

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.02.2015

CORAM

The Hon'ble Mr. Justice R.S.Ramanathan

Crl.O.P.Nos.755 and 936 of 2015

B.M.Sivannarayan Sah

...Petitioner in both O.Ps.

vs.

1.The State, rep. by  
The Commissioner of Police,  
Greater Chennai,  
No.132, Commissioner Office Building,  
EVK Sampath Road,  
Vepery, Chennai - 600 007.

2. The Inspector of Police (L & O)  
F1 Police Station,  
Chindatripet, Chennai - 600 002.

...Respondents in both O.Ps.

Prayer in Crl.O.P.No.755 of 2015 Criminal Original Petition filed under Section 482 of the Criminal Procedure Code praying to direct the respondent-Police to register a case pending in C.S.R.No.720/CSR/FIPS/L&O/2014, and to remove the people belonging to "Tamilaka Valvu Urimai Katchi", their board and flags from the petitioner's property immediately.

Prayer in Crl.O.P.No.936 of 2015 Criminal Original Petition filed under Section 482 of the Criminal Procedure Code praying to direct the respondent-Police to provide police protection to the petitioner and his property until delivery of possession of the ground and first floor of the suit property is handed over to the petitioner, pending in E.P.No.21 of 2012, on the file of this Court.

For Petitioner in both O.Ps. : Mr.M.Venkateswaran

For Respondents in both O.Ps. : Mr.M.Maharaja  
Additional Public Prosecutor

## COMMON O R D E R

These Criminal Original Petitions are filed, seeking direction upon the respondent-Police to register a case pending in C.S.R.No.720 of 2014 and to remove the obstructors and their property from the petitioner's property immediately and further to provide police protection to the petitioner and his property until delivery of possession of the suit property is handed over to the petitioner, as per the order passed by this Court in E.P.No.21 of 2012.

2. It is submitted by the learned counsel appearing for the petitioner that the petitioner is the owner of the property, bearing Door No.28, New No.61, situate at Aghram Street, Chintadripet, Chennai - 600 002. The property originally belonged to Sri Kandaswamy Permanent Fund. The petitioner entered into an agreement of sale with the said Sri Kandaswamy Permanent Fund/vendor, for purchase of the said property on 23.09.2004, and paid Rs.5,00,000/- towards part of the sale price. Thereafter, the petitioner paid Rs.5,00,000/- under the cheque, dated 25.05.2005, Rs.5,00,000/- under the cheque dated 09.06.2006, Rs.5,00,000/- under the cheque dated 15.12.2006, and Rs.7,50,000/- under the cheque dated 12.09.2007. As per the agreement of sale, dated 23.09.2004, the Vendor has to deliver vacant possession of the entire property.

3. It is submitted by the learned counsel appearing for the petitioner that the premises consists of ground floor, first floor and second floor, and the possession of the second floor alone was delivered to the petitioner. Later, the vendor refused to execute the sale deed in respect of ground, and first and second floors, and therefore, the petitioner filed Civil Suit No.860 of 2008, before this Court for enforcing the sale agreement, dated 23.09.2004. The suit was decreed in favour of the petitioner, by judgment and decree, dated 08.09.2010. To put the decree into execution, the petitioner filed E.P.No.21 of 2012. The learned Master, by order, dated 19.12.2012, allowed the Execution Petition and directed the Assistant Registrar, Original Side, to execute the sale deed on behalf of the vendor. Accordingly, the Assistant Registrar, Original Side No.1, High Court, Madras, executed the sale deed in favour of the petitioner in respect of the suit property. The petitioner also paid entire sale consideration. Thereafter, the petitioner filed Application No.4324 of 2013, in E.P.No.21 of 2012, in C.S.No.860 of 2008, for delivery of vacant possession of the suit property, in which, the judgment-debtor appeared and filed counter, contending that there was no decree for delivery of possession, and therefore, the decree-holder has to file separate suit for delivery of possession. However, the learned Master, having regard to Section 22 of the Specific Relief Act, allowed the application by order, dated 22.11.2013, and directed the judgment-debtor, viz., Sri Kandaswamy Permanent Fund to handover possession of ground and first floors to

the decree-holder/petitioner herein. That was challenged by the judgment-debtor by filing Appeal in Application No.5971 of 2013 and that application was dismissed by this Court.

