



W.P.No.35527 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 22.01.2025

Coram:

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

W.P.No.35527 of 2024

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Babu Mamundi Raja

.. Petitioner

Vs.

1. Superintendent of Police, Ariyalur District.
2. Inspector of Police, Keezhapalur, Ariyalur District.
3. M/s.Chettinadu Cements,
Represented by GM (Accounts),
Keezhapalur Village,
Ariyalur Taluk, Ariyalur District.

.. Respondents

Writ Petition filed under Article 226 of the Constitution of India, praying for issuance of a Writ of Mandamus to direct the respondents 1 and 2 to provide sufficient Police protection to the petitioner and his workers to cultivate the agriculture and other related activities in the Survey No.89/1.

For petitioner : M/s.G.Murugendran

For respondents: Mr.S.Sugendran, Addl.P.P. for RR-1 and 2

Mr.K.Krsihaswamy for R-3



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ORDER

This Writ Petition is filed for issuance of a Writ of Mandamus to direct the respondents 1 and 2 to provide sufficient Police protection to the petitioner and his workers, to cultivate the agriculture and other related activities in the Survey No.89/1.

2. Learned counsel for the petitioner submitted that the third respondent-Company is using their henchmen to prevent the petitioner to reach the petitioner's property.

3. The third respondent-Company has filed counter affidavit stating as follows:

(a) The land measuring 1.59.0 ares equivalent to 3.94 acres of land in S.F.No.89/1 in Keezhapalur Village, which is the subject matter of O.S.No.86 of 2008 which was filed for partitioning the suit properties. The said suit is filed by the petitioner's mother, one Rajeswari, her daughter Usha Rani, son (the petitioner herein) and daughter-Arul Priya as plaintiffs. The plaintiffs are the second wife and the children of the second wife of Late Govindaraju.

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(b) The first and second defendants in the suit are the children of the said

Late Smt.Banumathi, daughter of Late Govindaraju and his first wife, Late Kasiammal. The third respondent is the purchaser of 1.59 acres, i.e. approximately 50% of the total 3.94 acres from the first and second defendants in S.No.89/1 in the said village. The suit was filed for partition of 19/20 shares of the plaintiff. The plaintiffs have also sought for the relief of mandatory injunction to remove the construction put up by the third respondent / third respondent. The suit was filed for partition of three items of property, of which the second item in S.F.No.89/1 is the subject matter of the present Writ Petition.

(c) In the said suit, a preliminary decree was passed on 23.08.2017, while the other reliefs were declined. The third respondent has filed First Appeal in A.S.No.10 of 2020 against the said preliminary decree, which was dismissed on 23.04.2022. The appellate Court confirmed the shares as fixed by the preliminary decree. The appellate Court granted a mandatory injunction, though no appeal was filed by the plaintiffs and directed that the right of the third respondent for allotment of the property purchased, would be considered in the final decree proceedings on the ground of equity. The third respondent thereafter filed Second Appeal in S.A.No.803 of 2022 before this Court and this Court, by judgment dated 30.04.2023, modified the decree and judgment and decree of the trial Court and appellate Courts, granting the plaintiffs a total of



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19/25 and 6/25 shares to the first and second defendants.

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(d) The third defendant's property would be allotted subject to the final decree proceedings. The third defendant was to continue in possession till the final decree proceedings and the decree for mandatory injunction was set aside by this Court. This Court also directed the third respondent to file a sketch/map of the pathway for the petitioner herein to access. The pathway was accordingly earmarked and a plan was also filed. Further, by order dated 30.06.2023, the respondents in the Second Appeal included the writ petitioner, who were given the right of access without claiming any right over the soil and without claiming any right over the soil and without the right to obstruct the respondents from enjoyment of the property. The judgment of this Court indicated a right for the respondents who were represented before this Court, i.e., the plaintiffs and not only the third plaintiff (third respondent herein). The other respondents therein are not parties to the present Writ Petition and it is not open to the petitioner herein to claim exclusive rights in S.F.No.89/1.

(e) Further, the second item of the suit schedule property, measures about 3.94 acres in Survey No.89/1. The third respondent had purchased a half-share measuring 1.59 acres under sale deed, dated 26.09.2008 and was in possession of the same. The entire 3.94 acres in Survey No.89/1 is now the subject matter of partition suit, pending before the Principal Sub-Court, Ariyalur.

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The entire 3.94 acres in S.No.89/1 falls within the factory area of the third respondent. In S.A.No.803 of 2022 filed before this Court, the petitioner herein was permitted to have access to the balance land by a pathway through the entrance of the third respondent's factory without claiming any rights in the soil and without interfering with the possession and enjoyment of the third respondent.

(f) If the petitioner has any grievance, he can approach the Sub-Court Ariyalur, where the partition suit is pending for further directions or this Court in S.A.No.803 of 2022. There is an efficacious and alternative remedy available to the writ petitioner and the petitioner is not entitled to approach this Court under Article 226 of the Constitution of India.

(g) The third respondent has never acted in violation of the judgment and decree of this Court in S.A.No.803 of 2022. The petitioner has insisted on unidentified persons entering to access the pathway through the third respondent's property, which is not within the scope of the decree in the Second Appeal filed before this Court. The present Writ Petition may be dismissed, in view of the pendency of the civil partition suit in O.S.No.86 of 2008 pending on the file of the Principal Judge, Ariyalur and as the other parties to the suit, are not parties to the suit herein.

