



W.P.(MD)No.22795 of 2024

WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **13.02.2025**

CORAM:

THE HONOURABLE MR JUSTICE P.B. BALAJI

W.P.(MD)No.22795 of 2024
and
W.M.P(MD)No.19318 of 2024
and
W.M.P(MD)No.23600 of 2024

R.Jothiraj

.... Petitioner

/Vs./

1.The Revenue Divisional Officer,
Sankarankovil,
Tenkasi District.

2.The Tahsildar,
Thiruvengadam Taluk,
Tenkasi District.

3.Mr.Balamurugan
4.Mr.Athmaraman
5.Kanagalakshmi

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India, to issue a Writ of Mandamus, directing the respondents 1 and 2 or their subordinates not to survey and demarcate the land comprised in Survey Number 206/2 and 206/3A situated in Kalingapatti Bit-2 Village,



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Thiruvengadam Taluk, Tenkasi District which are the subject matter of the Civil Suit in O.S.No.150 of 2023 on the file of the Principal District Munsif Court, Sankarankovil.

For Petitioner : Mr.R.J.Karthick
For R1 & R2 : Mr.S.Kameswaran
Government Advocate
For R4 & R5 : Mr.M.Thirunavukkarasu
For R3 : No appearance

ORDER

The writ petition has been filed to issue a writ of mandamus forbearing the respondents 1 & 2 from surveying and demarcating the land comprised in Survey Number 206/2 and 206/3A situated in Kalingapatti Bit-2 Village, Thiruvengadam Taluk, Tenkasi District, which is the subject matter of the Civil Suit in O.S.No.150 of 2023, on the file of the Principal District Munsif Court, Sankarankovil.

2. I have heard the learned counsel appearing for the petitioner as well as the respondents.



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3. The respondents 4 & 5 have filed a petition in W.M.P(MD)No.23600 of 2024 for vacating an interim injunction granted by this Court at the time of admission.

4. The case of the writ petitioner is that a civil suit in O.S.No.150 of 2023 is pending the Principal District Munsif Court, Sankarankovil and the said suit is filed for declaration, permanent injunction as well as a mandatory injunction. The contesting respondents have also entered appearance in the said suit and filed their written statement. According to the petitioner, the subject matter in dispute in the said suit is also the same survey numbers, viz. 206/2 and 206/3A.

5. The learned counsel for the petitioner would submit that today an application for appointment of an Advocate Commissioner has been filed in the said suit and therefore, it would be just and proper for the competent Civil Court to go into the issues and in the said suit, the commissioner's report would be of assistance to the Court in deciding the issues that arise for consideration.



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6. He would further submit that in the meantime, the respondents 4 & 5 have made a separate application for survey of survey No.206/3 alone and before the survey could be conducted, the petitioner has filed the instant application, where, this Court also granted an interim injunction restraining any survey to be conducted pending further orders.

7. Admittedly, as of now, there is an application for appointment of Advocate Commissioner to survey the properties of both the petitioner as well as respondents 4 & 5 in a suit for larger reliefs of declaration and injunction. The survey is sought in the present writ petition is the same survey which is sought by the respondents 4 & 5 privately. In the light of the above, it would be proper for the survey to be conducted in the pending suit O.S.No.150 of 2023 in the presence of the Advocate Commissioner to be appointed by the Principal District Munsif Court, Sankarankovil, so that the parties would also have an opportunity to test the report as well as the survey by cross-examining the Commissioner/the surveyor concerned.



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8. The learned counsel for the respondents 4 & 5 would invite my attention to the FMB sketch and also the request for survey of 206/11B which is adjoining the properties of both the petitioner and the respondents 4 & 5. On verifying the FMB sketch, I find that S.No. 206/11B is situated immediately to the South of 206/2, which lands are owned by the respondents 4 & 5. According to the respondents 4 & 5, the owner of S.No.206/11B is complaining of encroachment by the respondents 4 & 5 into his property. Therefore, in order to have a clear picture, the respondents 4 & 5 would seek for the survey of lands in S.No.206/11B as well since, he has no objection for the commissioner inspecting adjoining lands in the pending suit in O.S.No.150 of 2023.

9. I have considered the above contentions and I have also gone through the written instructions provided by Tahsildar, Thiruvengadam, where, the Tahsildar has also stated that in view of the pendency of the suit in O.S.No.150 of 2023 and there being a dispute with regard to the measurements of the properties, it would be appropriate for the parties to approach the Civil Court and seek



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directions.

10. Therefore, as seen from the above, it is clear that both the petitioner and the respondents 4 & 5 seek for a proper survey to be conducted. It is only the forum where the survey is to be ordered, is in dispute. However, considering the fact that a competent Civil Court is already seized off the matter and is deciding substantive reliefs for declaration and injunction, it would be proper for the said Court to appoint a commissioner and survey the disputed lands.

11. I am conscious of the fact that the petitioner is the plaintiff in the said suit and he restricts his prayer for survey of the lands belonging to the petitioner and the respondents 4 & 5. As contended by the learned counsel for respondents that there may be a necessity to survey the lands 206/11B as well since the issue of encroachment has been raised by the owner of 206/11B and it would have a bearing on the disputes in the present case, it is therefore, open to the respondents 4 & 5 to give necessary memo of instructions to the Advocate Commissioner to be appointed in O.S.No.150 of 2023.



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12. In view of the above, I direct the learned Principal District Munsif, Sankarankovil to take up the application for appointment of an Advocate Commissioner filed by the petitioner as plaintiff and since the counsel for the respondents 4 and 5 has no objection for appointment of a commissioner, the learned Principal District Munsif, Sankarankovil shall appoint a Commissioner and direct the Advocate commissioner to take the help of the Taluk surveyor and conduct a survey of the subject lands 206/2 and 206/3A and if necessary instructions are given by way of memo of instructions by the counsel for the respondents 4 and 5 herein, then also inspect and survey, survey No.206/11B, of course, after putting the owner of the said lands in survey number 206/11B on prior notice regarding the survey to be conducted. The Advocate Commissioner's report along with the surveyor's report shall be filed before the Principal District Munsif Court, Sankarankovil and it shall be open to the parties namely the petitioner as well as the respondents 4 & 5 to test the said report and survey, during trial of the said suit. The trial Court shall decide the disputes keeping in mind the survey report to be furnished by the Tahsildar, Thiruvengadam Taluk. The



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learned Principal District Munsif, Sankarankovil shall ensure that the Commission is issued expeditiously and the survey shall be completed within a period of four weeks.

13. With the above observations and directions, the writ petition is disposed of. No costs. Consequently, connected miscellaneous petitions are closed.

Index : Yes / No
NCC : Yes / No
am

13.02.2025

Note: Issue order copy on 17.02.2025

TO:-

- 1.The Revenue Divisional Officer,
Sankarankovil,
Tenkasi District.
- 2.The Tahsildar,
Thiruvengadam Taluk,
Tenkasi District.



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P.B. BALAJI, J.

am

Order made in
W.P.(MD)No.22795 of 2024

Dated:
13.02.2025