



Order dated 10.11.2023
in W.P.No.22107 of 2008

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 10.11.2023

Coram:

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

Writ Petition No.22107 of 2008

1. Michael Raj (deceased)
2. J.Dhanaselvi
3. M.Karthik
4. M.Soundararajan

(Petitioners 2 to 4 are substituted
as Legal Representatives of the
deceased first petitioner,
by order of Court, dated 30.08.2019
in W.M.P.No.23831 of 2019
in W.P.No.22107 of 2008)

.. Petitioner

Vs.

1. The Special Commissioner and
Commissioner of Land Administration,
Chepauk, Chennai-5.
2. The District Revenue Officer,
Madurai District, Madurai.
3. The Revenue Divisional Officer,
Madurai District, Madurai.
4. Tmt.G.Mariammal (died)
5. Gnanaprakasam
6. Lilly Pushpam
7. Amalamary
8. Irudhayamary

Page No.1/14



Order dated 10.11.2023
in W.P.No.22107 of 2008

9. Josephine Shagayarani

10. Arokyaraj

11. Mariya Joseph

(Respondents 5 to 11 are
impleaded as legal representatives
of the deceased G.Mariammal
(fourth respondent),
vide order of Court, dated 10.11.2023
in W.M.P.No.23833 of 2019
in W.P.No.22107 of 2008)

.. Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Certiorarified Mandamus to call for the records of the first respondent in his proceedings No.D.Dis.(K4) R.P.No.41/04 (8500/2004), dated 19.11.2004, confirming the orders of the third respondent in Na.Ka.No.10419/98 N, dated 31.08.1998 as confirmed by the second respondent in his order in See.Ma.No.20/99 (72194/99 G2), dated 07.06.2001 and quash the same and consequently direct the respondents 1 to 3 to restore the lane of a width of 6' running on the Eastern side of the petitioners' land bearing S.No.39/73, Samayanallur Village, Madurai District, as a common lane in the Revenue Records.

For petitioner : Mr.R.Karthikeyan

For respondents: Mr.P.Gurunathan, Addl.G.P. for RR-1 to 3
Mr.R.Subramanian for R.4

Page No.2/14



WEB COPY



Order dated 10.11.2023
in W.P.No.22107 of 2008

RR-5 - notice sent and Tapal returned un-served (expired)

RR-6 - Tapal not yet returned either served or unserved

RR-7 to 9 : Not ready in notice

RR-10 and 11 - No appearance, names printed in the cause list

ORDER

The petitioners have filed the above Writ Petition praying for issuance of a Writ of Certiorarified Mandamus to call for the records of the first respondent in his proceedings No.D.Dis.(K4) R.P.No.41/04 (8500/2004), dated 19.11.2004, confirming the orders of the third respondent in Na.Ka.No.10419/98 N, dated 31.08.1998 as confirmed by the second respondent in his order in See.Ma.No.20/99 (72194/99 G2), dated 07.06.2001 and quash the same and consequently direct the respondents 1 to 3 to restore the lane of a width of 6' running on the Eastern side of the petitioners' land bearing S.No.39/73, Samayanallur Village, Madurai District, as a common lane in the Revenue Records.

2. The case of the petitioner in a nut-shell is as follows:

(a) The first petitioner (since deceased) was the owner of the lands in Survey No.39/69 in Samayanallur Village, Madurai North Taluk, of an extent of 0.01.9 hectares or about 5.5 cents. The said land comprised of a total extent of 11 cents that was a single piece of land. The lands vested with on Rayar Pillai.

Page No.3/14



Order dated 10.11.2023
in W.P.No.22107 of 2008

His daughters, namely Savariyayee and Mariyayee succeeded to the property by succession.

(b) There was a civil suit between them in O.S.No.311 of 1919 on the file of the District Munsif Court, Melur, which was filed by Mariyayee, claiming half share in the total extent of 11 cents and odd. The said suit was decreed on 15.07.1920 and Mariyayee was declared to be entitled to the Northern half of the lands of 6.5 cents together with the trees thereon and also the right over the pathway of 6 bush feet on the Eastern part of the Southern half of the lands, apart from the other scheduled properties involved in the said suit.

(c) The said lands were divided into half and 2-3/4th cents were sold to Michael Pillai and another 2-3/4th cents were sold to Ariyanachiammal, Wife of Vellaisamy Pillai. Both the said extents were sold to one Rayar Pillai, Son of Michael Pillai and his son Michael Pillai, Savarimuthu Pillai and Athony Pillai succeeded to the lands. The middle son Savarimuthu Pillai purchased the shares of his two brothers, by sale deed and land purchased by the first petitioner from Savarimuthu Pillai. This is the undisputed facts with regard to the right of the first petitioner over the lands.

