

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 20.03.2015

Date of decision: 24.04.2015

CORAM:

THE HONOURABLE MR.JUSTICE R.S.RAMANATHAN

CrI.O.P. No.4983 of 2015

and

M.P.No.2 of 2015

- 1.S.Ashokan
- 2.Jayalakshmi Ganesan
- 3.S.Veeraraghavan
- 4.S.Natarajan
- 5.S.Ganapathy
rep.by their Power Agent,
A.R.Suresh

... Petitioners

vs.

1. State rep.by
The Commissioner of Police,
The Greater Chennai,
Vepery, Chennai - 600 007.
2. The Deputy Commissioner of Police,
Adyar Range, Adyar,
Chennai - 600 040.
3. The Inspector of Police,
Neelankarai Police Station,
Neelankarai, Chennai.
4. S.Suresh Kumar
5. S.Ravi Rathinam
6. S.Raja Rathinam

7. S.Kudiyarasu Devi

... Respondents

(Impleaded the proposed respondents as respondents 4 to 7 vide order made in M.P.No.1 of 2015 in CrI.O.P.No.4983 of 2015, dated 20.3.2015)

PRAYER : Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure praying to direct the third respondent police in view of the representation dated 18.2.2015 given to the first respondent, to give protection to the petitioners, their power agent, the agreement holder, their workman, their servants, their gardener cum watchman in respect of the property at No.145, subsequent No.115, present No.134, bearing survey No.84/1A, extending 1.50 acres in Neelankarai Village, Saidapet Taluk, belonging to the petitioners.

For petitioners : Mr.I.Subramanian, Senior Counsel,
for Mr.C.S.Dhanasekaran

For respondents : Mr.S.Shanmugavelayutham,
- 1 to 3 Public Prosecutor,
assisted by Mr.M.Maharaja,
Additional Public Prosecutor.

For respondents : Mr. K.M.Vijayan, Senior Counsel,
- 4 to 7 for M/s.R.T.Shyamala.

O R D E R

This petition is filed seeking for a direction to the third respondent police, on the basis of the representation dated 18.2.2015 given to the first respondent, to give protection to the petitioners, their power agent, agreement holder, their workman, their servants, their gardener cum watchman in respect of the property at No.145, subsequent No.115, present No.134, bearing survey No.84/1A, extending 1.50 acres in Neelankarai Village, Saidapet Taluk, belonging to the petitioners,

2. It is submitted by the learned Senior Counsel for the petitioners, Mr.I.Subramanian, that the petitioners are the owners of the property at No.134, having an extent of 1.50 acres of land in Survey No.84/1 of Neelankarai Village, Saidapet Taluk, and their

title and possession was confirmed by this Court in Second Appeal No.1458 of 2007 dated 01.10.2012 and by order dated 23.11.2012 in Special Leave to Appeal (Civil) Nos.33689-33690/2012, the Hon'ble Supreme Court confirmed the common judgment of this Court dated 01.10.2012 made in S.A.No.1458 of 2007 and CRP NPD No.3952 of 2008 and the appellants in Second Appeal No.1458 of 2007 are attempting to dispossess the petitioners by force and therefore, the present petition is filed to protect their possession. The learned Senior Counsel submitted that in the Second Appeal specific finding was given to the effect that the petitioners were the owners of the said property and they had been in continuous possession of the property and the appellants had neither any title nor possession of the property and therefore, the suit filed by the appellants was rightly dismissed by the trial Court and the first Appellate Court confirmed the judgment and decree of the trial Court. He therefore submitted that the petitioners being lawful owners of the property are entitled to enjoy the property and if their possession is disturbed by the persons whose suit was dismissed, the petitioners are entitled to get the order of protection. Therefore, the petitioners are entitled to claim protection from the respondents police - 1 to 3 and they have also given a complaint dated 18.2.2015 to the first respondent police stating in detail the judgments of the Courts and requesting them to give protection and the Respondents 1 to 3 were not taking further action, and hence, the petition has been filed. He, therefore, submitted that the petition may be allowed and the respondents be directed to give police protection to the petitioners.

