 passed in Civil Appeal No.2763 of 1977. Therefore, according to him, the writ petitioner having slept over his rights for almost 30 years, cannot seek to conduct survey and demarcation of boundaries now. According to the petitioner, the writ petitioner in W.P.[MD]No.4603 of 2022 has achieved indirectly what he could not have achieved directly, through the order passed by this Court on 16.03.2022. With the above-mentioned grounds, the petitioner has filed this petition.

3.The operative portion of the order passed by this Court on 16.03.2022 in W.P.[MD]No.4603 of 2022 is extracted hereunder:

'Accordingly, this Court directs the first respondent to conduct survey and demarcate the four boundaries of the land situated in S.No.865/2A, Sirumalai Village, Dindigul East Taluk, Dindigul District, in the presence of the petitioner, Mr.Balasubramanian as well as any other necessary party, whom the first respondent deems fit to put on notice, within a period of twelve [12] weeks from the date of receipt of a copy of this order. The first respondent shall seek the assistance of the second respondent for conducting survey and demarcation of boundaries and in case any police assistance is required, the first respondent shall also seek the same.'

4.It was made clear by this Court in the order dated 16.03.2022, referred to supra that any survey and demarcation of boundaries can be done only in the presence of Mr.Balasubramani, the petitioner in this Writ Miscellaneous Petition. Admittedly, Mr.Balasubramani's [the petitioner herein] father Samikannu Pillai was a party to the consent order dated 13.12.1994 passed by the Hon'ble Supreme Court in Civil Appeal No.2763 of 1977. As per the said consent order, the writ petitioner's family was allotted 15 acres and Balasubramani's family was allotted 15 acres. In the order dated 16.03.2022 passed by this Court in W.P.[MD]No.4603 of 2022, this Court has only directed survey and demarcation of boundaries in terms of the order of the Hon'ble Supreme Court dated 13.12.1994 passed in Civil Appeal No.2763 of 1977. This Court has



also observed in the said order that no prejudice would be caused to any of the parties, if survey and demarcation is done in the presence of the writ petitioner as well as Mr.Balasubramani, the present petitioner in this Writ Miscellaneous Petition as well as any other necessary party whom the Tahsildar deems fit to put on notice.

5.Any review can be filed only if there is an error apparent on the face of the order. Eventhough the petitioner in this writ miscellaneous petition was not made a party respondent in W.P.[MD]No.4603 of 2022, his rights are well protected, according to this Court, as seen from its order dated 16.03.2022 passed in W.P. [MD]No.4603 of 2022. Only after giving notice to him and only in his presence, the survey and demarcation of boundaries can take place. Even now, he has got the right to raise all objections to the Tahsildar when the survey and demarcation of boundaries is done by him with the assistance of the Taluk Surveyor. However, it is for the Tahsildar to decide whether the objections can be accepted or not.

6.With regard to the contention raised by the petitioner that Section 3 r/w. Article 136 of the Limitation Act will get attracted is concerned, the said contention is for execution of decree. However, the order passed by this Court on 16.03.2022 in W.P.[MD] No.4603 of 2022 relates only to survey and demarcation of boundaries and does not involve execution of a decree. Therefore, the said contention does not deserve any merit, that too in a review application.

7.Further, instead of filing a leave to file a review application, the petitioner has filed an impleading application seeking to implead himself as a party respondent in the main writ petition. The writ petition has already been disposed of and therefore, there is no question of any further impleadment of any party.

8.For the foregoing reasons, this Court is of the considered view that this Writ Miscellaneous Petition does not deserve any merit. Accordingly, the same is dismissed. REV.APLW.[MD]No.SR16079 of 2022 is also dismissed at the SR stage itself. There shall be no order as to costs.

Sd/-

Assistant Registrar (CO)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

MR

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



To

1.The Tahsildar,
Dindigul East Taluk,
Dindigul District.

2.The Taluk Surveyor,
Dindigul East Taluk,
Dindigul District.

+1 CC to M/s.T.S.R. VENKATRAMANA, Advocate (SR-17884[F]
dated 11/04/2022)

+1 CC to M/s.AJMAL ASSOCIATES, Advocate (SR-17451[F]
dated 08/04/2022)

ORDER MADE IN
W.M.P. [MD]No.4592 of 2022
in
REV.APLW. [MD]No.SR16079 of 2022
07.04.2022

SB(CO)
GC(25.04.2022) 4P 5C