



W.P.(MD)No.23236 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED : 10.10.2022

CORAM

THE HONOURABLE Mrs.JUSTICE V.BHAVANI SUBBAROYAN

Writ Petition (MD) No.23236 of 2022
and
W.M.P.(MD)No.17340 of 2022

Tamilkarasu, S/o.Kamatchi

.. Petitioner

Versus

1.The Tahsildar,
Ramanathapuram Taluk Office,
Ramanathapuram.

2.The Land Surveyor/Head Surveyor,
Perunkulam,
Ramanathapuram.

3.Kandasamy, S/o.Chinnaiya

.. Respondents

Prayer :- Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of Mandamus, forbearing the respondents 1 and 2 from surveying the land, situated in S.No.239/3A, measuring an extent of 15 cents and S.No.239/3A1, measuring an extent of 6 cents, Rettaiyurani Village, Ramanathapuram Taluk, by considering the objection submitted by the petitioner, dated 23.09.2022.

For Petitioner : Mr.K.P.Narayana Kumar

For Respondents 1 and 2 : Mr.D.Gandhiraj
Special Government Pleader



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ORDER

The petitioner has prayed for issuance of a Writ of Mandamus, forbearing the respondents 1 and 2 from surveying the land, situated in S.No. 239/3A, measuring an extent of 15 cents and S.No.239/3A1, measuring an extent of 6 cents, at Rettaiyurani Village, Ramanathapuram Taluk, by considering the objection submitted by him, dated 23.09.2022.

2.Heard Mr.K.P.Narayana Kumar, learned counsel appearing for the petitioner and Mr.D.Gandhiraj, learned Special Government Pleader, who takes notice for the respondents 1 and 2.

3.The case of the petitioner is that his paternal grandparents, namely, Pattani and Muthurakkayiammal owned several properties in different survey numbers at Rettaiyurani Village. His grandparents died in the year 1992 and 1982 respectively, leaving behind their children namely, Kamatchi, Subramani, Chinnathambi, Arunchalasamy, Sivagami and Indirani as their legal heirs. During their life time or after their death, there was no partition between the legal heirs and three of the legal heirs of Muthurakkayiammal namely, Kamatchi, Subramani and Chinnathambi are no more. The said Chinnathambi and Arunachalasamy also have no Class-1 legal heirs. The petitioner is the son of Kamatchi, who is the elder son of Muthurakkayiammal



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and Pattani and there has been no partition between the parties so far and they are enjoying the property jointly.

4.Further, the property situated in S.No.239/3A and S.No.239/3A1 is owned by the petitioner's grandmother namely, Muthurakkayiammal and Patta Nos.961 and 689 stand in her name. While so, the third respondent herein, who is the son-in-law of Subramani claiming to be the owner of the above said properties, by relying on the sale deed executed by Arunachalasamy on 22.04.2021, filed a Writ Petition in W.P.(MD)No.16617 of 2022 before this Court to survey the land and demarcate the boundaries. The said Writ Petition was disposed of on 26.08.2022, with the following directions:-

"(i) The survey authority will issue notice to the writ petitioner as well as the adjacent land owners and also to the interested persons, if any.

(ii) Enquiry shall be held. During enquiry, objections raised by the adjacent land owners/interested persons shall be considered.

(iii) If according to the jurisdictional authority, the objections are without any basis, the same shall be overruled and the objections shall be informed accordingly. But the survey will be conducted only after a period of six weeks so that the objector can move the concerned Court for injunction. If before the proposed date of survey, the objector is unable to obtain any



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injunction order, the survey can very well go on.

(iv) If the jurisdictional authority finds objections to be having substance, then, he shall call upon the applicant to move the jurisdictional civil Court, for agitating his rights.

(v) If required, the survey authority is empowered to seek aid of the jurisdictional police and the jurisdictional police are mandated to grant police protection. No costs."