3. Initially, Respondents - 4 to 7 were not impleaded who are Appellants 2 to 5 in S.A.No.1458 of 2007. Nevertheless, when the matter was taken up on 12.3.2015, Mr.K.M.Vijayan, learned Senior Counsel, sought permission of this Court to intervene on behalf of the Appellants 2 to 5 in S.A.No.1458 of 2007 and submitted elaborate arguments regarding the maintainability of the petition filed by the petitioners and also argued that the petitioners were not in possession of the property and though the suit filed by Respondents 4 to 7, who were later impleaded herein, was dismissed, there was no decree in favour of the petitioners and therefore, the petitioners cannot seek police protection and also submitted that without impleading the Respondents 4 to 7, the petitioners are not entitled to file a petition seeking for police protection against them. The learned Senior Counsel argued for more than an hour and thereafter, the case was reserved for judgment. Later Respondents 4 to 7 filed M.P.No.1 of 2015 to implead themselves as parties to the petition and that was allowed and on the same day, M.P.No.2 of 2015 filed by Respondent 4 to 7 questioning the maintainability of the present petition filed by the petitioners was taken up and the learned Senior

Counsel once again elaborately argued the matter on merits and also with reference to the maintainability of the petition.

4. The gist of the arguments of the learned Senior Counsel, Mr.K.M.Vijayan, appearing for Respondents 4 to 7, regarding maintainability of the petition as well as merits of the case is as follows:-

(i) The present petition filed by the power agent is not maintainable as the power of attorney being given in the year 2001 and later, the law has been amended and as per section 34-B of the Registration Act, the power of attorney has to be registered and the photos of the agent and the principal have to be affixed in the power of attorney and therefore, after coming into force of section 34-B of the Registration Act, the present petition filed by the power agent based on the power of attorney executed on 14.2.2001, is not a valid power of attorney and therefore, he cannot represent the principal and the petition has to be dismissed.

(ii) The learned Senior Counsel further submitted that without registering a case or getting a decree in their favour, the petitioners are not entitled to seek police protection and by virtue of the police protection order that they may be passed in this petition, they will try to get back possession from Respondents 4 to 7 and that should not be permitted. He therefore submitted that section 482 Cr.P.C. can be invoked only to prevent the abuse of process of law and in this case, the petitioners are not in possession of the property though the suit filed by Respondents 4 to 7 was dismissed and confirmed by this Court. In the absence of proof of possession, they cannot get police protection, they are trying to get back possession which is not permitted in law.

(iii) He also submitted that there is no provision in the Criminal Procedure Code which enables the Court to give a direction directing the police officials to give police protection in the given circumstances and such protection can be given to enforce the decree and as on date, there

is no decree in favour of the petitioners, and therefore, they are not entitled to seek police protection.

(iv) He further submitted that the petitioners are not entitled to bypass the provisions of Order XXI of the Civil Procedure Code, when a decree holder is prevented from enjoying his property and though the petitioners are not the decree holders and even assuming that there is a finding in their favour in the Second Appeal, they will have to work out their remedy in the manner known to law as provided under Order XXI CPC and they cannot seek any police protection. He also took me through various provisions of Order XXI, Rules 10, 32, 35 and 97 to 101. He also relied upon the judgment of this Court in *G.Meena Versus the Commissioner of Police, Chennai and others* reported in 2009 (2) MWN(Cr.) 228 and *Moran M.Baselios Marthoma Mathews II and others Versus State of Kerala and Others* reported in (2007) 6 Supreme Court Cases 517 in support of his contention. Even assuming that the petitioners have got title, the suit was filed in the year 2001 and on the date of suit, the petitioners were not in possession of the property and that was also confirmed in the suit filed by the petitioners as plaintiff in O.S.No.481 of 2001 wherein the petitioners sought for injunction and the injunction was not granted holding that they were not in possession of the property and they filed an Appeal and the Appeal was also dismissed and they also filed CRP (PD) Nos. 317, 1020 of 2007 and their revisions were also dismissed. He therefore submitted that this Court confirmed that the petitioners were not in possession of the property and thereafter, the petitioners withdrew the suit and contested the suit filed by Respondents 4 to 7 and therefore, the petitioners cannot be stated to be in possession of the property and even assuming that the petitioners are the lawful owners of the property, they will have to file a suit for recovery of possession from Respondents 1 to 4 and if it is the case of the petitioners that they were forcibly dispossessed during pendency of the suit, their

remedy is to file a suit under section 6 of the Specific Relief Act and they cannot seek for police protection for the property by filing a petition and thereafter get possession through Court through the aid of police protection and that practice cannot be permitted.