4. The learned counsel also submitted that the Application No.2254 of 2014, was filed by the petitioner for possession of ground and first floors of the schedule mentioned property and the said application was ordered, and when the Bailiff went to execute the warrant, he was prevented from executing the same, and the Bailiff also submitted a report, dated 21.04.2014, stating that the ground floor was found locked and in the first floor, Sri Kandaswamy Permanent Fund and Park Town Benefit Fund, were functioning and they did not permit him to enter into the premises and the employees of the Park Town Benefit Fund Limited objected to the execution of the warrant. Hence, the petitioner filed Application Nos.3929 and 3930 of 2014, for removal of obstruction created by the judgment-debtor in the ground and first floor of the suit property and also to provide Police protection for carrying out the delivery of handing over of vacant possession of the suit property. The learned Master, by order, dated 24.11.2014, allowed those Applications and directed delivery to be reported by 09.01.2015. The learned counsel further submitted that the Bay Shore Records, represented by Khajamohideen filed Application No.3933 of 2014, obstructing delivery, claiming that he entered into a lease agreement with the judgement-debtor on 10.12.2010, in respect of ground floor along with some other tenants, sharing ground floor, first floor and second floor. The learned counsel also submitted that Park Town Benefit Fund, represented by its Chairman, R.Vivekanandan, filed Application No.4627 of 2014, not to evict them, and the same is pending, and no order has been passed in that application.

5. It is further submitted by the learned counsel for the petitioner that, pursuant to the order passed in A.Nos.3929 and 3930 of 2014, the Bailiff went to the premises to deliver possession of the suit property to the petitioner, and at that point of time also, he was prevented and a report to that effect was also filed by the Bailiff. The learned counsel appearing for the petitioner, therefore, submitted that, eventhough the petitioner obtained decree in his favour, and delivery was ordered by this Court, the Bailiff was not able to effect delivery and he was prevented by the muscle man from the "Tamilaga Valvu Urimai Katchi, headed by Akram Khan, and his henchmen did not allow the Bailiff to execute the warrant and they were supported by Khajamohideen, C.Asaithambi, and the judgment-debtor/Sri Kandasamy Permanent Fund. The learned counsel also submitted that O.S.No.185 of 2015, on the file of III Assistant City Civil Judge, was filed by Akram Khan, claiming to be a tenant of first floor, having an extent of 1685 sq.ft., as per the lease agreement, dated 16.06.2010, entered into with the judgment-debtor.

The learned counsel also submitted that O.S.No.186 of 2015 was also filed on the file of III Assistant Civil Judge, by one Krishnarajulu, claiming to be a tenant under the judgment-debtor, as per the lease agreement, dated 18.02.2013, in respect of 600 sq.ft., in first floor.

6. It is further submitted by the learned counsel for the petitioner that, one Asaithambi filed a suit in O.S.No.7412 of 2014 against Sri Kandaswamy Permanent Fund and the petitioner, and obtained an order of injunction in his favour by taking out an interlocutory application, viz., I.A.No.19943 of 2014. In that application, the said Asaithambi has represented M/s.Breadway, as its partner and claimed that he was inducted into the possession of ground and first floor of the property, bearing Door No.28, New No.61, Agraham Street, Chintadripet, Chennai - 600 002, which is the subject matter of C.S.No.860 of 2008. Hence, the petitioner filed C.R.P.(PD)No.421 of 2015, to stay all further proceedings in O.S.No.7412 of 2014, and this Court, by order, dated 2.2.2015, granted interim stay. The learned counsel also submitted that the alleged tenants, who filed suits and applications, claimed to be tenants under the judgment-debtor after the suit in C.S.No.860 of 2008 was filed and decree was passed. Hence, they are not entitled to obstruct the execution of decree.

7. Learned counsel appearing for the petitioner, therefore, submitted that the petitioner has filed Crl.O.P.No.755 of 2015, seeking registration of an FIR against the persons, who are in illegal occupation of his property. The respondent-Police received the complaint and issued C.S.R.No.720 of 2014, but no further action has been taken till date, regarding the petitioner's complaint.

8. The learned Additional Public Prosecutor, representing the respondent-Police submitted that direction may be issued to the respondent-Police to register an FIR, if any cognizable offence is made out by the petitioner.

9. Heard both sides. I have also gone-through the affidavits filed in support of these Petitions and the typed- sets filed along with the petition in Crl.O.P.No.755 of 2015.

10. As submitted by the learned counsel appearing for the petitioner, C.S.No.860 of 2008 was filed by the petitioner for specific performance of agreement of sale, dated 23.09.2004. That suit was decreed in favour of the petitioner, and the defendant/Sri Kandaswamy Permanent Fund was directed to execute the sale deed on receipt of the balance sale consideration. Since the defendant/judgment-debtor did not execute the sale deed, the same was executed by the Assistant Registrar, Original Side No.I, High Court, Madras, in favour of the petitioner on 04.01.2013. Therefore, the

petitioner becomes the absolute owner of the property, and as per the order passed in Application No.4324 of 2014, delivery of possession was also ordered, and when there was objection to the delivery of possession and when the premises was found locked, Application Nos.3929 and 3930 of 014, were filed by the petitioner for removal of obstructions created by the judgment-debtor in the ground and first floor, and those applications were also allowed.