(d) Insofar as the lands that were partitioned and allotted to Savariyayee, who was the defendant in the said suit filed by Mariyayee, the same was also subject to several transactions stated below.

Page No.4/14



Order dated 10.11.2023
in W.P.No.22107 of 2008

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(e) One Innasimuthu Pillai, son of Arulappa Pillaia, had purchased the entire lands under a Registered sale deed from Savariyayee and he had five sons, by name Savarimuthu, Rayar Pillai, Anthonyaa Pillai, Michael Pillai and Vedamuthu Pillai and Vedamuthu Pillai gave his share to the fourth respondent herein (G.Mariammal - since deceased) who was the daughter-in-law of Michael Pillai, and the said Michael Pillai also conveyed his share to G.Mariammal. The Southern part of the original lands belonging to Rayar Pillai that formed the Southern boundary of the petitioners' lands, have now been divided into three parts and the part that is on the Eastern side, now vests with the fourth respondents (since deceased, by his legal heirs).

(f) The above said portion is adjoining the pathway that is described as having of 6 Busah feet or English feet. Since the same was adjoining the common pathway that over which it has been declared that the deceased first petitioner's predecessor Mariyayee is entitled to right of way to the fourth respondent (since deceased) and Vedamuthu Pillai started to claim full right over the same which was resisted by the first petitioner and her family, as the same was the only access to their property. The first petitioner had put up a small wall over the entire length of the lane of six feet in order to safeguard it.

(g) The fourth respondent and Vedamuthu Pillai have filed a suit in O.S.No.608 of 1991 on the file of the District Munsif Court, Madurai, praying to



Order dated 10.11.2023
in W.P.No.22107 of 2008

grant decree of mandatory injunction to remove the said wall and for permanent injunction restraining the first petitioner from interfering in their right to use the said lane and to hand over the lane to them. The said suit was decreed, against which, the first petitioner filed A.S.No.25 of 1995 before the Principal Sub-Court, Madurai and the trial Court's decree was partly reversed, holding that the suit lane was only a common lane and that the plaintiff did not seek to have exclusive possession of the lane, against which, the first petitioner filed S.A.No.1643 of 197, which was dismissed by this Court and the suit decree as modified by the first appellate Court in its decree, was confirmed, which has become final, as no further appeal was preferred.

(h) Since the fourth respondent and Vedamuthu Pillai failed to get exclusive right over the pathway in the civil Court as noted above, they then moved the third respondent-RDO for including the lane in their Patta, and the third respondent, by proceedings dated 31.08.1998 without any notice to the first petitioner, directed that the lane should be included within the Patta lands of the fourth respondent. Since this was done without notice to the first petitioner, the first petitioner filed a Revision before the second respondent-DRO, Madurai, who without appreciating the case of the first petitioner, by order dated 07.06.2001 in See.Ma.No.20/99 (72194/99/G2), rejected the revision petition filed by the first respondent by relying upon the judgments of the Civil



Order dated 10.11.2023
in W.P.No.22107 of 2008

Court in O.S.No.608 of 1991 and A.S.No.25 of 1995 and without even referring to the observations made in the said A.S.No.25 of 1995 with regard to the claim being as one of a common lane and not exclusive lane of the fourth respondent and Vedamuthu Pillai and also held that the order of the third respondent is correct.

(i) Aggrieved by the said order dated 07.06.2001, the first petitioner filed a Revision before the first respondent and as there was a delay of 262 days in filing the revision, the first respondent dismissed the said revision filed by the first petitioner, against which, the first petitioner filed W.P.No.42351 of 2002, which was allowed by this Court on 06.02.2004 by directing the first respondent to consider and pass orders on the Revision on merits. In the meantime, Vedamuthu Pillai who was one of the plaintiff in O.S.No.608 of 1991 and the second petitioner before the third respondent, had passed away and as there were no other legal heirs, the fourth respondent herein was the only legal heir and as of now, only the fourth respondent was contesting the denial of the right of the first petitioner.

(j) In the meanwhile, the disputed lane was open on both the Southern side into the R.C. Street and on the Northern side to the Railway lands became blocked on the Northern side by the Railway Department by construction of a compound wall for Samayanallur Railway junction, and therefore, the



Order dated 10.11.2023
in W.P.No.22107 of 2008

only access to the first petitioner's land is by means of the suit lane from the R.C.Street.