As such, the learned Senior Counsel submitted that the petition is liable to be dismissed.

5. As stated supra, the simple case of the petitioners is that they are the owners of the property, their ownership, title and possession were confirmed by this Court in S.A.No.1458 of 2007 and that was also affirmed by the Hon'ble Supreme Court and their possession is sought to be disturbed by Respondents 4 to 7 and therefore, police protection is necessary to protect the possession of the property of the petitioners.

6. The learned Senior Counsel, Mr.K.M.Vijayan, appearing for Respondent 4 to 7, countered the arguments of Mr.I.Subramanian, learned Senior Counsel appearing for the petitioners by raising various pleas as stated above and to appreciate the contention of the learned Senior Counsel, we will have to see various points raised by the learned Senior Counsel appearing for Respondents 4 to 7 and the common judgment rendered in S.A.No.1458 of 2007 and CRP NPD No.3952 of 2008 dated 01.10.2012.

7. Before going into the merits of the case, it is pertinent to consider the arguments of the learned Senior Counsel, Mr.K.M.Vijayan, regarding the objection raised in filing the petition by power agent whose power of attorney was executed in the year 2001 stating that the said power of attorney has become invalid after the amendment to the Registration Act. The learned Senior Counsel relied on Section 34-B of the Registration Act which makes it clear that the power of attorney must be registered and therefore submitted that in the absence of the power of attorney executed as per the provision of section 34-B of the Registration Act, a person cannot maintain any action as a power agent. सत्यमेव जयते

8. To appreciate the said contention of the learned Senior counsel for Respondents 4 to 7, we will have to see the provisions of section 34-B, which is as follows:-

"34-B. Procedure for Registration of document of Power of Attorney relating to immovable property - Subject to the provisions of this Act, no document of Power of Attorney relating to immovable property shall be

registered, unless passport size photographs and finger prints of the principal, the agent and of the identifying witnesses are affixed to the document and the agent has also signed such document."

9. As per section 34-B, a power of attorney relating to immovable property shall not be registered unless passport size photographs and fingerprints of the principal and agent and identifying witnesses are affixed in the said document. The said Act does not state anything about the power of attorney executed prior to the amendment of section 34-B, namely, whether the earlier power of attorney is valid or not.

10. According to me, section 34-B which came into effect in the year 2012 will have prospective operation and will not have retrospective operation and the power of attorney executed earlier to that will not lose its operation or validity. Admittedly, the principal executed power of attorney in favour of the agent and on the basis of such power of attorney, the petition was filed by the power agent. Therefore, the submission of the learned Senior Counsel that the present petition is not maintainable as power of attorney was not registered as per section 34-B of the Registration Act cannot be accepted.

11. The main contention of the learned Senior Counsel appearing for Respondents 4 to 7 is that the petitioners are not in possession of the property and that was also proved by their own act in filing suit in O.S.No.481 of 2001 for injunction and in that suit, they also filed an Application for temporary injunction in I.A.No.2115 of 2001 and that Application was dismissed and they filed a revision in CMA 21 of 2002 on the file of the learned Subordinate Judge, Chengalpattu and that Civil Miscellaneous Appeal was also dismissed and they filed Civil Revision Petitions Nos.317, 1020, 2021 of 2007 and they were also dismissed. He therefore contended that when the petitioners' suit for injunction was negatived holding that they were not in possession of the property, they cannot claim to be in possession of the property now and pray for police protection to protect their possession. He therefore submitted that from 2001 onwards, the petitioners were not in possession of the property and even though there may be some observations in S.A.No.1458 of 2007 in favour of the petitioners that cannot be taken advantage of by the petitioners as no decree was passed against them. In other words, the learned Senior Counsel, MR.K.M.Vijayan, submitted that the petitioners are not decree holders and no decree has been passed in their favour and merely the suit for injunction filed by Respondents 4 to 7 was

dismissed and some findings in the Second Appeal were in favour of the petitioners, the petitioners cannot claim to be in possession of the property and seek police protection when this Court also found in 2001, that the petitioners were not in possession of the property.