(h) Without prejudice to the above facts, the third respondent now sets



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out the security and safety aspects involved in this case. The pathway in question earmarked in the plan, passes through the third respondent's factory and is near the power plant, as seen from the plan. Additionally, the premises house being residential quarters of the factory employees, and more than 100 families are accommodated, which include women and children. The factory operates machinery and equipment, which requires adherence to safety guidelines. The order of this Court passed in the Second Appeal did not authorise the writ petitioner to take unidentified individuals in large numbers into the factory by the pathway.

(i) As of now, the writ petitioner had not moved for final decree before the Sub-Court at Ariyalur. The petitioner is trying to take a group of persons/men into the factory premises of the third respondent, which may cause trouble to the women and children as well as to the operation of the third respondent's factory. The third respondent has never acted in violation of the Court order and will always comply with the same.

(j) The writ petitioner is not entitled to take a group of persons inside the third respondent's factory for the reasons set out above by the third respondent. The third respondent's main objection made by the petitioner, that he is only entitled to a small portion of the land and that the petitioner is the original owner. The property in Survey No.89/1 measuring 3.94 acres is the subject



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matter of the partition suit and the third respondent is entitled to be in possession of their portion pursuant to the judgment of this Court in the Second Appeal. The petitioner has no exclusive right in S.No.89/1 and there are other co-owners who are parties in the suit, which includes the first and second defendants in the suit.

(k) The writ petitioner is not a poor person and he is utilising the property for cultivation. The petitioner is seeking to enter into the property, not by himself, but by a group of unidentified persons, which is not permitted by this Court and the third respondent apprehends that the petitioner and his men may cause damage to the factory premises as well as pose a danger to the women and children in the residential quarters.

(l) The petitioner has no exclusive right of ownership over Survey No.89/1, but he is only a co-owner along with the other plaintiffs. The petitioner had not suffered any violation under Article 21 of the Constitution of India. The petitioner is required to follow due process of law by approaching the Sub-Court, Ariyalur, where the partition suit is pending, or this Court in the Second Appeal, for further directions and not to approach this Court by filing the petition under Article 226 of the Constitution. The prayer in the present Writ Petition refers not only to agriculture, but also to the other related activities. This shows the mala-fide intention of the petitioner to pressurise the respondent(s) in accepting the



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unreasonable claim of the petitioner.

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4. Learned counsel for the third respondent submitted that the Civil Suit in O.S.No.86 of 2008 on the file of the Sub-Court, Ariyalur, was filed and the said suit was decreed by the trial Court on 23.08.2017 holding that the petitioner and his sisters are entitled to 19/20 shares and the petitioner's father's first wife's daughter also obtained 1/20 shares in the suit property. Pending the said suit, the third respondent executed the sale deed, dated 24.09.2008 in respect of item No.2 of the suit properteis to an extent of 0.79.05 ares from the petitioner's first wife's daughter Banumathi and that the suit property is situated adjacent to the property of the third respondent. Aggrieved by the decree and judgment of the said suit, the third respondent filed First Appeal in Appeal Suit No.10 of 2020 before the Additional District Judge, Ariyalur and the said appeal was dismissed, against which, the third respondent herein has filed S.A.No.803 of 2022 before this Court and this Court had partly allowed the Second Appeal and modified the decree of the trial Court in respect of the shares, dated 09.05.2023 and the Second Appeal was posted in the caption 'for being mentioned' in which paragraphs 2 and 3 of the judgment of this Court was clarified, holding as follows:

"2. Vide the judgment dated 09.05.2023, the Court has only made arrangement for providing a

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pathway to the respondent to access his property and relegated the final decision on the same to the court which is required to pass a final decision on the same to the court which is required to pass a final decree. Today a plan is made available by the appellant indicating the line of pathway along the property that he had purchased. The respondent counsel on instructions agrees to the facility as indicated in the plan. This implies that till a final decree is passed, the respondent shall have right of access to the portion in his enjoyment along the pathway shown in saffron colour above the eastern boundary of the property.

3. It is made clear that the respondent for the present will have only the right of access through the said pathway but he will not claim any right over the soil till final decree is passed and also will not have the right to obstruct the appellant from enjoying his property otherwise. This plan is directed to be made part of the decree."

5. Subsequent to passing the above decree (preliminary decree), final decree proceedings will have to be initiated and no final decree proceedings had been taken on file so far and the respective share of the parties will have be allotted only in the final decree proceedings.



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6. Unless passing of final decree and earmarking of the share of the properties with boundaries, no one can claim the properties with the extent and boundaries.

7. From the above facts, it is clear that the dispute between the parties is only civil in nature. Hence, the petitioner is not entitled to the relief prayed for in this Writ Petition. This petition is not maintainable and no relief could be granted by the Writ Court and this Court cannot conduct roving enquiry with regard to the rights and entitlement to the parties. Hence, the petitioner is granted liberty to seek appropriate remedy before the competent Civil Court.

8. With the above observations, this Writ Petition is dismissed. There shall be no order as to costs.

22.01.2025

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To

1. Superintendent of Police, Ariyalur District.
2. Inspector of Police, Keezhapalur, Ariyalur District.

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3. The Public Prosecutor, High Court, Madras.

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P.VELMURUGAN, J

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