



W.P. No.13410 of 2018

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.03.2023

CORAM:

THE HON'BLE MR. JUSTICE M.DHANDAPANI

W.P. No.13410 of 2018

and

W.M.P. No.15809 of 2018

V. Kumaraguru

...Petitioner

VS.

1. The District Collector,
Vellore District,
Sathuvachari,
Vellore – 635 009.

2. Sub Collector Cum Sub Divisional
Executive Magistrate,
Tirupattur – 635 601.
Vellore District.

3. Tahsildar,
Vaniyambadi Taluk,
Vaniyambadi – 635 751.
Vellore District.

4. S. Farooq Ahmed
5. A. Mukhther Begum
6. Irshad
7. Aswak Ahmed

... Respondents



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Prayer : Writ Petition filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus, directing the respondents 2 and 3 to obey and enforce the decree dated 20.04.2017 passed in A.S. No.58 of 2015 on the file of the Subordinate Judge, Vaniyambadi, by delivering back to the petitioner the property being the land and the building bearing Door No.15, C.N.A. Road, Vaniyambadi – 635 751, Vellore District, together with all the furniture, fixtures, utensils and vessels, used by the petitioner running his business in the name and style of “Vasantha Vihar”.

For petitioner : Mr.S. Subbiah
Senior Counsel
for Ms.Elizabeth
For respondents : Mr. M. Alagu Gowtham,
Government Advocate for R1 to R3

ORDER

The petitioner has filed this writ petition seeking for a Mandamus directing the respondents 2 and 3 to obey and enforce the decree dated 20.04.2017 passed in A.S. No.58 of 2015 on the file of the Subordinate Judge, Vaniyambadi, by delivering back to the petitioner in respect of the property (land and building), viz., bearing Door No.15, C.N.A. Road, Vaniyambadi – 635 751, Vellore District, together with all the furniture, fixtures, utensils and vessels, used by the petitioner for running his business in the name and style of “Vasantha Vihar”.



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2. The case of the petitioner is that the aforesaid property belongs to the 5th respondent and the petitioner is running a hotel business under R5 by paying rents regularly as a tenant. The said property was allotted to the 5th respondent by virtue of a partition deed. While so, suddenly the 5th respondent refused to receive monthly rents, for which, the petitioner commenced his legal battle and thereby finally, he preferred two appeals before the Lower Appellate Court. It is his case that though the reliefs sought for by him have been granted by the Lower Appellate Court, the possession of the subject property has not been restored, till date. Hence, this writ petition.

3. Learned counsel for the petitioner submits that by considering the legal issues involved in the subject property and only after proper appreciation of the facts, the Lower Appellate Court has allowed both appeals by a common judgment, in favour of the petitioner. However, the said findings were not taken into account by the respondents. She fairly submitted that subsequent to filing of this writ petition, the private respondents have preferred Second Appeals viz., S.A.No.505 and 506 of 201 before this Court. Therefore, she submits that it would suffice, if this Court issues appropriate directions in the above regard.



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4. Mr.M.Alagu Gowtham, learned Government Advocate appearing for the respondents 1 to 3 though concurred with the submission made by the learned counsel for the petitioner with regard to filing of Second Appeals by the private respondents, the official respondents can act further only subject to the result of the Second Appeals referred to supra. In the above circumstances, the prayer sought for in this writ petition is not maintainable and the writ petition deserves to be dismissed.

5. Heard the learned counsel on either side and perused the materials available on record.

6. The facts in this case are not in dispute. Admittedly, two Second Appeals have been preferred viz., S.A. No.505 and 506 of 2018 by the private respondents against the judgment and decree of the lower appellate Court. Pending S.A.s, it would not be appropriate for this Court to entertain this writ petition under Article 226 of the Constitution.

7. In view of the aforesaid reasons, this Court is not inclined to issue any positive directions as sought for by the petitioner. Accordingly,



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this writ petition is disposed of granting liberty to the petitioner to work out a remedy in the manner known to law upon the final disposal of the Second Appeals. No costs. Consequently, connected miscellaneous petition is closed.

15.03.2023

Index: Yes/No
Internet: Yes/No
Speaking Order/Non-Speaking Order
vsi2

To

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M.DHANDAPANI, J.

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