



W.P(MD)No.13073 of 2023

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 07.06.2023

CORAM:

THE HONOURABLE MR.JUSTICE C.V.KARTHIKEYAN

W.P(MD)No.13073 of 2023

and

W.M.P(MD)No.11068 of 2023

Balamurugan

... Petitioner

Vs.

1.The District Collector

Madurai District,

Madurai - 625 020.

2.The Tahsildar

Madurai South Taluk,

Madurai.

3.The Surveyor

Madurai South,

Madurai.



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4.Prabhakaran

... Respondents

PRAYER : Writ Petition is filed under Article 226 of the Constitution of India praying to issue a Writ of Mandamus forbearing the respondents No.2 and 3 from surveying the land in Survey No.5/2B situated at Silaiman Village, Madurai South, Madurai District, based on the petitioners objection letter dated 23.05.2023.

For Petitioner : Mr.S.Thangaraj

For Respondents : Mr.D.S.Nedunchezian - for R1 to R3

Government Advocate

MrM.Kannan - for R4

ORDER

Eventhough notice is not directed to the fourth respondent, there is a representation made by Mr.M.Kannan, learned counsel on behalf of the fourth respondent.

2. The Writ Petition has been filed in the nature of a Mandamus seeking a negative direction against the respondents 2 and 3 /



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Tahsildar and Surveyor of Madurai South Taluk, Madurai, forbearing them from surveying the land in Survey No.5/2B situated at Silaiman Village, Madurai South, Madurai District, based on the objection letter, dated 23.05.2023.

3. The issue has a long and winding history. The sister of the petitioner herein, apparently had sold the property to the fourth respondent herein. However, it is the claim of the petitioner herein that thereafter, a rectification deed was registered and it is the contention of the petitioner that in one of the pages, his signature had been forged. These are issues which this Court can never examine and can never give a finding. The only authority which could examine all these issues relating to forgery once alleged is the Civil Court. In the mean while, the fourth respondent has been knocking at the doors of this Court seeking permission to survey the very same lands.

4. The fourth respondent, had originally filed a Writ Petition in W.P.(MD) No.20951 of 2014, seeking a direction to survey the lands. An order was passed by a learned Single Judge of this Court on



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22.12.2014 and it was very specifically stated that prior to conducting survey of the lands, notices must be given to any third party who has objections. The third party who has objections is the Writ Petitioner herein.

5. The Writ Petitioner, taking advantage of the Appellate Side Rules, as an aggrieved party, had filed W.A.(MD)SR.No.2156 of 2015 seeking interference with the order of the learned Single Judge. The Division Bench of this Court, however, stated that as a third party, he cannot file a Writ appeal, when there is no legal ground available. It had been observed that the learned Single Judge had directed that notice must be given to any objector and therefore, it was stated that the petitioner/Writ Appellant has no cause to maintain the Writ Appeal. The Writ Appeal was dismissed at the SR stage itself.

6. Thereafter, the fourth respondent had once again filed another Writ Petition in W.P.(MD) No.3791 of 2021. The petitioner herein was not a party to the said writ petition. But he was subsequently, impleaded by the order the Court, dated 12.04.2022. The relief sought in



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that particular writ petition was to direct the respondents therein, to survey and determine the boundaries of the land in Survey No.5/27 measuring 1742 square feet at Silaiman Village, Madurai South Taluk, Madurai District and also for consequential direction to the third respondent therein / Inspector of Police, Silaiman Police Station, Madurai District, to give adequate police protection at the time of survey.

7. A short order was passed by the learned Single Judge and let me extract the entire order :

"When the matter was taken up for hearing the learned counsel for the petitioner sought leave of this Court to withdraw this petition and he has also circulated a letter to that effect.

2. Recording the said submission, this writ petition is dismissed as withdrawn. No costs."

8. Thereafter, the petitioner herein, had filed O.S.No.938 of 2023 before the Subordinate Court, Madurai, and the relief sought in the said suit are as follows :



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Wherefore it is prayed that this Hon'ble Court may graciously be pleased to pass a decree and judgment in favour of the Plaintiff:-

- a) To declare that the plaintiff is the absolute lawful owner of the 1st item of schedule of property as mentioned in the rough sketch as ABCDEF and consequential permanent injunction restraining the Defendants and their henchmen, nominee, agents and those who are claiming under them are not to interfere with the Plaintiff's peaceful possession and enjoyment of the 1st item of schedule of property as mentioned in the rough sketch as ABCDEF
- b) To declare that the alleged sale deed executed by Plaintiff in favour of the 1st Defendant herein in Document No.11345/2011 dated 30.11.2011 registered at Joint II Sub Registrar Office, Madurai South is illegal, invalid, ab-initio, null and void, inoperative and not binding upon the plaintiff's rights over the 1st item of schedule of property as mentioned in the rough sketch as ABCDEF



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To declare that the alleged Rectification deed

f) To declare that the alleged sale deed executed by 1st Defendant in favour of the 4th Defendant herein in Document No.2295/2014 dated 24.03.2014 registered at Joint I Sub Registrar Office, Madurai South is illegal, invalid, ab-initio, null and void, inoperative and not binding upon the plaintiff's rights over the 1st item of schedule of property as mentioned in the rough sketch as ABCDEF

g) Direct the defendants to pay the cost of the suit and

h) Granting to pass such other relief or further reliefs as this Hon'ble court may deem fit and proper in the circumstances of the case.

invalid, ab-initio, null and void, inoperative and not binding upon the plaintiff's rights over the 1st item of schedule of property as mentioned in the rough sketch as ABCDEF

9. In the suit, reliefs have been sought that the sale deeds executed subsequently by the sister of the petitioner herein are to be reexamined by the Court and to set aside the same. When that suit is pending, it would only be appropriate that the Tahsildar and other Revenue Officials, stay away from the property and the litigation. The Civil Court will have to adjudicate all these issues and thereafter, determine the title and then the persons on whom the title is declared can always approach the authorities to survey the lands. But pending the suit,



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I do not see any reason why the land should be surveyed and what advantage would accrue to the fourth respondent herein by the lands being surveyed. Even if the lands are to be surveyed, since a suit has been filed, the entire issue relating to the said land, comes under the purview of the learned Subordinate Judge, Madurai, and application will have to be filed in that particular Court.

10. At any rate, since the sale deed by which the fourth respondent now claims title itself is sought to be impinged, it would only be appropriate that the Sub Court, Madurai, is given adequate opportunity to examine all issues and thereafter, the issue of the survey of the lands, which is not going to decide title, can be taken up.

11. The learned counsel for the fourth respondent, it must be reiterated again, who had entered appearance, even though notice had not been issued, reiterated that he should be granted permission to file a counter. But the nature of the order is not going to change. The parties will have to go before the Civil Court. The issues are pending before the Civil Court already. The fourth respondent is the defendant in the Civil



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Court. He has to work out his remedy is there. His title today is under question. He has to concentrate on strengthening his title, otherwise, if the sale deed itself is set aside, then, he will lose title and every right, even the right to seek an order to survey the lands.

12. In view of that particular fact, a direction is given to the Tahsildar and other Revenue Officials to stay away from the land and await orders of the civil Court / Subordinate Court, Madurai, wherein the suit in O.S.No.938 of 2023 is now pending relating to the said lands.

13. With the above directions, the Writ Petition stands disposed of. No costs. Consequently, connected miscellaneous petition is closed.

07.06.2023

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

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C.V.KARTHIKEYAN, J.

RM

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