



W.A(MD)Nos.911 and 912 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 25.08.2022

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CORAM:

**THE HONOURABLE MR.JUSTICE S.S.SUNDAR
AND
THE HONOURABLE MRS.JUSTICE S.SRIMATHY**

W.A(MD)Nos.911 and 912 of 2022
and C.M.P.(MD) Nos.7586 and 7587 of 2022

S.Muruganantham ... Appellant/Respondent No.3
in both the Writ Appeals

Vs.

N.Kumara Guru ... 1st Respondent/Writ Petitioner
in W.A.(MD) No.911 of 2022

Jagadeesan ... 1st Respondent/Writ Petitioner
in W.A.(MD) No.912 of 2022

2.The Revenue Divisional Officer,
Pudukottai District, Pudukottai.

3.The Tahsildar,
Gandavakottai Taluk, Gandarvakottai,
Pudukottai District.

... Respondents 2 & 3/Respondents
1 & 2 in both the Writ Appeals

Common Prayer: Writ Appeals filed under Clause 15 of the Letters
Patent, praying to set aside the orders dated 29.03.2020 in
W.P(MD)Nos.5491 and 5492 of 2022 and allow these Writ Appeals.

For Appellant in both the : Mr.T.Pon Ramkumar
Writ Appeals

For 1st Respondent in both: Mr.S.Deenadhayan
the Writ Appeals

For Respondents 2 & 3 in : Mr.T.Amjadkhan
both the writ appeals Government Advocate



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COMMON JUDGMENT

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(Judgment of the Court was delivered by S.S.SUNDAR,J.)

These Writ Appeals are directed against the orders of learned Single Judge of this Court dated 29.03.2020 in W.P(MD)Nos.5491 and 5492 of 2022.

2. Heard Mr.T.Pon Ramkumar, learned counsel for the petitioner and Mr.S.Deenadhayalan, learned counsel for the first respondent and Mr.T.Amjadkhan, learned Government Advocate appearing for respondents 2 and 3, in these writ appeals.

3. Since the issue involved in these writ appeals are one and the same, they are taken up together for disposal.

4. Brief facts, which are necessary for disposal of these Writ Appeals, are follows:-

The first respondent in these writ appeals filed the writ petitions for issuance of a Writ of Mandamus, directing the respondents 2 and 3 herein to survey the land and fix the four boundaries in S.No. 81/6C, an extent of 0.04.64 Ares, (11.46 cents) and S.No.61/6B, an extent of 0.01.46 Ares, (3.6 cents) respectively situate at Sunthampatti



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Village, Gandharvakottai Taluk, Pudukkottai District, based on the revenue records within a stipulated time fixed by this Court on the basis of the representations of the 1st respondent in these writ appeals dated 14.02.2022. W.P.(MD) No.5491 of 2022 was disposed of on the following lines:-

"4.The petitioner has produced documents in support of his case that he is the owner of the aforementioned property. He has sought for a survey and fixation of boundaries by the appointment of a Surveyor and the petitioner has given a representation on 14.02.2022 for the said purpose.

5.No prejudice would be caused to the respondents if the representation of the petitioner dated 14.02.2022 is considered on merits and in accordance with law after hearing the petitioner as well as the rival claimants if any.

6.Accordingly, this Court directs the second respondent to survey and fix the boundaries in the petitioner's property in S.No. 81/6C, measuring an extent of 0.04.64 Ares (11.46 cents), situated at Sunthampatti Village, Gandharvakottai Taluk, Pudukkottai District after giving notice to the petitioner and rival claimants if any within a period of twelve [12] weeks from the date of receipt of a copy of this order."

W.P.(MD) No.5492 of 2022 was also disposed of by a similar order.



5. The appellant, who is the third respondent in those writ petitions, challenged the order of the learned Single Judge mainly on the ground that the appellant has filed a suit in O.S.No.128 of 2019 on the file of the District Munsif Court, Gandharvakottai and obtained an order of interim injunction in respect of the properties in S.Nos.81/6A and 81/6B. Stating that the writ petitioners/1st respondent in these Writ Appeals have not filed appeal as against the order of interim injunction, it is contended by the appellant that the writ petitions are to circumvent the interim injunction granted by the jurisdictional civil Court.

6. Learned counsel for the appellant also submitted that learned Single Judge disposed of the writ petitions at the admission stage itself without hearing the appellant, who is a necessary and proper party. He also submitted that appropriate notice should be given to the appellant under the provisions of the Tamil Nadu Survey and Boundaries Act, 1923 and the Rules framed therein.