11. It is seen from the report of the Bailiff, dated 21.04.2014 that, when he went to execute the warrant for effecting delivery of possession, he found the ground floor in a locked state and in the first floor, Sri Kandaswamy Permanent Fund/judgment debtor and Park Town Benefit Fund were functioning, and they did not permit the Bailiff to enter into the premises. Therefore, the Bailiff returned the warrant as un-executed.

12. It is further seen from the report of the Bailiff, dated 23.01.2015, that the ground floor portion was found locked by some third parties, who were running a bakery shop and in the first floor portion, a lady was sitting, who claimed to be the Staff of Sri Kandaswamy Permanent Fund, and when the Bailiff asked the occupants of the suit property to leave the premises on the basis of the warrant issued by this Court, one Prabu, who was found sitting in the ground floor refused to vacate the ground floor, and therefore, in the presence of Police, and with the help of labourers working nearby, eviction process was carried out by the Bailiff by removing articles found in the ground floor and inventories were prepared and photographs were taken, and when such eviction process was going on, at about 3.15 p.m., 30 men belonging to some political outfit, stopped the eviction process and the said gang headed by Mr.Akram Kham, asked the Bailiff and his men to leave the premises and also threatened the photographer to stop recording. At that point of time, one person, by name Govindaraju, produced the ex parte injunction order, dated 23.12.2014, passed by the learned V Assistant Judge, City Civil Court, Chennai, in I.A.No.19943 of 2014 in OS.No.7412 of 2014, which was obtained by C.Asaithambi, the plaintiff in O.S.No.7412 of 2014. When the Bailiff explained the obstructors that they were not bound by the injunction order, and that, they may be permitted to execute the warrant, as ordered by this Court and also asked the obstructors to give their objection in writing, one C.Asaithambi, claimed that he was in occupation of the premises for the past four years and refused to vacate the premises on the basis of the injunction order. The other objection was given by Akram Khan, who claimed to be the State Treasurer of "Tamilaga Valvu Katchi, and he stated that he was having political party office, and therefore, he cannot be removed from the premises.

13. The Bailiff has further stated in his report, dated 23.01.2015 that, when he and his men entered the premises at 2.00

p.m. there were no Board, Flags or any signs of a political party office, and only bakery items were found in the ground floor, and in the first floor, some table chairs and some CDs were found. But to his shock, he found that the things, which were initially removed by him and his men from the ground floor were found again in the ground floor, as the obstructors placed them in the ground floor premises. As the obstructors were large in numbers, the Bailiff returned the warrant as un-executed.

14. It is, therefore, seen from the report of the Bailiff that, when he went to execute the warrant on 21.04.2014, the ground floor was found locked and in the first floor, Sri Kandaswamy Permanent Fund and Park Town Benefit Fund were functioning, and they did not permit the Bailiff to enter into the premises. Again, when the Bailiff went to execute the warrant on 23.01.2015, the ground floor was occupied by M/s.Breadway, represented by Asaithambi, who has obtained an order of injunction in his favour in I.A.No.19943 of 2014 in O.S.No.7412 of 2014. As per the injunction order, the said Asaithambi, as partner of M/s.Breadway, claims to be in possession of the ground and first floor as tenant under Sri Kandaswamy Permanent Fund Limited and as per the affidavit filed in support of Application No.4627 of 2014, by Park Town Benefit Fund, represented by its Chairman, Mr.R.Vivekanandan, under the lease deed, dated 25.02.2010, executed by Kandaswamy Permanent Fund in favour of Park Town Benefit Fund, Park Town Benefit Fund was let into possession of the ground floor and according to him, there were some other tenants in the ground, first and second floors. Therefore, Application No.4627 of 2014, was filed under Order 21 Rule 97 CPC not to evict the said Park Town Benefit Fund.

15. At this juncture, it is pertinent to refer to the schedule of property, described in C.S.No.860 of 2008, filed by the petitioner/decreed-holder and also the schedule of properties described in O.S.No.185 of 2015, O.S.No.186 of 2015 and O.S.No.7412 of 2014, filed Akram Khan, P. Krishnarajalu and by Breadway, represented by C.Asaithambi respectively. In C.S.No.860 of 2008, the subject matter of the suit, is a house, comprised of ground and first and second floors, bearing Old R.S.No.253 and 251/B, present S.No.253, Old Door No.28, New No.61,Block No.6 of Chintadripet Village, Agraharam Street, measuring East to West, on the North, 25 Feet, on the South, 26 feet, North to South, on the East, 58 feet, on the West, 58 feet, measuring 1685 sq.ft., wherein ground and two floors are constructed.

