

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE THE AG.CHIEF JUSTICE MR.ASHOK BHUSHAN
&
THE HONOURABLE MR.JUSTICE A.M.SHAFIQUE

TUESDAY, THE 3RD DAY OF FEBRUARY 2015/14TH MAGHA, 1936

WP(C).No. 527 of 2015 (M)

PETITIONER(S)/PETITIONERS:-

1. PHILOMINA FRANCIS, AGED 65 YEARS
D/O.LATE DEVASSIA FRANCIS.
2. AGNES FRANCIS, AGED 55 YEARS
D/O.LATE DEVASSIA FRANCIS

BOTH ARE RESIDING AT KUNNAPPALLIL HOUSE
THEKKETHUKAVALA P.O., THAKIDI BHAGOM
KOTTAYAM - 686 519.

BY ADVS.SRI.T.C.SURESH MENON
SRI.P.S.APPU

RESPONDENT(S)/RESPONDENTS:-

1. THE SUB INSPECTOR OF POLICE,
PONKUNNAM POLICE STATION, PONKUNNAM
KOTTAYAM - 686 506.
2. K.F.FRANCIS,
S/O.LATE DEVASSIA FRANCIS
RESIDING AT KUNNAPPALLIL HOSUE, CHIRAKADU P.O.
KANJIRAPPALLY, KOTTAYAM - 686 507.

R1 BY SR. GOVERNMENT PLEADERSRI. C.R. SYAMKUMAR
R2 BY ADV.SRI.T.J.LAKSHMANAN IYER
R2 BY ADV.SRI.JOSE CYRIAC

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 03-02-2015,
THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER(S)' EXHIBITS

EXHIBIT P1. TRUE COPY OF THE MEDICAL CERTIFICATE ISSUED BY DR.SR.ANIE CYRIAC M.D., CHIEF PSYCHIATRIST, BISHOP VAYALIL MEDICAL CENTRE, MOOLAMATTOM DATED 18.12.2014.

EXHIBIT P2. TRUE COPY OF THE JUDGMENT IN O.P.NO.12650/1995 ON THE FILE OF THIS HONOURABLE COURT DATED 13.09.1995.

EXHIBIT P3. TRUE COPY OF THE REPRESENTATION SUBMITTED BY THE 1ST PETITIONER TO THE 1ST RESPONDENT DATED 22.12.2014.

EXHIBIT P4. TRUE COPY OF THE ACKNOWLEDGMENT DATED 22.12.2014.

RESPONDENT(S)' EXHIBITS

NIL

// TRUE COPY //

P.A. TO JUDGE

soil.

ASHOK BHUSHAN, Ag.C.J. & A.M. SHAFFIQUE, J.

W.P.(C) No. 527 OF 2015

Dated this the 3rd day of February, 2015

JUDGMENT

Shaffique, J.

This writ petition is filed seeking police protection to the life and liberty of the petitioners so as to enable them to peacefully reside in the residential house belonging to the 1st petitioner from the threat of 2nd respondent.

2. It is alleged that 2nd respondent is threatening the petitioners and preventing them from occupying the residential building. Petitioners allege that during the life time of petitioners' father, Sri.Devassia Francis and mother Smt.Marykutty, they were residing in the building along with the 2nd respondent. Thereafter, after the death of their parents, the 2nd petitioner was living with the 1st petitioner away at Delhi. 2nd respondent is the brother of petitioners who according to them was living a wayward life and he is not permitting the petitioners to come and reside in the property owned by them. Both the petitioners are spinsters and they have no support. They have filed a complaint before police

seeking assistance and protection to reside in the building. Since no action was taken in the matter, this Writ Petition is filed.

3. Counter affidavit has been filed by 2nd respondent inter alia stating that he never objected the petitioners to enter into the property and reside in the building and he has never threatened the petitioners. He also submits that he is ready and willing to look after his sisters and requested them many times to stay with him in the house which is in his possession. According to the 2nd respondent, he has right in respect of the building and in which he is still residing and he will not oppose the petitioners coming and residing in the said building. It is contended that this writ petition is filed for creating a right in favour of the petitioners and there is no cause of action for them to file the same. The intention is to evict 2nd respondent from the building.

4. In the facts and circumstances of the case, in regard to their right or interest in the property, the remedy of the parties is to approach civil court to establish their rights. Having regard to the fact that 2nd respondent has no objection in the petitioners residing in the building along with him, we do not find

it necessary to issue an order as prayed for. However, we observe that if there is any threat or objection from the 2nd respondent or any other person, it is always open for the petitioner to file a complaint before the Police who shall look into the same and appropriate action shall be taken in accordance with law.

With the above observation, the Writ Petition is closed.

**Ashok Bhushan,
Acting Chief Justice.**

**A.M. Shaffique,
Judge.**