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WP.No.19946 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.01.2023

CORAM:

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

W.P.No.19946 of 2021 &

W.M.P.No.21196 of 2021

Subramani

... Petitioner

Vs

1. The District Collector,
District Collectorate, Namakkal District,
Tiruchengode Road, Namakkal 0 637 003.
2. The Tahsildar,
Mohanur Taluk, Namakkal District.
3. The President,
Maniyakalipatti Panchayat, Namakkal District.
4. Thangavel

... Respondents

Prayer:- Writ Petition filed under the Article 226 of Constitution of India, to issue a Writ of Mandamus directing the respondents from interfering with any activity in the burial ground comprised in S.No.197, Pettapalayam Village, Mohanur Taluk, Namakkal District.



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For Petitioner : Mr.I.Abrar Mohamed Abdullah
For Respondents : Mrs.R.Anitha,
Special Government Pleader – R1 & R2
Mr.Richandson Wilson – R3
Mr.S.Senthil – R4

ORDER

This writ petition has been filed directing the respondents from interfering with any activity in the burial ground comprised in S.No.197, Pettapalayam Village, Mohanur Taluk, Namakkal District.

2. The brief background of filing of this Writ Petition to be mentioned here. The fourth respondent has originally filed a suit in O.S.No.269 of 2010 in respect of Survey No.197, particularly the path situated in survey number seeking a relief of declaration and permanent injunction against the writ petitioner. Similarly, he has also filed a suit in O.S.No.608 of 2010 against the petitioner for the relief of permanent injunction. The petitioner has filed a suit in O.S.No.271 of 2010 in respect of the very same survey No.197 for permanent injunction restraining the fourth respondent from



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encroaching upon the grave yard and also the path way. It appears that all the suits were tried together and a common judgment has been passed on 20.06.2018 wherein the suits filed by the fourth respondent has been dismissed and the suit filed by the Writ Petitioner has been decreed. The first appeal filed as against the judgment of the trial Court has been confirmed. As against which Second appeal in 356, 357 and 358 of 2021 have been filed and pending before this Court. Even at the time of admission of the second appeal, this Court has not granted any interim stay of the judgment of the Courts below.

3. At this stage, a Writ Petition has been filed by the fourth respondent before this Court seeking a direction in W.P.No.16367 of 2021 in respect of the very same survey number, viz., 197, as if the survey number is a pathway as per FMB sketch and the villagers are trying to encroach upon it. It is relevant to note that in the above Writ Petition filed by the fourth respondent, the present Writ Petitioner has not been made a party. The above Writ Petition has been disposed of in the admission stage itself on 11.08.2021 and the Division Bench of this Court has directed the police authorities to give necessary police protection for removal of



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encroachment. Now it appears that on the basis of the above Order, the authorities have taken steps to remove the encroachments. According to the Writ Petitioner as the Division Bench of this Court is not aware of the development and the present writ petitioner is not a party in the above Writ Petition, he has filed the present Writ Petition.

4. Mr.S.Senthil, learned counsel appearing for the fourth respondent submitted that pursuant to the Order of the Division Bench, the authorities have taken action. Therefore, having filed the second appeal, the Writ Petition has been filed only to prevent encroachment from the villagers. The second appeals are pending in respect of the same survey number and the dispute is only between the writ petitioner and the fourth respondent. Whereas, the writ petition has been filed to prevent the encroachment from the public. Therefore, it is his contention that the present Writ Petition is not maintainable.

5. Whereas, Mr.I.Abrar Mohamed Abdullah, learned counsel appearing for the Writ Petitioner contended that despite concurrent finding of the Courts below, without making the writ petitioner a party in the Writ



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Petition, Orders were obtained by suppressing material facts and submitted that the authorities cannot take action since the matter is already culminated into the Second Appeals.

6. It is relevant to note that the issue in the civil suits pertaining to survey no.197 has not been brought to the notice of the Division Bench and the Division Bench proceeded as if there is general encroachment. A perusal of the judgment of the trial Court indicate that separate issues have been framed by the trial Court particularly in respect of the survey No.197, besides there are also issues as to the rights of the parties over the path way. As rightly pointed out by the learned counsel appearing for the petitioner, if those facts have been brought to the notice of this Court, such a general direction would not have been passed by this Court. Therefore, on suppression of certain facts, the fourth respondent has taken undue advantage by obtaining Orders from this Court without making the Writ Petitioner as a party to the proceedings. As indicated above, the parties are at logger heads in respect of the survey No.197 and there are concurrent findings recorded by the trial Court as well as the first appellate Court in favour of the Writ Petitioner. Even in the second appeal, no interim stay



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has been granted. Therefore, the same issue cannot be reagitated under the pretext that the third parties are interfering with the pathway. When the very path way is the subject matter in the above three suits and it has been decided after framing issues and judgment has been passed on the basis of the evidence before the trial Court, the same cannot be undone in this writ petition. Though the Division Bench has passed an Order on the basis of the facts placed before this Court, except stating that the second appeals are pending, none of the above facts have been brought to the notice of the Division Bench.

7. In such view of the matter, this Court is of the view that as the second appeals are pending before this Court and the subject matter of the issue relate to the survey No.197, it is well open to the fourth respondent to agitate all his grounds by filing additional documents in the second appeals. The respondents 1 and 2 shall await the Order of the Second Appeal, which will conclusively decide the rights of the parties in respect of the survey No.197. Till such time, there shall be no coercive action by the respondents.



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8. With the above direction, this Writ Petition is disposed of.

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Consequently, connection miscellaneous petition is closed. No costs.

12.01.2023

Index : Yes/No
Neutral Citation : Yes/No
vrc

To,

1. The District Collector,
District Collectorate, Namakkal District,
Tiruchengode Road, Namakkal 0 637 003.
2. The Tahsildar,
Mohanur Taluk, Namakkal District.
3. The President,
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N.SATHISH KUMAR, J.

VTC

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