



W.A.(MD).No.255 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 14.12.2023

CORAM

**THE HON'BLE MR.JUSTICE S.M.SUBRAMANIAM
AND
THE HON'BLE MR.JUSTICE V.LAKSHMINARAYANAN**

W.A.(MD).No.255 of 2023
and
C.M.P.(MD).No.3103 of 2023

1.Veerasamy

2.Malar

3.K.Nallathambi

4.N.Rani

5.Moorthy

6.S.Kalyani

.. Appellants/Third Parties

Vs.

1.Anbu Selvi

.. 1st Respondent/Petitioner

2.The Tahsildar,
Aranthangi Taluk,
Pudukottai District.

3.The Taluk Surveyor,
Aranthangi Taluk,
Pudukottai District.

.. Respondents 2 & 3/Respondents 1 & 2

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PRAYER: Writ Appeal filed under Clause 15 of Letters Patent, praying to set aside the order dated 16.12.2022 made in W.P.(MD).No.28327 of 2022, by allowing this appeal.

For Appellants : Mr.R.Suriyanarayanan
For R-1 : Mr.B.Jameel Arasu
For R-2 & R-3 : Mr.M.Lingadurai
Special Government Pleader

JUDGMENT

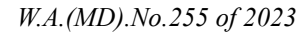
(Judgment of the Court was delivered by S.M.SUBRAMANIAM,J.)

The intra-court appeal on hand has been instituted against the order dated 16.12.2022 passed in W.P.(MD).No.28327 of 2022.

2. The learned Single Judge, without advertng to the case placed before the Writ Court, disposed of the Writ Petition by issuing the following directions:

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

(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.



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



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(VII) A copy of the survey report will be served on the parties also. No costs.”

3. The writ appellants before us are third parties to the Writ proceedings. By obtaining leave from this Court, the present Writ Appeal is filed.

4. The learned counsel for the appellants mainly contended that by not impleading the writ appellants in the Writ proceedings, the first respondent/writ petitioner secured directions to survey the subject property, in which, dispute existed between the parties. A civil suit in O.S.No.90 of 2019 is pending on the file of Sub Court, Aranthangi.

5. The learned counsel for the appellants further contended that the intention of the first respondent/writ petitioner is to survey the land and establish title over the same. Since a boundary dispute exist between the parties, conducting survey would be insufficient to establish the title.



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6. The learned counsel for the first respondent/writ petitioner made a submission that the fees required for conducting survey has already been deposited with the competent authorities. Under the provisions of the Survey and Boundaries Act, the first respondent/writ petitioner is entitled to survey her land. Therefore, the learned Single Judge has issued directions under the provisions of Survey and Boundaries Act and thus, the Writ Appeal is to be rejected.

7. It is necessary to consider the scope of the Tamil Nadu Survey and Boundaries Act, 1923. It is a pre-independence Act enacted in the year 1923 for survey of lands and settlement of boundary disputes. Section 3 provides interpretation clause. Section 3(ii) defines '*Government land*' means any land not forming an estate or any portion thereof. Therefore, the Act defines the Government land and such Government land not forming an estate or any portion thereof.

8. Chapter 2 of the Survey and Boundaries Act provides the survey of Government lands. Section 5 to 10 and the procedures contemplated therein



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are applicable for survey of Government lands alone and not the estate lands. Therefore, by relying on Section 5 to 10 of the Survey and Boundaries Act, private estate cannot be surveyed. Such private disputes are to be resolved only through the competent Civil Court of law. Wherever there is a boundary dispute between the parties, they are to be relegated to approach the Civil Court of law and in the present case, a civil suit has already been instituted and pending before the Sub Court, Aranthangi.

9. The purpose and object of the Survey and Boundaries Act, 1923, which is a pre-independence Act, cannot be utilised for the purpose of settling private boundary dispute between the parties. The very object is different and distinct and in respect of boundary dispute between the private parties, it has be resolved only through the competent Civil Court of law. Therefore, the Writ Petitions filed under the provisions of Survey and Boundaries Act are entertainable in respect of Government lands under Chapter 2 and estate lands as per the definitions provided under Chapter 3 of the Act.



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10. In the present case, since the parties have instituted a suit, they are at liberty to move the Civil Court in the pending suit for appointment of Advocate Commissioner or to survey the subject property with the assistance of a qualified Surveyor or for other necessary reliefs for resolving the boundary disputes by following the procedures as contemplated under the Civil Procedure Code. In the event of filing any such interlocutory application in the pending suit by either party, the competent Civil Court may consider the same on merits and in accordance with law.

11. In view of the above facts and circumstances, the order of the learned Single Judge dated 16.12.2022 passed in W.P.(MD).No.28327 of 2022 is set aside and the Writ Appeal stands allowed. There shall be no order as to costs. Consequently, connected miscellaneous petition stands closed.

(S.M.S.,J.) (V.L.N.,J.)
14.12.2023

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
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