



W.P(MD)No.22742 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 19.09.2023

CORAM:

THE HONOURABLE MR.JUSTICE B.PUGALENDHI

W.P(MD)No.22742 of 2023

and

W.M.P(MD)Nos.18998 & 18999 of 2023

A.Veerapandi

... Petitioner

Vs

**1.The Tahsildar,
Melur Taluk,
Madurai District.**

2.S.Rajapoornachandran

...Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying to issue a writ of Certiorari calling for the records in Athumal No.869/23 dated 07.09.2023 passed by the first respondent and quash the same.

For Petitioner :Mr.K.Pandiyarajan

**For R1 :Mr.M.Sarangan
Additional Govt. Pleader**

For R2 :Mr.Palanichamy



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ORDER

The petitioner has filed this writ petition as against the notice which was received by him from the survey officer. The survey officer fixed the date for conducting the survey for the land in Survey No.590/1 and New No.590/1D1 to an extent of 5 acres and 69 cents, situated at Navinipatti Village, Melur Taluk based on the application of the second respondent.

2. The learned counsel appearing for the petitioner submits that the issue with regard to the subject property is pending before this Court in S.A(MD).No.591 of 2005 and without considering the same, the survey officer has issued the notice for conducting survey on the subject property.

3. The learned Additional Government Pleader appearing for the first respondent submits that based on the decree granted in A.S.No. 263/2004 by the Sub Court, Melur, the second respondent has made a request for conducting survey and accordingly this notice was issued for



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conducting survey. The petitioner has also submitted his objection to the first respondent not to conduct the survey till the disposal of the second appeal and the same was also considered and thereafter, decision has been taken to proceed with the survey.

4. The learned counsel for the second respondent submitted that S.A(MD)No.591 of 2005 was filed before this Court by the mother of the petitioner one Karuppayee and which was dismissed for non-prosecution on 03.10.2018 and that there is no impediment for the survey officer to conduct the survey. Further, the first appellate Court has also granted a decree in favour of them and survey has to be conducted based on the Civil Court decree as on date.

5. This Court considered the rival submission made.

6. Though the petitioner claims that the subject matter is pending before this Court in S.A(MD)No.591 of 2005, the same appears to have been dismissed for non-prosecution on 03.10.2018. The vendor of the second respondent one Sivakumar has obtained a decree in favour



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of him in A.S.No.263 of 2004 which was challenged by way of second appeal in S.A(MD)No.591 of 2005 by the mother of the petitioner and the same was dismissed for non-prosecution in the year 2018, thereafter, the petitioner filed an application to restore the second appeal with condone delay petition and the same is pending from the year 2021. The petitioner has not prosecuted the condone delay application for the past two years. The first appellate Court has granted a decree and there is no impediment for the survey officer to conduct the survey as per the decree. The petitioner has to work out his remedy in C.M.P(MD)No.4403 of 2021 and in the event the petitioner succeeds in the second appeal he can restore his possession with regard to the property.

7. In view of the above, this writ petition is dismissed. No costs. Consequently, connected miscellaneous petitions are closed.

NCC : Yes / No.
Index : Yes / No.
Internet: Yes
am

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To
The Tahsildar,
Melur Taluk,
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B.PUGALENDHI, J.

am

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