



W.P.No.1737 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.01.2023

CORAM :

THE HONOURABLE MR.JUSTICE R.SURESH KUMAR

Writ Petition No.1737 of 2023

S.Venkatesan

.... Petitioner

-Vs-

1.The Tahsildar
Sholinganallur Taluk
Chengalpattu
No.1, 1st Cross Street
New Kumaran Nagar
Sholinganallur
Chennai 600 119.

2.T.Gunasundari

.... Respondents

Prayer : Writ Petition under Article 226 of the Constitution of India praying for the issuance of a Writ of Mandamus directing the 1st respondent to consider the representation dated 1/9/2022 made by the petitioner with regard to demarcation of the property situated in Old Survey No. 55/1 and 55/2 New Survey No. 55/1A2 and 55/2A2 situated in Oggiam Thuraipakkam Village Sholinganallur Taluk Kancheepuram District within the registration District of Chennai south and Sub Registration District of Neelangarai.

For Petitioner : Mr.A.Prabhakaran

For Respondents : Mr.R.P.Muruganraja
Government Advocate – for R1
Notice dispensed with – for R2



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ORDER

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The prayer sought for herein is for a Writ of Mandamus directing the 1st respondent to consider the representation dated 1/9/2022 made by the petitioner with regard to demarcation of the property situated in Old Survey No. 55/1 and 55/2 New Survey No. 55/1A2 and 55/2A2 situated in Oggiam Thuraipakkam Village Sholinganallur Taluk Kancheepuram District within the registration District of Chennai south and Sub Registration District of Neelangarai.

2. In respect of the property in question situated at Old Survey No. 55/1 and 55/2 New Survey No. 55/1A2 and 55/2A2 situated in Oggiam Thuraipakkam Village Sholinganallur Taluk Kancheepuram District, it is the case of the petitioner that the property originally belonged to Thiruvengadam Naicker who was holding the entire estate including this piece of property, with whom the petitioner claims to have entered into a sale agreement sometime in the year 2010. Though time is the essence of the contract, the sale was not concluded immediately and in the meanwhile the said Thiruvengadam Naicker died. Thereafter, one of the sons of Thiruvengadam Naicker viz, Srinivasan received some more money from the petitioner confirming the sale agreement entered into between his father and the petitioner. Subsequently, there was a partition in the family of the said Thiruvengadam Naicker and this portion of the



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property ie., the subject property was allotted to the said Srinivasan and another son Dilli. Since the property was allotted to those two sons they in turn subsequently settled the property, out of love and affection, to their sister one Gunasundari, who is none other than the 2nd respondent herein. That is how the 2nd respondent has claimed ownership and based on which she wants to take possession of the property.

3. It is to be noted that, at the time the agreement was entered into between the erstwhile owner Thiruvengadam Naicker and the petitioner, it is the claim of the petitioner that the petitioner had been put in possession of the property. Therefore, since then he claims that he has been in possession of the property.

4. At this juncture, now the 2nd respondent wants to take possession of the property from the petitioner. Therefore, he had approached the civil court and filed a suit in O.S.No.211 of 2017 on the file of the District Munisif Court, Alandur and the said suit is still pending. The suit was filed only for bare injunction and not for specific performance.



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5. When that being the position, now the 2nd respondent Gunasundari approached the Revenue Tahsildar concerned to demarcate the properties as per the partition deed so that the allotted property or the settled property which is in question, in favour of the 2nd respondent can be separated in order to get a separate patta in her favour.

6. Aggrieved over the said move of the 2nd respondent, the petitioner had given a protest petition to the Revenue Tahsildar on 01.09.2022 not to demarcate the property and in order to consider the representation, the petitioner has filed the present writ petition with the aforesaid prayer.

7. In this context, it is to be noted that the said 2nd respondent herein had already approached this Court in W.P.No.17552 of 2022, wherein a learned Judge of this Court by order dated 12.07.2022, has passed the following order.

“ 6. Taking into consideration the factual aspects of the matter, this Court without going into the merits of the case, directs the 2nd respondent to consider the representation of the petitioner dated 23.06.2022 and pass appropriate orders, on merits and in accordance with law after affording an opportunity of hearing to the petitioner as well as aggrieved persons if any, within a period of twelve weeks from the date of receipt of a copy of this order.”



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8. Heard Mr.A.Prabakaran learned counsel for the petitioner and Mr.P.Sathish, learned Additional Government Pleader appearing for the official respondents. In view of the order that is going to be passed in this writ petition, notice to the 2nd respondent is hereby dispensed with.

9. Insofar as the title and ownership of the property in question is concerned, the 2nd respondent would claim that, she has perfected her title by virtue of the partition under which the two brothers settled the property in favour of the 2nd respondent. In that context, whether the petitioner is entitled to get the property by executing the sale agreement that too by way of specific performance is a question for which admittedly the petitioner has not so far approached the civil Court for filing any suit for specific performance, even though the learned counsel for the petitioner submits that he has filed Order II Rule 2 petition before the civil court to permit the petitioner to convert the suit already filed to seek for larger relief of specific performance.

10. Be that as it may. That process in the suit will take some reasonable time and would be concluded on the basis of merits and till such time if the 2nd respondent wants to demarcate the property, this Court feels that there is nothing wrong in the said claim of the 2nd respondent to seek for demarcation of



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the property to identify the four boundaries of the property in question which was allotted to the two brothers who in turn settled the property in favour of the 2nd respondent.

11. Therefore, this Court feels that the representation or petition filed by the petitioner against the said move of the 2nd respondent to survey and demarcate the property may not have any substance and therefore that cannot stand in the way of the 1st respondent Revenue Tahsildar to survey the land and to demarcate the property, which is in question for the purpose of the claim made by the 2nd respondent.

12. It is also clear that even if the demarcation is made and the subject property is separately identified, that would not alter the situation as to who is in possession of the property either the possession in title or physical possession. That is ultimately the matter to be decided by the civil court if at all the relief is sought for by the petitioner.

13. In that view of the matter, this Court is inclined to dispose of this writ petition with the following order.



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- The 1st respondent Revenue Tahsildar shall go ahead with the plea raised by the 2nd respondent to survey the land and to demarcate the land which is in question and in this regard, the objection petition given by the petitioner not to undertake the said work since would not stand in the legal scrutiny, unmindful of the same, the 1st respondent can go ahead and complete the said task.
- It is made clear that after demarcation and identification of the four boundaries of the property in question, necessary proceedings to that effect shall be issued in favour of the 2nd respondent. However, such issuance would not automatically or *ipso facto* confer any right on the 2nd respondent with regard the physical possession or otherwise of the possession claimed by the petitioner in view of the possession, which he has taken pursuant to the agreement he has entered into with the father of the 2nd respondent. Therefore, that issue can be decided by the civil court in the pending suit or any subsequent suit initiated by the parties in respect of the very same subject property.

With the above directions, this writ petition is disposed of. No costs.

24.01.2023

Index : Yes/No
Neutral Citation : Yes/No
Speaking Order / Non-speaking order
KST



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To

The Tahsildar
Sholinganallur Taluk-Chengalpattu
No.1, 1st Cross Street
New Kumaran Nagar
Sholinganallur, Chennai 600 119.



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R. SURESH KUMAR, J.

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