



WEB COPY



W.P. No.13531 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:23.07.2024

CORAM

THE HON'BLE MRS.JUSTICE V.BHAVANI SUBBAROYAN

W.P.No.13531 of 2024

Kamala

....Petitioner

..Vs..

1. The Collector,
Cuddalore District,
Cuddalore
2. The Tahsildar,
Cuddalore District,
Cuddalore
3. The Block Development Officer,
Cuddalore Panchayat Union,
Cuddalore.
4. The President,
Kilinjikuppam Panchayat,
Cuddalore Taluk,
Cuddalore District.
5. Mr. Sekar,
6. Mr. Kaliaperumal,
....Respondents



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WEB COURT

PRAYER: Writ Petition filed under Article 226 of the Constitution of India seeking to issue a Writ of Mandamus directing the Respondents 1 to 4 to remove the cement road laid over 148 Sq.metres in S.No. 197/2 in Mettukuppam, hamlet of Kilinjikuppam, Cuddalore Taluk, Cuddalore District and consequently directing respondents 1 to 5 to pay damages to the petitioner in such amount as this Hon'ble Court should deem fit and pass orders accordingly.

For petitioner : Mr. D. Baskar

For Respondents : Mrs.C. Meera Arumugam for R1 &
R2
(Addl. Govt. Pleader)
:Mrs.K. Tamil Vendan for R3 & R4
(Govt. Advocate)

ORDER

This Writ petition has been filed seeking to issue a Writ of Mandamus directing the Respondents 1 to 4 to remove the cement road laid over 148 Sq.metres in S.No. 197/2 in Mettukuppam, hamlet of Kilinjikuppam, Cuddalore Taluk, Cuddalore District and consequently directing respondents 1 to 5 to pay damages to the petitioner in such amount as this Hon'ble Court should deem fit and pass orders accordingly.



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2. The learned counsel for the petitioner submits that the petitioner's father owned properties in Mettukuppam Village, hamlet of Kilinjikuppam in Cuddalore Taluk, Cuddalore District which is included S.No.197/2. The petitioner's brother/6th respondent herein lives in the north-western corner of S.No.197/2 in a house. The 5th respondent lives immediately west of S.No. 197/2. He is a self proclaimed Nattanmai of the village and belongs to the ruling party. Since the 5th respondent being a neighbour of 6th respondent who is an illiterate, has instigated the 6th respondent to claim the entire properties of his father stating as if his mother or sisters did not have a share in ancestral properties.

3. It has been further submitted by the learned counsel for the petitioner that in view of the preliminary decree dated 12.12.2000, passed in O.S 186 of 1997 on the file of the Additional Sub-Court, Cuddalore filed by the plaintiff's mother, the 6th respondent has only a 1/6th share whereas the petitioner and petitioner's sister have 4/5th share in the suit property since their mother died. Against the aforesaid Judgment and Decree, A.S.No.32 of 2004 filed by the 6th respondent, was dismissed on 14.07.2004 and it became final.



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4. The learned counsel for the petitioner further submits that there is a public road running east- west, west of S.No. 197/2, immediately north of 5th respondent's house. There is another parallel road running east west on the further north of S.No. 197/2. There is a north-south road that links the east-west roads. These roads are the access for 5th respondent. Since the 5th respondent wanted to gain a short-cut from his house to reach the main road on the north, he had misrepresented to the 6th respondent as if the 4th respondent has proposed to lay a road south and east of his house in S.No.197/2, thereby he will be paid good compensation and that the laying of the road will enhance the value of the property. On assurance of the 5th respondent the 6th respondent executed a gift deed dated 06.01.2010 in favour of the Village Panchayat in respect of 148 sq.m in S.No.197/2.

5. It has been further submitted by the learned counsel for the petitioner that after came to know the ill devise of the 5th respondent, all on a sudden, without any prior notice, on 14.08.2023, materials were transported to the property for laying road. While the 6th respondent resisted to lay the road, he was threatened by ruling party-men and also the police at Reddichavadi. Even resistance on the side of the 6th respondent, the



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Respondents 1 to 5 laid the road upon 148 sq.metres immediately south and east of 6th respondent's house.

6.It has been further submitted by the learned counsel for the petitioner that since the Preliminary decree is passed with proportionate share among them in the suit property and it became final, the gift deed executed by the 6th respondent is not valid. The gift deed is not binding on the petitioner and her sisters. The Respondents 4 and 5 or either of them cannot lay a road without their knowledge and consent. The petitioner and her sister never agreed to gift the property. There was no need to lay the road. It is not for the benefit of the public. Only the 5th respondent will be benefited. No other persons will be benefited. There is no public interest involved.

7. The learned counsel for the petitioner further submits that as the Preliminary decree is still in force and final decree is to be passed, the laying of the road without permission of the petitioner and her sisters, without prior notice and for the benefit of an individual, ie the 5th respondent is arbitrary, illegal and a gross abuse of power. Hence, the



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petitioner sent a representation dated 16.08.2023 to respondents 1 to 4 and others to remove the road. Even they have been served with it, there is no response from their side. Hence, the Writ petition has been filed seeking for the relief as prayed therein.

8.The learned Government Advocates appearing for the respondents have submitted that the 6th respondent executed a gift deed under document No.30/2010 dated 06.01.2010 in favour of the Village Panchayat in the name of the then Panchayat president namely Mr. Siva and it cannot be given any compensation. Further, under Anaithu Grama Anna Marumalarchi Thittam, in the year 2021-22, after obtaining permission from District Collector, vide proceeding No.Na.Ka. No.A7/1250/2022 dated 27.05.2023, in the estimate of Rs.5,62,000/- Cement Road has been laid in Old Mettukuppam Mariamman Temple Street.

9.It has been further submitted by the learned Government Advocates that in view of the Gift Deed executed by the 6th respondent in favour of the Village Panchayat in the name of the then President, the Cement Road has been laid for the public usage. Hence, there is no



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possibility to grant any compensation to the petitioner. Further, the Road is under usage for the past 10 months after laying the cement road. During the time of laying the Cement Road, there is no any objection from the petitioner and since Final Decree proceedings has not been filed before this Court, the petitioner is not entitled to claim her respective shares in the suit property. Hence, the Writ petition is liable to be dismissed.

10. Heard both sides and perused the materials available on record.

11. Having considered the facts and circumstances of the case and also considering the submissions made on either side, it is seen that the final decree is to be passed in O.S 186 of 1997 filed by the plaintiff's mother, while the preliminary decree dated 12.12.2000 has been passed in O.S 186 of 1997 on the file of the Additional Sub-Court, Cuddalore. As per the preliminary Decree, each family members is entitled to 1/6th share in the suit property and as their Mother died, other legal heirs are entitled to 1/5th share in the suit property. Under such circumstances, in order to know whose share has been gifted to the Village Panchayat, the petitioner is at liberty to



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proceed for final decree for division of the suit property by metes and bounds. Further, if the petitioner is entitled to the respective share in the suit property which has been gifted to the Village Panchayat, it is left open to the petitioner to move appropriate Court to get her share in the property in the manner known to law.

12.In view of the above, the Writ petition is disposed of. No costs.

23.07.2024

Index : Yes/No
Internet: Yes/No
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V.BHAVANI SUBBAROYAN, J.,



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