12. To appreciate the said contention of the learned Senior counsel, Mr.K.M.Vijayan, we will have to see the common judgment rendered by this Court in S.A.No.1458 of 2007 and CRP NPD No.3952 of 2008 dated 001.10.2012. As stated supra, O.S.No.6992 of 2001 on the file of the VII Assistant Judge, City Civil Court, was filed by Respondents 4 to 7 and another for injunction in respect of the very same property and in that suit, the petitioners herein are the defendants and the suit was dismissed and the appeal in A.S.No.707 of 2006 on the file of the V Additional Judge, City Civil Court, Chennai, was also dismissed. Therefore, Respondents 4 to 7 herein and one S.R.Selvaraj filed S.A.No.1458 of 2007. While dismissing the Second Appeal, this Court framed the following substantial questions of law for consideration.

(i) Whether the Court below was right in holding that the suit for bare injunction is not maintainable without the prayer for declaration of title?

(ii) Whether the findings of the Court below regarding the title and possession of defendants 3 to 7 is sustainable in view of the order passed in O.S.No.481 of 2001?

(iii) Whether the finding of the Court below is right in holding that the respondent 3 to 7 are resisted by the interim injunction when he is not the true owner?

(iv) Whether the impugned judgment and decree in the Second Appeal No.1458/2007 can be looked into as the subsequent suit is overlooking the bar imposed under section 10 of C.P.C.?

(v) Whether the withdrawal of the suit in O.S.No.481/2001 after passing the impugned judgment and decree will enable the respondents to contest the present Second Appeal?

(vi) Whether the principles of res-judicata as contemplated under section 11 of CPC will apply against R3 to R7 herein?

13. The second substantial question of law with reference to the title and possession of the petitioners in respect of the suit property and whether the petitioners can claim title having regard to the orders passed in O.S.No.481 of 2001. Similarly, the fifth

substantial question of law was also to the effect that whether the withdrawal of the suit in O.S.No.481/2001 would go against the petitioners from contesting the present Second Appeal. It is seen from the judgment that the very same points now urged by the learned Senior Counsel in these petitions were also urged before the learned Single Judge and the learned Single Judge answered the second substantial question of law against the appellants, namely, Respondents 4 to 7 herein and in favour of the Respondents 3 to 7 namely, the petitioners herein. In the Second Appeal, it was held that the petitioners were in possession of the property and Respondents 4 to 7, the appellants in the Second Appeal were not in possession of the property and the specific finding in the Second Appeal is as follows:-

"12. ...Further, even in their own suit, when the plaintiffs/appellants were obliged to prove their own case for grant of injunction by substantiating that from the date of purchase of the suit property till the date of filing of the suit, they have been in possession of the property, they miserably failed to establish such basic and vital requirement. On the other hand, defendants - 3 to 7, by producing all oral and documentary evidence, traced their clear title to the property and their continuous possession therein from 1950 in respect of S.No.84/1 correlated to Paimash Nos.166A etc.,."

14. While dealing with the effect of withdrawal of the suit in O.S.No.481/2001 filed by the petitioners, the learned Single Judge held as follows:-

"15. ... At any rate, the entire realm of records was completely analysed by both the courts by their exhaustive and well considered orders to give an emphatic legal and factual finding that the records clearly spell out that the appellants and respondents 1 and 2, who are strangers to the suit property, smartly colluded together to take away the property of the rightful owners/D3 to D7 who are respondents 3 to 7 herein, and on a careful scrutiny, this Court finds not even a single ground including the point of res judicata as held above to upset the well considered orders of the Courts below. Therefore, the ultimate substantial question of law is also answered against the appellants."

15. Therefore, this Court has not only found that the respondents 4 to 7 herein were not in possession of the property but also found that the petitioners were in possession and also they have title for the property and therefore, it is not open to the respondents 4 to 7 to contend now that the petitioners are not in possession of the property and they are in possession of the property. As a matter of fact, Respondents 4 to 7 are bound by the judgment and decree passed in S.A.No.1458 of 2007.

16. Another contention of the learned Senior Counsel, Mr.K.M.Vijayan, is that there is no decree in favour of the petitioners and the petitioners cannot be termed as decree holders as defined under section 3 of the CPC and even assuming that they claim to be decree holders, by reason of finding in favour of the defendants, the petitioners will have to file a suit for recovery of possession of the property in the manner known to law.

