

W.P.(MD)No.14795 of 2023

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 20.03.2025

CORAM

THE HON'BLE MR.JUSTICE P.B.BALAJI

W.P.(MD)No.14795 of 2023

and

W.M.P.(MD)No.12482 of 2023

Easwaran

: Petitioner

Vs.

1.The Tahsildar,
Srivaikundam Taluk,
Thoothukudi District.

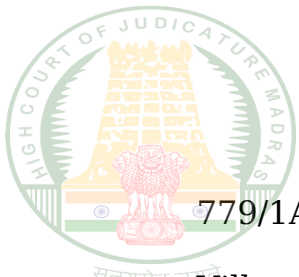
2.The Taluk Surveyor,
Srivaikundam Taluk,
Thoothukudi District.

3.Murugan

4.C.Jebasinthai

: Respondents

PRAYER: Writ Petition filed under Article 226 of the Constitution of India, praying for a Writ of Mandamus, forbearing the respondents 1 and 2 from conducting any survey or demarcation or subdivision without issuing notice and obtaining concern from all the pattadars including this Petitioner in the property bearing Survey No.



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779/1A1A1, comprised in Patta No.959, situated at Sri Moolakkarai Village, Srivaikundam Taluk, Thoothukudi District.

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For Petitioner : Mr.S.Selva Aditya
For Respondents 1 & 2 : Mr.S.Kameswaran
Government Advocate
For Respondents 3 & 4 : Mr.M.S.Jeya Karthick

ORDER

The Writ Petition has been filed to issue a Writ of Mandamus to forbear the survey authorities from conducting survey based on the application of the third respondent.

2.Heard the learned Counsel on either side.

3.The case of the petitioner is that the petitioner's grandfather purchased 5.42 acres out of larger extent of 13.38 acres and on the death of the petitioner's grandfather, the petitioner's father's name was mutated in the revenue records, including patta. The specific contention of the petitioner is that the entire 13 acres remains undivided and the fourth respondent, without any right filed a suit in O.S.No.75 of 2008, before the District Court, Thoothukudi, alleging that fraudulent sale deeds had been brought about to defeat the rights of the said fourth respondent. According to the petitioner, the



fourth respondent colluded with the defendants in the said suit and obtained a decree on 27.04.2010.

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4. Thereafter, the fourth respondent has apparently entered into a sale agreement with the third respondent, to convey the property measuring an extent of 3.5 acres out of 9 acres which was subject matter of the decree in the subject survey number. However, in order to ascertain the lay of the property, the third respondent sought for survey to be conducted. It is in furtherance of the said application made by the third respondent that the respondents 1 and 2 have attempted to survey. However, the petitioner, on coming to know about the survey proposed to be conducted at the instance of the third respondent, has objected to the survey and thereafter, the present Writ Petition has been filed.

5. Learned Counsel for the petitioner inviting my attention to the plaint in O.S.No.75 of 2008, would submit that the plaintiff is fourth respondent in the Writ Petition and drawing my specific attention to schedule I, which is concerning the petitioner herein would submit that what has been purchased was only undivided 9 acres out of 13 acres comprised in S.No.799/1A1A. Admittedly, when patta stands in joint co-owners, without consent of co-owners, survey cannot be proceeded with.



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6.Learned Counsel for the third and fourth respondents would however, submit that the decree was not obtained collusively and the suit was warranted only because of fraudulent fabricated documents brought about, in order to defeat the rights of the fourth respondent. The third respondent who proposed to purchase 3.5 acres was well within her right to request for survey to be conducted. He would therefore, seek for dismissal of the Writ Petition.

7.The learned Government Advocate would invite my attention to the order of this Court dated 26.04.2024 in W.P.(MD)No.10272 of 2024, where in similar matters, this Court had directed conducting of survey subject to several directions contained in the said order. The said directions are extracted for easy reference:

“4.The Writ Petition is disposed of with the following directions:

(I) The petitioner is directed to submit his / her application in online mode. The survey authority will scrutinize if the application submitted by the petitioner is in order.

(II) The petitioner will have to enclose all the relevant documents such as patta. The applicant must have individual patta in his / her name. If he / she is having joint patta, co-pattadars must given their consent for conducting survey.



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(III) The survey authority will issue notice to the writ petitioner as well as the adjacent land owners and also to the interested persons, if any.

(IV) Enquiry shall be held. During enquiry, objections raised by the adjacent land owners / interested persons shall be considered.

(V) If according to the jurisdictional authority, the objections are without any basis, the same shall be overruled and the objectors shall be informed accordingly. But the survey will be conducted only after a period of six weeks so that the objector can move the concerned court for injunction. If before the proposed date of survey, the objector is unable to obtain any injunction order, the survey can very well go on.

(VI) It is open to the parties to serve memo of instructions to the surveyor at the time of conducting survey. The same will be borne in mind. While it cannot be binding on the surveyor, the same will be taken note of.

(VII) If the jurisdictional authority finds objections to be having substance, then, he shall call upon the applicant to move the jurisdictional civil Court for agitating his rights.

(VIII) If required, the survey authority is empowered to seek aid of the jurisdictional police and the jurisdictional police are mandated to grant police protection.



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(IX) It is made clear that at the end of the survey exercise, survey stones alone can be installed. The exercise of survey and demarcation undertaken pursuant to the direction of this Court can never result in dispossession of any party. No person shall put up fencing at the time of survey by using police aid. If the petitioner wants to put up fencing and if there is any objection from any private party, fencing can be put up only after the petitioner obtains decree from the jurisdictional Civil Court.

(X) The survey authority will conclude the entire exercise one way or the other within a period of six weeks after service of notice on the interested persons.

(XI) A copy of the survey report along with sketch will be served on the parties. No costs."

8.I am also conscious of the fact that this Court has repeatedly considered such Writ Petitions for survey based on the earlier order in **Mariyappan's** case and disposed of several Writ Petitions with similar conditions. Here, admittedly, the petitioner claims to be owning 5.42 acres in the subject survey number out of total extent of 13 acres. Even assuming the claim of the third respondent and fourth respondent that the decree is not collusive and the petitioner has no right and has not been able to substantiate the same by way of an registered sale deed, yet the name of the petitioner's father is



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admittedly mutated. Therefore, when survey is sought by third respondent, unless co-pattathars give no objection, survey cannot be proceeded with. The only other alternative which is open to the fourth respondent is to file a suit for partition and separate possession of the property, which according to him belongs to the fourth respondent and thereafter, the fourth respondent either directly or through third respondent would be entitled to make an application for survey. In view of the directions of this Court in W.P. (MD)No.10272 of 2024 dated 26.04.2024, as well, blanket surveys cannot be permitted on the application of the third or even the fourth respondent.

9.In view of the above, the Writ Petition is disposed of, directing the fourth respondent to either produce no objection certificate of other co-owners, expressing no objection for survey or alternatively move the competent civil Court for a partition decree, impleading all the persons interested in the subject survey number and after obtaining a decree for separate possession, the fourth respondent shall be entitled to seek for survey. The Counsel for the third and fourth respondent would however, seek for liberty to be given to the third and fourth respondent to approach the authorities for removing the name of the petitioner's father, if they are able to satisfy that the name was wrongly included. It is always open to



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them to make such applications and if and when filed, the same shall be disposed of, by the authorities, in accordance with law. There shall be no order as to costs. Consequently, the connected miscellaneous petition is closed.

20.03.2025

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



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To

1.The Tahsildar,
Srivaikundam Taluk,
Thoothukudi District.

2.The Taluk Surveyor,
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Thoothukudi District.



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P.B.BALAJI., J.

MR

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