



W.A.(MD)No.153 of 2023

WEB COPY BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 22.02.2023

CORAM:

THE HONOURABLE MR.JUSTICE D.KRISHNAKUMAR

and

THE HONOURABLE MRS.JUSTICE L.VICTORIA GOWRI

W.A.(MD)No.153 of 2023
and C.M.P.(MD)No.2074 of 2023

Rengan

... Appellant

Vs.

1.Gunasekaran

2.The Tahsildar,
Singampunari,
Sivagangai District.

3.The Head Surveyor,
Singampunari,
Sivagangai District.

... Respondents

PRAYER : Appeal filed under Clause 15 of the Letters Patent, against the order passed by this Court in W.P.(MD)No.29149 of 2022, dated 23.12.2022.



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For Appellant : Mr.G.Prabu Rajadurai
For Respondents : Mr.S.Sarangan,
Addl. Government Pleader for R2 & R3

JUDGMENT

[Judgment of the Court was delivered by D.KRISHNAKUMAR, J.]

This Writ Appeal is directed against the order made in W.P.(MD)No.29149 of 2022, dated 23.12.2022.

2. The first respondent / writ petitioner has filed a Writ Petition before this Court in W.P.(MD)No.29149 of 2022, seeking for a direction to the respondents therein to survey and fix the boundaries in Survey No.159-1A, situated at Thirumalakudi Village, Musundapatti Group, Singampunari Taluk, Sivagangai District and this Court, by order dated 23.12.2022, has passed the following order:

“2. The Writ Petition is disposed of with the following directions:-



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(I) The survey authority will issue notice to the writ petitioner as well as the adjacent land owners and also to the interested persons, if any.

(II) Enquiry shall be held. During enquiry, objections raised by the adjacent land owners / interested persons shall be considered.

(III) If according to the jurisdictional authority, the objections are without any basis, the same shall be overruled and the objectors shall be informed accordingly. But the survey will be conducted only after a period of six weeks so that the objector can move the concerned Court for injunction. If before the proposed date of survey, the objector is unable to obtain any injunction order, the survey can very well go on.

(IV) If the jurisdictional authority finds objections to be having substance, then, he shall call upon the applicant to move the jurisdictional civil Court for agitating his rights.

(V) If required, the survey authority is empowered to seek aid of the jurisdictional police and the jurisdictional police are mandated to grant police protection.

(VI) It is made clear that at the end of the survey exercise, survey stones alone can be installed. The exercise of survey and



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demarcation undertaken pursuant to the direction of this Court can never result in dispossession of any party. No person shall put up fencing at the time of survey by using police aid. The Survey Authority will pass order within a period of six weeks after service of notice on the interested persons.

(VII) A copy of the survey report will be served on the parties also.

No costs”.

As against the said order, the appellant has filed this Writ Appeal.

3. According to the appellant, the property bearing S.No.159/1A, Tirumalaikudi Village, belongs to the joint family of the appellant. Since the properties are not undivided, they have divided the property by usage with clear physical boundaries. The appellant came to know that during UDR, the land was divided and a portion measuring 2.31 acres was given separate Survey Number 159/1A in the name of Murugan @ Alagar. Such sub division and exclusive entry of Murugan in respect of the portion measuring 2.31 acres under S.No. 159/1A is a mistake during UDR. Without any registered partition, such sub division and separate entry would not bind the appellant's rights. The appellant



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came to know that the said Murugan @ Alagar by sale deed dated 22.12.2009 sold the said sub divided portion to one Valliammal and thereafter, the said Valliammal by sale deed dated 25.08.2010 reconveyed the property to the said Murugan. Thereafter, the said Murugan by sale deed dated 04.03.2021 sold the property to one Alagar and that the 1st respondent / writ petitioner by a sale deed dated 01.11.2021 allegedly purchased the property from the said Alagar. By using the said sale deed, the 1st respondent / writ petitioner obtained patta and thereafter, he has filed a Writ Petition in W.P.(MD)No.29149 of 2022 seeking to survey and fix the boudaries in S.No.159-1A. In the light of the order passed by the Writ Court, the appellant possession was disturbed by the 1st respondent / writ petitioner. Hence, the appellant has filed this Writ Appeal.

4. We have heard the submissions made by the learned counsel appearing on either side and perused the materials available on record.

5. On a perusal of the records, it is seen that there is a dispute between the appellant and the 1st respondent / Writ Petitioner, if the appellant is claiming any



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right over the property, he should approach the Civil Court. In the present case on hand, the appellant himself has admitted that the property in S.No.159/1A was subdivided under UDR scheme and a portion of the land measuring 2.31 acres was given separate Survey Number in the name of Murugan @ Alagar. Therefore, if there is any mistake in the UDR Patta, the appellant has to approach the competent forum for rectification of the said mistake. Without doing the same, the appellant has filed this Writ Appeal. Further, the Writ Court has also clearly observed that if the jurisdictional authority finds objections to be having substance, then, he shall call upon the applicant to move the jurisdictional civil Court for agitating his rights. In view of the above, we are of the view that if the appellant is having any grievance either he make an application before the authorities concerned or before the appropriate forum to seek his right in the aforesaid property and therefore, the order of the learned Single Judge does not warrant interference and there is no merit in the Writ Appeal.



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6. Accordingly, this Writ Appeal is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

[D.K.K., J.] [L.V.G., J.]
22.02.2023

NCC : Yes / No
Index : Yes / No
vsm

TO:

- 1.The Tahsildar,
Singampunari,
Sivagangai District.
- 2.The Head Surveyor,
Singampunari,
Sivagangai District.



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