7. Even before filing of appeals by the appellant, it appears that the Tahsildar concerned has inspected the land after issuing notice to the appellant as well as the writ petitioners. From the report of Tahsildar, it is seen that the Tahsildar had only surveyed the property and demarcated the land in S.Nos.81/6C and 81/6B and the boundaries of the properties



in S.Nos.81/6C and 81/6B have been fixed by the Tahsildar. Since the appellant objected for laying of survey stones, it is stated by the Tahsildar that no stone was laid on the boundaries of the land in S.Nos. 81/6C and 81/6B.

8. It is true that the Division Bench of this Court deprecated the practice of disposing of writ petition at the admission stage without notice to the person, who is likely to be affected by the legal consequences of the order. It is also true that a direction, which is similar to the one issued by learned Single Judge in the present case, may not be appropriate without hearing the other side. A person, who holds title is entitled to get demarcation of the property as per the revenue records, if there is no rival claimant. However, the claim of title by an individual based on revenue records cannot be taken as the basis in all cases, as there may be rival claimants. In such circumstances, a direction to the revenue officials to fix boundaries of a property on the basis of revenue records produced before the Court should be avoided. Taking advantage of the order passed by the Court, any one may try to interfere with the physical possession of another person, who is not a party to the proceedings as the Revenue officials are capable of interpreting Court orders unmindful of the civil consequences.



9. It is to be noted that patta is not a document of title, even though it is stated so under the provisions of Tamil Nadu Patta Pass Book Act, 1983. Having regard to Tamil Nadu Patta Pass Book Act, 1983, ownership of the person on the basis of patta should be examined with reference to the Ryatwari patta that was granted pursuant to the Ryatwari settlement. In such circumstances, Patta granted in favour of every person cannot be recognized as one to prove his title when such patta is not on the basis of Ryatwari patta or on the basis of revenue records prepared pursuant to the settlement. A civil Court or this Court is not justified in recognizing the title or possession merely on the possession of a computer patta or revenue document that is not supported by sufficient material to trace his title as indicated in the provisions of Tamil Nadu Patta Pass Book Act.

10. However, in the present case, the facts are entirely different. It is true that the appellant filed a civil suit in O.S.No.128 of 2019 on the file of District Munsif Court, Gandharvakottai. The said suit is for declaration of appellant's right over suit 'B' schedule property by easement of necessity to have access through the North-South road to reach his 'A' schedule property and consequently for restraining the defendants and their men in any manner interfering with plaintiff's peaceful possession and enjoyment of 'B' schedule pathway by putting up



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any structure or fence or any construction. 'A' schedule property described in the schedule appears to be the property of the appellant in S.No.81/6A in Sundampatti Revenue Village, Gandharvakkottai, Pudukottai District. The appellant does not claim any title in respect of the suit 'B' schedule property, which is described as a pathway measuring 18.2 meter by east west and 4.5 meter by north south = 81.9 square meter as shown as ABCD in the rough sketch annexed with the plaint out of the total extent of around 11.11 cents. From the very pleadings of the appellant in the plaint, the appellant based his case that the suit 'B' schedule property is the property, which is necessary for the convenient enjoyment of 'A' schedule property. Having claimed a right of pathway to have access to 'A' schedule, it can be inferred that the plaintiff cannot claim title in 'B' schedule property. The writ petitioners appears to be title holders of 'B' schedule property, subject to the right of easement that may be recognized in favour of the appellant, subject to the outcome of the result of suit in O.S.No.128 of 2019 before learned District Munsif, Gandharvakottai (previously it was O.S.No.77 of 2018, on the file of District Munsif Court, Pudukkottai).

11. From the report of Tahsildar and the facts narrated by the appellant, particularly, after going through the plaint averments, this Court is of the view that the appellant is not a person aggrieved as the



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writ petitioners are entitled to have their properties demarcated especially when the appellant has no rival claim disputing the title of the writ petitioners and his right is confined only to right of easement by necessity.

12. For the reasons stated above, this Court is unable to find any reason to interfere with the orders of learned Single Judge. Accordingly, these Writ Appeals are dismissed. However, the right of easement ie., the subject matter of the suit is protected by virtue of interim order granted by the trial Court. It is needless to say that the appellant's right to have access through 'B' schedule property cannot be disputed in view of the interim order granted by the trial Court. No Costs. Consequently, connected Miscellaneous Petitions are also dismissed.

[S.S.S.R.,J] [S.S.Y.,J.]
25.08.2022

Index :Yes/No
Internet :Yes/No
sj

To

- 1.The Revenue Divisional Officer,
Pudukottai District, Pudukottai.
- 2.The Tahsildar,
Gandavakottai Taluk, Gandarvakottai,
Pudukottai District.



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