



W.P.No.20519 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED 08.02.2023

CORAM

THE HONOURABLE Ms. JUSTICE V.M.VELUMANI
AND
THE HONOURABLE Mrs. JUSTICE R.HEMALATHA

W.P.No.20519 of 2021

R.Vijayasamundeeswari

.. Petitioner

Vs.

1.The District Collector
Villupuram District
Villupuram

2.The Block Development Officer
Kooteripattu Village
Mailam Ondirum
Tindivanam Taluk
Villupuram

3.P.Anandavalli Ammal (deceased)

4.Perumal Mudaliar

5.P.Sivaselvam

6.Vijayalakshmi

7.Poonkuzhali

8.P.Athithan

(R4 to R8 substituted as legal heirs of the deceased R3
vide order dated 12.1.23 made in W.M.P.No.33475/22)

.. Respondents



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Petition filed under Article 226 of the Constitution of India praying to issue a writ of mandamus, directing the respondents 1 and 2 to remove the illegal constructions put up by the 3rd respondent in survey number 61/1 (Old survey numbers 57/8 and 57/5), Palapattu Village, Tindivanam Taluk in accordance with the provisions of Town and Country Planning Act and Tamil Nadu Panchayath Building Rules 1997, within the time limit fixed by this Court.

For Petitioner : Mr.M.Vijayakumar
For 1st Respondent : Mrs.R.L.Karthika
Government Advocate
For 2nd Respondent : Mr.T.Arun Kumar
Additional Government Pleader
For R3 to R8 : Mr.A.Bharathi
for M/s.Muthumani Doraisami

ORDER

(Made by V.M.VELUMANI, J.)

The petitioner has come out with the present writ Petition for a direction to the respondents 1 and 2 to remove the illegal construction put up by the 3rd respondent in survey No. 61/1 (Old survey Nos.57/8 and 57/5), Palapattu Village, Tindivanam Taluk.



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2. Mr.M.Vijayakumar, learned counsel appearing for the petitioner

submitted that the property in question originally belonged to one Arumuga Mudaliar and after his death, his daughter Lakshmikantham inherited the same. The petitioner is the daughter-in-law of Lakshmikantham. One Rajeswari, daughter of Lakshmikantham sold the property to the 3rd respondent. Since the 3rd respondent attempted to interfere with the rights of Lakshmikantham, she filed O.S.No.113 of 2007 before the Principal Sub Court, Tindivanam, for declaration of title and the same was decreed on 28.06.2012. Challenging the said decree, A.S.No.31 of 2012 that was filed by the 3rd respondent before the Principal District Court, Villupuram, came to be dismissed on 29.04.2013, aggrieved by which, S.A.No.812 of 2013 was filed before this Court and the same is pending.

3. Mr.M.Vijayakumar, learned counsel appearing for the petitioner further submitted that Lakshmikantham settled the property in favour of her son T.K.Ravichandra Mouli, who is the husband of the petitioner, *vide* settlement deed dated 21.09.2012. After T.K.Ravichandra Mouli's death, the petitioner and her three sons inherited the property. The



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petitioner's three sons settled their shares in favour of the petitioner. The petitioner has gifted portion of the property for charitable purpose and few others. While so, the 3rd respondent encroached the petitioner's property and put up illegal construction. Hence, the petitioner gave a representation dated 13.11.2014 and filed W.P.No.31714 of 2014, wherein, this Court, by order dated 22.12.2014 directed the 2nd respondent to pass orders on the representation of the petitioner. Since the respondents have not taken any action, the petitioner has come out with the present writ petition.

4. The 2nd respondent has filed counter affidavit. Mr.T.Arun Kumar, learned Additional Government Pleader appearing for the 2nd respondent submitted that the construction put up by the 3rd respondent is a private patta land and the respondents cannot remove the construction put up by the 3rd respondent in his private land. As per the orders of this Court, the 2nd respondent conducted enquiry and in the enquiry, the 3rd respondent produced a copy of the judgment dated 02.03.2020, passed by this Court in S.A.No.812 of 2013, in terms of the compromise memo dated 14.02.2020, whereby, Lakshmikantham has recognised the 3rd respondent as owner.