17. According to me, the arguments of the learned Senior Counsel is self contradictory. He argues that the petitioners are not the decree holders and therefore, they are not entitled to seek police protection to enforce the decree passed in their favour and on the other hand, he would contend that they will have to follow the procedure contemplated under Order XXI CPC if their possession is disturbed. Order XXI, Rules 35, and 97 to 101 of the CPC deals with the right of the decree holder or purchaser. Section 3 of the CPC defines "decree holder" as any person in whose favour a decree has been passed or an order capable of execution has been made. Section 2 of the CPC defines "decree" as the formal expression of an adjudication which, so far as regards the Court expressing it, conclusively determines the rights of the parties with regard to all or any of the matters in controversy in the suit and may be either preliminary or final. Therefore, as per the definition of decree, when the rights of the parties are conclusively determined in favour of one person, he becomes a decree holder though no formal decree has been passed in his favour.

18. In that case, the next question arises for consideration is whether the petitioners in whose favour decree was passed are entitled to file an Application for police protection without exhausting other remedy as per Order XXI, Rules 97 to 101 of the CPC.,?

19. Rule 97 deals with resistance or obstruction to possession of immovable property and as per Order XXI, Rule 97 of the CPC , where the holder of a decree for the possession of immovable property or the purchaser of any such property sold in execution of a decree

is resisted or obstructed by any person in obtaining possession of the property, he may make an application to the Court complaining of such resistance or obstruction. Therefore, it applies only to a person who got decree for possession and when he wants to take possession of the property and in that process if he is resisted or obstructed in obtaining possession of the property, he may make an Application.

20. In this case, as per the judgments and decree passed in S.A.No.1458 of 2007, the petitioners are found to be in possession of the property and therefore, there is no need for them to invoke Order XXI, Rule 97 of the CPC. In this case, Order XXI, Rule 99 cannot also be applied as Respondents 4 to 7 are the judgment debtors and Order XXI Rule 99 provides that if any person other than the judgment-debtors is dispossessed of immovable property by the holder of a decree, such person may make an Application to the Court complaining of such dispossession. Therefore, the contention of the learned Senior Counsel that the petitioners have to seek the aid of Order XXI, Rules 97 to 99, to safeguard that possession cannot be accepted for the reason stated above. However, as stated supra, Respondents 4 to 7 cannot blow hot and cold and it is not open to them to contend that the petitioners are not the decree holders and no decree was passed against them and at the same time, to contend that they will have to take recourse under Order XXI, Rules 97 to 101 of the CPC. Therefore, the arguments of the learned Senior Counsel in that respect cannot be accepted.

21. The learned Senior Counsel submitted that the petitioners are not in possession of the property though they were found to be in possession of the property in the Second appeal and it was only a paper decree and Respondents 4 to 7 are in actual possession and that was also confirmed by the status report filed by the police officials stating that the key for the gate was available with Respondents 4 to 7 herein and therefore, remedy for the petitioners is to file a suit for recovery of possession and without filing such a suit, they cannot file a petition to get police protection for the petitioners to get possession of the property from appellants by force.

22. He also submitted that even assuming that the petitioners are dispossessed by Respondents 4 to 7 by force, the remedy open to the petitioners is to file a suit under section 6 of the Specific Relief Act and without resorting to that, they cannot circumvent the law and get possession of the property. He also submitted that whether the petitioners are in possession or whether the Respondents 4 to 7 are in possession is a question of fact and that cannot be decided by this Court and therefore, when possession is disputed,

this Court should not grant police protection.

23. In the judgment rendered in Mahadeo Saularam Sheika v. Pune Municipal Corporation [1995 (3) SCC 33], it was held after referring to Woodroffe on "Law relating to injunction"; L.C.Goyal "Law of injunctions", David Bean "Injunction"; Jayce on Injunctions and other leading Articles on the subject that the appellant who was a trespasser in possession could not seek injunction against the true owner. In that context, the Apex Court quoted Shiv Kumar Chadha v. M.C.D. [1993 (3) SCC 161], wherein it was observed that injunction is discretionary and that: "Judicial proceedings cannot be used to protect or to perpetuate a wrong committed by a person who approaches the Court."

