

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.10.2015

CORAM

THE HONOURABLE MR.JUSTICE P.N.PRAKASH

Crl.O.P.No.17531 of 2015

V.Ramaswami

... Petitioner

Vs

1. The Inspector of Police
M4, Red Hills Police Station,
Madhavaram District, Chennai.

2. P.Kumaran ... Respondents
(The 2nd respondent impleaded as per
the order of this Court dt.27.7.2015
made in M.P.No.1 of 2015 in Crl.
O.P.No.17531 of 2015.)

Prayer:- This criminal original petition has been filed under
Section 482 Cr.P.C to direct the respondent to provide
adequate protection to the petitioner's workers while
constructing the compound wall and for peaceful enjoyment.

For Petitioner : Mr.P.H.Pandian,
Senior Counsel
for M/s.M.R.Uma Vijayan

For Respondent No.1 : Mr.C.Emalias
Additional Public Prosecutor

For Respondent No.2 : Mr.V.Selvaraj, Senior Counsel
for M/s.Devadasan and Sagar

ORDER

This criminal original petition has been filed to direct
the respondent to provide adequate protection to the
petitioner's workers while constructing the compound wall and
for peaceful enjoyment.

2. Heard the learned senior counsel appearing for the
petitioner; the learned Additional Public Prosecutor appearing

for the first respondent and the learned senior counsel appearing for the second respondent and perused the material placed on record.

3. It is the case of the petitioner that he had entered into a sale agreement with the ***second respondent's brother** on 29.04.2006 for selling his property measuring about 4.678 Acres in Survey Nos.177, 178, 181, Pullilin Village, Red Hills, Chennai, for a total sale consideration of Rs.7,00,50,000/-. Since the sale did not go through, the second respondent filed C.S.No.121 of 2007 for specific performance of the agreement and the suit appears to have been dismissed on 07.11.2014.

4. The second respondent filed an application to set aside the order dated 07.11.2014 and that application was also dismissed by a learned Single Judge of this Court on 13.01.2015, aggrieved by which, the second respondent has filed O.S.A.No.49 of 2015 before the Division Bench.

5. While so, the petitioner wanted to put up a compound wall around his property and it is alleged by the petitioner that when his contractors went to the site, they were driven away by the second respondent on 29.06.2015. Therefore, the petitioner lodged a complaint with the first respondent police and petition enquiry in CSR No.512 of 2015 is pending. On notice to the parties, the second respondent has entered appearance and has filed a counter, wherein, in para - 4, it is stated as follows;

" 4. I submit that pending disposal of O.S.A.No.49 of 2015 and the law of Lis pendens the petitioner is always free to construct compound wall and enjoy the property peacefully subject to result of civil litigation. The petitioner is also free to seek police help if he is genuinely concerned about his safety. I state that the petition has been filed on the basis of foul allegations made against me."

6. The contention of the second respondent is that the allegation that he had prevented the petitioner's contractors from constructing a wall on 29.06.2015 is an utter falsehood and that, no such incident had ever taken place.

7. The learned Additional Public Prosecutor also submitted that petition enquiry in CSR No.512 of 2015 reveals that the second respondent had not prevented or threatened the

servants of the petitioner. Hence, there appears to be some force in the contention of the 2nd respondent that he was not there at the place occurrence on 29.06.2015.

8. Therefore, without going into these aspects, in view of the undertaking given by the second respondent in para -4 that of his counter affidavit which has been extracted above, this Court is of the view that it will be in the interest of justice, if the respondent police is directed to give police protection to the petitioner to fence his property without prejudice to the civil litigation between the parties.

with the above direction, the criminal original petition is closed.

Sd/-
Assistant Registrar(CO)
Dated 28.10.2015

***Amended as per the order of
this Court dated 30.10.2015.
Sd/-Assistant Registrar
Dated 30.10.2015**

//True Copy//

Sub Assistant Registrar

sms

To

1. The Inspector of Police
M4, Red Hills Police Station,
Madhavaram District, Chennai. To Substitute the order
already despatched on
28.10.2015
2. The Public Prosecutor,
High Court, Madras.

+3cc's to Mr.M.R.Uma Vijayan, Advocate, S.R.No.59131
+1cc to M/s.Devadasan and Sagar, Advocate, S.R.No.59299

Cr1.O.P.No.17531 of 2015

EV(CO)
CA(28/10/2015)

JD 04/11/2015