



WEB COPY



W.P.No.35596 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.12.2024

CORAM

THE HON'BLE **MS.JUSTICE P.T.ASHA**

W.P.No.35596 of 2024
and
W.M.P.No.38462 of 2024

P.Palaniyammal

... Petitioner

Vs.

1. The Tahsildar,
Hasthampatty,
Salem District.

2. The Superintendent of Police,
Salem District,
Salem.

3. The Inspector of Police,
Mallur Police Station,
Mallur,
Salem District.

... Respondents

Prayer: Writ Petition filed under Article 226 of Constitution of India, for issuance of a Writ of Certiorarified Mandamus to call for the records relating to order of the 1st Respondent dated 22.05.2024 in Na.Ka.4555/2023/A9 and consequently quash the same and consequently direct the 1st respondent to survey and to fix boundaries for the property in Survey Nos.40, 41/1, 41/2,



W.P.No.35596 of 2024

41/3 and 42/5 at Vazhakuttapatty Village, Mookuthipalayam, Salem South Taluk, Salem District as per the judgment decree dated 25.09.1989 in O.S.No.1679 of 1984 and judgment and decree dated 12.11.1990 in A.S.No.187 of 1989.

For Petitioner : Mr.K.Selvaraj
For R1 : Mr.A.Selvendran
Special Government Pleader
For R2 & R3 : Mr.R.Vinoth Raja
Government Advocate (Crl.Side)

ORDER

Mr.A.Selvendran, learned Special Government Pleader takes notice on behalf of the 1st Respondent and Mr.R.Vinoth Raja, learned Government Advocate (Crl.Side) takes notice on behalf of the 2nd and 3rd Respondents.

2. Aggrieved by the refusal on the part of the 1st respondent to survey the lands of the Petitioner, the Petitioner is before this Court. Brief resume of the facts are set out herein below:-

The Petitioner is the absolute owner of the property measuring an extent of 2.09 Acres comprised in S.No.40 at Vazhakuttapatty Village, Mookuthipalayam, Salem South Taluk, Salem with the right of path way in S.Nos.41/1, 41/2, 41/3 and 42/5 together with 1/3rd share in the Well in the



W.P.No.35596 of 2024

said S.No.40. The above property was purchased by the Petitioner under a registered Sale Deed dated 28.01.1983. Patta in respect of Plot No.330 also stands in the name of the Petitioner. Though the plaintiff had been given a right of pathway the neighboring land owners were preventing the Petitioner from using the pathway along with the Raja Vaikkal. This constrained the Petitioner to file a Suit in O.S.No.1679 of 1984 on the file of the District Munsif Court, Salem seeking a permanent injunction restraining the defendants from interfering with the Petitioner's use of the said pathway. After an elaborate trial, a Suit was decreed on 25.09.1989 in O.S.No.1679 of 1984 and the appeal filed by the Respondents in A.S.No.187 of 1989 on the file of the District Court, Salem had also gone against them and the Judgment in O.S.No.1679 of 1984 on 25.09.1989 stood confirmed. Thereafter, the defendants had not filed any further appeal to this Court. The Courts below have concurrently upheld the right of the property to use the pathway together. The legal heirs of the defendants and their purchasers were attempting to obliterate the pathway. Therefore, the Petitioner has sought for a survey of the pathway and fix the boundaries for the 6 feet wide pathway. The Petitioner had submitted an application on 10.10.2023 enclosing a copy of the e- challan for Rs. 1600/- as also the Advocate Commission sketch and



W.P.No.35596 of 2024

report filed in OS/679/84. To this, the 1st respondent had issued notice dated 15.12.2023 informing the petitioner and Subban, Periyasamy and Subramani, defendants in the suit OS/1679/84 that he planned to conduct survey of the lands and directed the petitioner and the aforesaid persons to be present for the survey and fixation of boundaries. The Survey Officials surveyed the pathway and the survey was objected to by the aforementioned persons. Therefore the Officials of the Respondents did not fix the boundary stone in the surveyed pathway and they have also issued the Impugned Order stating that the survey could not be conducted as there is no sub division of the pathway and not described within the boundaries. Aggrieved by the same, the Petitioner is before this Court.

3. Heard the learned counsel on either side.

4. The Order of the 1st Respondent clearly displays the total non application of mind on the part of the 1st Respondent. The decree in the Suit in O.S.No.1679 of 1984, clearly describes the pathway not only with boundaries but also with measurements and the 1st Respondent contention that there is no detailed marking cannot be accepted. It is also seen that the defendants in the suit who are respondents in CrI.O.P.No.4200 of 2023 on the file of this Court have given an undertaking that they will not prevent the



W.P.No.35596 of 2024

use of the pathway by the Petitioners. It is also seen that the Advocate Commissioner had been appointed in Suit in O.S.No.1679 of 1984 and he was directed to note down the physical features and file a report of the plan of the pathway which exercise has also been done. In case the Revenue Officials face an obstruction during the survey and fixing of the boundary stones they can approach the jurisdictional police for assistance and on such request being asked it shall be provided by the Inspector of the said Police Station.

5. Therefore, the Writ Petition is allowed on the basis of the description of the property as set out in the decree in O.S.No.1679 of 1984 dated 12.11.1990. Accordingly, the Impugned Order dated 22.05.2024 is quashed and the 1st Respondent is directed to fix boundaries in the subject properties within a period of four (4) weeks from the date of receipt of a copy of this Order. No costs. Consequently, connected Miscellaneous Petition is closed.

02.12.2024

Index : Yes/No
Speaking/Non-speaking Order
Neutral Citation :Yes/No
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WEB COPY



W.P.No.35596 of 2024

P.T.ASHA, J.

rgm

To

1. The Tahsildar,
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