24. In the judgment reported in (1994) 5 Supreme Court Cases 547 in the matter of Premji Ratansey Shah and others Versus Union of India and others, it is held as follows:-

"5. It is equally settled law that injunction would not be issued against the true owner. Therefore, the courts below have rightly rejected the relief of declaration and injunction in favour of the petitioners who have no interest in the property. Even assuming that they had any possession, their possession is wholly unlawful possession of a trespasser and an injunction cannot be issued in favour of a trespasser or a person who gained unlawful possession, as against the owner. Pretext of dispute of identity of the land should not be an excuse to claim injunction against true owner."

25. In the judgment reported in (2004) 3 Supreme Court Cases 137 in the matter of Sopan Sukhdeo Sable and others Versus Assistant Charity Commissioner and others, it is held as follows:-

24. There are two different sets of principles which have to be borne in mind regarding course to be adopted in case of forcible dispossession. Taking up the first aspect, it is true that where a person is in settled possession of property, even on the assumption that he has no right to remain in property, he cannot be disposed by the owner except by recourse of law. This principle is laid down in Section 6 of the Specific Relief Act, 1963. That Section says that

"If any person is dispossessed without his consent from immovable property other wise than in due course of law, he or any person claiming through him may, by suit, recover possession thereof, notwithstanding any other title that may be set up in such suit."

That a person without title but in "settled" possession as against mere fugitive possession can get back possession if forcibly dispossessed or rather, if dispossessed otherwise than by due process of law, has been laid down in several cases. It was so held by this Court in Yashwant Singh v. Jagdish Singh (AIR 1968 SC 620), Krishna Ram Mohate v. Mrs. Shobha Venkata Rao, (1989 (4) SCC 131, at p.136), Ram Rattan v. State of U.P. (1977 (1) SCC 188), and State of U.P. v. Maharaja Dharmender Prasad Singh (1989 (2) SCC 505). The leading decision quoted in these rulings is the decision of the Bombay High Court in K.K. Verma v. Union of India (AIR 1954 Bom. 358).

25. Now the other aspect of the matter needs to be noted. Assuming a trespasser ousted can seek restoration of possession under Section 6 of the Specific Relief Act, 1963 can the trespasser seek injunction against the true owner? This question does not entirely depend upon Section 6 of the Specific Relief Act, but mainly depends upon certain general principles applicable to the law of injunctions and as to the scope of the exercise of discretion while granting injunction? In Mahadeo Savlaram Sheike v. Pune Municipal Corporation (1995 (3) SCC 33), it was held, after referring to Woodroffe on "Law relating to injunction; L.C. Goyal 'Law of injunctions; David Bean 'Injunction' Jayce on Injunctions and other leading Articles on the subject that the appellant who was a trespasser in possession could not seek injunction against the true owner. In that context this Court quoted Shiv Kumar Chadha v. MCD (1993 (3) SCC 161) wherein it was observed that injunction is discretionary and

that:

"Judicial proceedings cannot be used to protect or to perpetuate a wrong committed by a person who approaches the Court".

26. Reference was also made to Dalpat Kumar v. Prahlad Singh (1992 (1) SCC 719) in regard to the meaning of the words 'prima facie case' and 'balance of convenience' and observed in Mahadeo's case (supra) that:

"9. It is settled law that no injunction could be granted against the owner at the instance of a person in unlawful possession."

26. Therefore, having regard to the fact that in Second Appeal, the petitioners herein were found to be in possession of the property and they were also found to be owners of the property having title to the same and the Respondents 4 to 7 herein were not in possession of any property, the Respondents 4 to 7 herein cannot claim any right over the property and even assuming that they were found to be in possession of the property, the law will only assist the true owner to enjoy the property and the possession of Respondents 4 to 7 as claimed by them can only be illegal possession and that cannot be allowed to perpetuate by resisting the Application filed by the petitioners for police protection.