(k) After the above order of this Court in the Writ Petition, the first respondent took up the hearing in the revision, but the actual findings of the Civil Court had been ignored by the first respondent. The land that has been used as a lane to width of 6' by about 75' on the Eastern side of the first petitioner's land and the fourth respondent's land was originally classified as "Nadai pathai" (pathway). But, the first respondent had confirmed the order of the third respondent in including the said land in the Patta of the fourth respondent, which has been since then in the Revenue Records. The first respondent failed to see that there is already undisputed findings by the Civil Courts which had become final, declaring the right of the petitioner over the disputed lane, and there was an observation that the parties have to work out their rights before the Civil Court once again.

(l) Though the order of the first respondent is dated 19.11.2004, it was not communicated to the first petitioner, due to which, the first petitioner could not challenge the same. Hence, the petitioner by application dated 27.04.2007 to the first respondent, sought for a certified copy of the said order of the first respondent, even after which, no order copy was furnished to the petitioner and with great difficulty, the first petitioner obtained only a xerox copy of the order



Order dated 10.11.2023
in W.P.No.22107 of 2008

of the first respondent only in the month of July 2008 and only thereafter, this Writ Petition is filed for the relief stated above.

3. Learned counsel for the petitioner submitted that earlier, suit was filed in O.S.No.311 of 1919 as indicated above and since the original owner one Rayar Pillai and the total extent of the land is 11 cents and in all the proceedings including the civil Court's decree, it is shown only as 'pathway', which is a common pathway. The Southern portion belongs to the said Rayar Pillai, i.e. it formed the Southern boundary of the first petitioner's lands which had now been divided into three parts and the part that is on the Eastern side, vested with the fourth respondent. It is further stated by the learned counsel that the Northern portion of the land originally belonged to the first petitioner and in order to reach the property to the Northern portion, the petitioner has to use the Southern portion, and therefore, it is a common pathway and it is not exclusive pathway of the fourth respondent. The learned counsel further contended that the fourth respondent had put up a construction and is restraining the petitioner from using it and the pathway was included in the Patta of the land of the fourth respondent. Aggrieved by the same, the first petitioner made a representation before the RDO and further to DRO, but they have not properly considered the Civil Court's decree and also the Revenue Records.

Page No.9/14



Order dated 10.11.2023
in W.P.No.22107 of 2008

4. It is also contended by the learned counsel for the petitioner that the disputed property is a 'pathway' existing to reach the Northern portion. Therefore, they have issued the Patta as if it is a private land of the fourth respondent. Even they have found out that in the Natham Adangal, it is shown only as 'pathway', but it is not in the Patta land and therefore, the impugned orders passed by the respondents 1 to 3, are liable to be set aside and the property in question is only a 'common pathway' through which the petitioner has to have access.

5. Learned counsel for the fourth respondent submitted that the alleged 'pathway' is an exclusive right of the fourth respondent and it is only a Patta land and there is no partition deed or any declaratory relief in regard to the use of the property as pathway, which is alleged to be a common pathway. Nowhere it is mentioned, i.e. neither in the documents of the writ petitioner nor in the documents of the fourth respondent, it is stated as a common pathway. Even in the Revenue Records/documents, particularly with regard to the boundaries, it is not shown that the Eastern boundaries of the Southern portion is a pathway. Therefore, it is only to be treated as patta land, and therefore, the Revenue Authorities also considered that they have issued the documents holding that it is a patta land. The learned counsel for the fourth respondent further submitted



Order dated 10.11.2023
in W.P.No.22107 of 2008

that the observation made by the Revenue Authority is that they cannot decide the rights also, especially the easementary right and that right can be decided only by the Civil Court. Further, now, as on date, no Civil Court has declared the disputed area as common pathway. In the above circumstances, the present Writ Petition is not maintainable and the same may be dismissed.

6. Heard both sides and perused the materials available on record.

7. Admittedly, the original owner is one Rayar Pillai in S.No.39/69 with 11 cents. However, there are no records to show that there was any partition and there are also no records to show that the disputed pathway is either shown as a private pathway or common pathway meant for both parties. Therefore, in the absence of any declaratory relief either by the Civil Court or in the recital of the Revenue documents, the Revenue Court, the Writ Court cannot decide the rights of the parties and it has to be agitated only before the Civil Court.

8. Hence, the Writ Petition is dismissed, however, the petitioners are at liberty to work out their remedy before the Civil Court in the manner known to law. There shall be no order as to costs.

10.11.2023

2/2

Page No.11/14



WEB COPY



Order dated 10.11.2023
in W.P.No.22107 of 2008

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Madurai District, Madurai.

Page No.12/14



WEB COPY



Order dated 10.11.2023
in W.P.No.22107 of 2008

P.VELMURUGAN, J

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W.P.No.22107 of 2008

10.11.2023

Page No.13/14



WEB COPY



Order dated 10.11.2023
in W.P.No.22107 of 2008

(2/2)