5. According to the petitioner, based on the above said order, the revenue authorities have attempted to conduct a survey. Further, the sale deed executed by the said Arunachalasamy in favour of the third respondent herein is without any valid title in respect of the joint family property, whereas, the said Arunachalasamy is claiming right over the subject property along with the other properties through a settlement deed executed by his brother Chinnathambi, vide Document No.767/2012, dated 02.02.2012. In fact, all the properties mentioned in the settlement deed are owned by the petitioner's grandparents Muthurakkayiammal and Pattani.

6. According to the petitioner, the legal heirs of Muthurakkayiammal have joint right over the property and the said Chinnathambi has no individual right over the property. However, by creating forged documents, he sold out



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the property, based on which, third respondent is claiming right and approached this Court earlier by way of filing the aforesaid Writ Petition, seeking to survey the subject property. Further, the settlement deed executed by the said Chinnathambi in favour of Arunachalasamy has no legal sanctity. Therefore, the subsequent document executed by the said Arunachalasamy in favour of the third respondent herein also has no legs to stand before the eye of law. Based on the said sale deed, the third respondent is not entitled to get title in favour of him.

7.Further, according to the petitioner, on 21.09.2022, the respondents attempted to survey the land and the petitioner objected the same, by explaining the aforesaid facts. But, without considering the same, the officials surveyed the subject property, without considering the objections raised by the petitioner. The petitioner has also given a representation to the respondents 1 and 2 on 23.09.2022 in this regard. However, the same has not been considered by them so far. Hence, the present Writ Petition.

8.The learned Special Government Pleader appearing for the respondents 1 and 2 submits that based on the direction of this Court in W.P. (MD)No.16617 of 2022, dated 26.08.2022, the survey has been conducted as per the revenue records in the presence of Village people with police



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protection and the land was also demarcated. The second respondent has also issued a notice, dated 19.09.2022, to the petitioner informing him to appear before the Village Administrative Officer on 21.09.2022 at 10.00 am. along with all the relevant documents. The petitioner submits that he is the grandson of Muthurakkayiammal and did not produce any valid document to prove his rights over the above said property. The petitioner herein has produced only a Patta to show that the subject property stands in the name of Muthurakkayiammal, W/o.Pattani and he has not produced any relevant document to show that he is the legal heir of the said Muthurakkayiammal. Therefore, the respondents 1 and 2 directed the petitioner to prove his right over the subject property, then, they will pass appropriate orders if they receive any such orders from the competent civil court. The petitioner did not produce any valid document to prove his right over the property. If the petitioner approaches the competent civil court regarding his right over the property and establishes the same by way of filing relevant documents, the authorities will proceed further in this regard.

9.At this juncture, the learned counsel appearing for the petitioner submits that this Court, vide order dated 26.08.2022, in W.P.(MD)No.16617 of 2022, directed the authorities concerned to conduct survey after a period of six weeks, so as to enable the petitioner/objector to move the concerned Court



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for injunction, and if the objector is unable to obtain any injunction order before the proposed date of survey, the survey can very well go on. However, the authorities have not given six weeks time to the petitioner, so as to enable him to move the concerned Court and in a hasty manner, conducted the survey on 21.09.2022.

10.On a perusal of the order passed by this Court in the aforesaid Writ Petition, it is seen that this Court has also observed that during enquiry, if objections raised by the adjacent land owners/interested persons, the same shall be considered. Further, this Court directed that if according to the jurisdictional authority, the objections are without any basis, the same shall be overruled and the objectors shall be informed accordingly and if the jurisdictional authority finds that the objections are having substance, then, he shall call upon the applicant to move the jurisdictional civil Court for agitating his rights.

11.The petitioner has not produced any valid document to prove his right over the property. If the petitioner approaches the competent civil court regarding his right over the property and establishes the same by way of filing relevant documents, the authorities will proceed further in this regard. Hence, the petitioner is not entitled to the relief sought for in the Writ Petition.



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V.BHAVANI SUBBAROYAN, J.

smn2

Order made in
W.P.(MD) No.23236 of 2022

10.10.2022