27. Mr.K.M.Vijayan, learned Senior Counsel, relied upon the judgment reported in 2009 (2) MWN (Cr.) 228 supra, in support of his contention. In that case, the plaintiff filed a suit for permanent injunction and also obtained an order of ex-parte temporary injunction and later, she was forcibly dispossessed by the defendants and she also gave a complaint which was registered as a crime and thereafter, she filed an Application under Section 482 of the Cr.P.C. for police protection and in that context, it was held that where the Court finds that a party who had secured an order of injunction from the Court is not in a position to have its full benefit owing either to obstructions or non-cooperation of the other side, it is always open to Court to direct the police authorities to see that its order is obeyed. Therefore, when an effective and alternative remedy is available to the petitioner to approach the Civil Court under Section 151 CPC and seek police protection by satisfying the Court that she is not in a position to have the full benefit of the order granted in her favour because of the obstructions or non-

cooperation of the defendants, it is not open to the petitioner to approach this Court under section 482 Cr.P.C.,. If a petition is filed under section 151 CPC before the Civil Court, then it will be open to the Civil Court to consider the objections raised by the other side and the Court can also appoint an advocate Commissioner to find out the physical features of the properties and decide as to whether the police protection should be provided or not. Such a detailed enquiry or adjudication of the disputed questions of fact cannot be gone into by this Court while exercising jurisdiction under section 482 Cr.P.C.,.

28. According to me, having regard to the pendency of the suit and having regard to the dispute raised by the parties regarding possession in that case, the learned Judge had observed that an alternative remedy is available to the petitioner to approach Civil Court under section 151 C.P.C., and seek police protection.

29. Further, in the same judgment, the learned Judge, relied upon the judgment of the Hon'ble Supreme Court in P.R.Muralidharan and others v. Swami Dharmananda Theertha Padar and others [2006 (4) SCC 501], wherein it is held as follows:-

"19. A writ for "police protection" so-called, has only a limited scope, as when the Court is approached for protection of rights declared by a decree or by an order passed by a Civil Court. It cannot be extended to cases where rights have not been determined either finally by the civil Court or, at least at an interlocutory stage in an unambiguous matter, and then too in furtherance of the decree or order."

30. Therefore, when the rights have not been determined by the Civil Court, police protection cannot be sought for. In this case, rights regarding possession and title were already decided by this Court in Second Appeal and confirmed by the Apex Court and the petitioners are found to be the lawful owners and also found to be in possession of the property. Therefore, they are entitled to approach this Court for protection of rights declaring the decree or an order passed by the Civil Court.

31. In the judgment reported in (2007) 6 Supreme Court Cases 517 supra, the Hon'ble Supreme Court held that disputed question of fact cannot be gone into by the Court while dealing with the Writ Petitions. In this case, there is no dispute regarding the possession of the property and it is the Respondents 4 to 7 who claim to be in possession of the property but as per the decree they are

not in possession of the property and the petitioners are in possession of the property and as stated supra, if Respondents 4 to 7 have got possession after the disposal of the Second Appeal as contended by them, their possession can only be illegal and they cannot be permitted to sustain their illegal possession and the Court cannot shut its eyes to help the decree holder or help a person in whose favour findings were given and this Court has got inherent powers under Section 482Cr.PC to direct the police to provide police protection to a person who is the owner of the property and who has been forcibly dispossessed. Therefore, the petitioners who are lawful owners and who are found to be in possession of the property are entitled to seek the aid of this Court to protect their property.

32. Therefore, in my opinion, the petitioners are entitled to the relief of police protection. This Court has got power to grant protection to a person who is lawfully entitled to enjoy the property and who was also found to be in possession of the property by the judgment of this Court. Therefore, the argument of the learned Senior Counsel for Respondents 4 to 7 cannot be accepted.

33. Hence, the Criminal Original Petition is allowed and M.P.No.2 of 2015 filed by Respondents 4 to 7 is dismissed. The third respondent is directed to give police protection to the petitioners to enjoy the property and in that regard, the first respondent and second respondent are directed to give suitable direction to the third respondent.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

asvm

To

1. The Commissioner of Police,
The Greater Chennai,
Vepery, Chennai - 600 007.
2. The Deputy Commissioner of Police,
Adyar Range, Adyar,
Chennai - 600 040.

3. The Inspector of Police,
Neelankarai Police Station,
Neelankarai, Chennai.

4. The Public Prosecutor,
High Court, Madras.

+5cc's to M/s.C.S.Dhanasekaran, Advocate, S.R.No.22460

+1cc to M/s.R.T.Shyamala, Advocate, S.R.No.22487

CRL.O.P. No.4983 of 2015
and
M.P.No.2 of 2015

MP (CO)
CA (30/04/2015)



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