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5. Mr.T.Arun Kumar, learned Additional Government Pleader further submitted that if any unauthorised construction is put up by the 3rd respondent in his private land, the same will be inspected by the 2nd respondent and action will be taken against her.

6. The 3rd respondent has filed counter affidavit. Apart from various averments in the counter affidavit, the 3rd respondent has stated that as per the compromise decree, her title to the property was recognized by Lakshmikantham and gave up all her right and interest in the property in favour of the 3rd respondent. The 3rd respondent is in possession of the property and has constructed a small farm house in the agricultural land. The 3rd respondent has given a representation on 31.01.2022 for regularisation to the Director and Deputy Director of Town and Country Planning and the same is pending.

7. Mr.A.Bharathi, learned counsel appearing for the respondents 3 to 8 submitted that the petitioner has suppressed the dismissal of the petition for impleading her in the Second Appeal, compromise decree and



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the pendency of the review petition filed by her and has come before this Court with unclean hands and hence, he prayed for dismissal of the writ petition.

8. We have elaborately extracted the submissions made by Mr.M.Vijayakumar, learned counsel for the petitioner as well as Mr.T.Arun Kumar, learned Additional Government Pleader appearing for R2 and Mr.A.Bharathi, learned counsel appearing for the respondents 3 to 8.

9. The petitioner has traced her title from her mother-in-law Lakshmikantham, but she has suppressed the fact that her mother-in-law had entered into a compromise in S.A.No.812 of 2013, based on which, a compromise decree was passed by this Court on 02.03.2020. In the compromise decree, her mother-in-law recognized the 3rd respondent as owner and filed a joint compromise memo. The terms of the compromise memo are extracted hereunder :

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9. It is respectfully submitted that the appellant and the Respondent in the above Second Appeal No.812 of 2013, on the advice of well wishers, have decided to settle all the disputes among



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themselves amicably. Pursuant to the compromise arrived at between the parties, both the parties in the above Second Appeal have agree to settle the issue subject matter of OS No.113 of 2007 on the file of Principal Subordinate Court, Tindivanam on the following terms and conditions :

a)The Respondent hereby affirms and agrees that the Appellant herein shall continue to enjoy the possession of the suit property and the Respondent has no claim or claims in the suit property in any manner and agree to withdraw the suit and recognize the title of the Appellant over the suit schedule property by relinquishing all her right and title over the property.

b)The Respondent herein agrees that she shall not in any way cause any hindrance or interference to the Appellant in respect of the suit property in future.

c)It is agreed by all the parties in the above Second Appeal that the present relinquishment under this Joint Memorandum of Compromise will be binding on all the parties to the above Second Appeal and their heirs and successors in interest and no other Documents or Arrangements, if execute by any of the parties shall affect the rights of the Appellant herein in respect of the suit property.

d)It is made clear that no property other than the suit schedule property has been included in this Joint Memorandum of Compromise.

10.Under these circumstances, it is humbly prayed that this Honourable Court may be pleased to record this Joint memorandum of Compromise and pass a Decree in the above SA No.812 of 2013 as per the terms of this Joint Memorandum of Compromise dismissing the OS No.113 of 2007 on the file of Principal Subordinate Judge, Tindivanam as withdrawn and thus render Justice. ”

The petitioner has suppressed the fact that she filed an application for impleading her as a party respondent in S.A.No.812 of 2013 and also about



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the filing of the review petition challenging the compromise decree. Thus, the petitioner has not approached this Court with clean hands.

10. Further, the 3rd respondent has applied for regularisation of farm house, which is pending before the Director and Deputy Director of Town and Country Planning, Villupuram.

11. In view of the above facts, the 2nd respondent is directed to inspect the property in question and if there is any unauthorised construction put up by the 3rd respondent, the 2nd respondent shall take appropriate action in accordance with law. The said exercise shall be completed within a period of eight weeks from the date of receipt of a copy of this order.

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

(V.M.V.,J.) (R.H.,J.)
08.02.2023

Internet : Yes / No
Neutral citation : Yes/No
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To

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V.M.VELUMANI, J.
AND



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R.HEMALATHA, J.

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