16. In the suit filed by Akramkhan in O.S.No.185 of 2015, on the file of III Assistant Judge, City Civil Court, Chennai, he claimed to be tenant of entire first floor portion, having 1685 sq.ft., He claimed to have been inducted into possession only under an un-registered lease deed, dated 16.6.2010. In the suit filed by

P.Krishnarajulu, in O.S.No.186 of 2015, on the file of III Assistant Judge, City Civil Court, Chennai, he claimed to be tenant in respect of 600 sq.ft. in first floor portion, as per the lease agreement, dated 18.02.2013. In the suit filed in O.S.No.7412 of 2014 by Breadway, represented by its Partner, C.Asaithambi, the schedule of property is ground and first floor, measuring an extent of 1685 sq.ft., and the said C.Asaithambi claimed to have been inducted into possession under the rental agreement, dated 05.02.2010.

17. In Application No.3933 of 2014, filed by Bay Shore Records, represented by its Proprietor, S.Khajamohideen, it has been stated that they entered into lease deed, dated 10.12.2010 with the judgment-debtor in respect of the property in ground floor along with some other tenants. He also stated that the first and second floors are also occupied by some other tenants. In Application No.4627 of 2014, filed by Park Town Benefit Fund, represented by R.Vivekanandan, he claimed to have been inducted into the first floor, as lessee under the agreement, dated 25.02.2010.

18. As stated supra, the suit property, bearing Old Door No.28, New No.61, situate at Agraham Street, Chintadripet, Chennai - 600 002, is having plinth area of 1685 sq.ft., wherein ground and two floors are constructed. It is the specific case of the decree-holder/petitioner that he is in possession of second floor, and the ground and first floor were occupied by the judgment-debtor, and therefore, the judgment-debtor was bound to deliver possession of ground and first floor.

19. As per the plaint allegation in O.S.No.185 of 2015, the plaintiff-Akraham Khan claimed to be the tenant of entire first floor, having 1685 sq.ft., under the lease deed, dated 16.06.2010. In O.S.No.186 of 2015, the plaintiff-P.Krishnarajalu, claimed to be lessee under the lease deed, dated 18.02.2013 in respect of 600 sq.ft., in the first floor. In Application No.4627 of 2014, filed by Park Town Benefit Fund, represented by R.Vivekanandan, he claimed to be lessee under the lease deed, dated 25.02.2010 in respect of first floor and in Application No.3933 of 2014, filed by Bay Shore Records, represented by S.Khajamohideen, he claimed to be tenant in respect of ground floor, having extent of 600 sq.ft., along with other persons under the lease deed, dated 10.12.2010. In O.S.No.7412 of 2014, the suit filed by Breadway, represented by C.Asaithambi, he claimed to be the tenant under the rental agreement, dated 05.02.2010, in respect of ground and first floor, having 1685 sq.ft.,

20. Therefore, having regard to various extents of property, claimed by all those alleged tenants under the judgment-debtor, it can be safely inferred that they cannot be in possession of respective portions under the lease documents, stated by them. Park

Town Benefit Fund, claimed to be the tenant of the first floor, having 1685 sq.ft., and Akram Khan also claimed tenancy in respect of first floor of 1685 sq.ft., and therefore, there cannot be two tenants in respect of same extent in the first floor. Further, in O.S.No.186 of 2015, plaintiff-Krishnarajalu also claimed to be in possession of 600 sq.ft., in the first floor and that also cannot be true, having regard to the claim made by Park Town Benefit Fund in A.No.4627 of 2014 and Akram Khan in O.S.No.185 of 2015. Similarly, in O.S.No.7412 of 2014, the plaintiff-C.Asaithambi, claimed to be the tenant of 1685 sq.ft., in the ground and first floor. This claim of tenancy also cannot be true, having regard to the tenancyship claimed by other tenants.

21. Therefore, having regard to the extent of property and having regard to the claim made by all those persons, who are claiming to be tenants under the judgment-debtor, the case put forth by them and the judgment-debtor cannot be true, as they cannot be tenants in respect of various portions as claimed by them under various lease agreements entered into with the judgment-debtor. Therefore, on that ground, it can be held that they are not entitled to any protection.

22. The matter can also be looked at from another angle under the provisions of Civil Procedure Code. As stated supra, C.S.No.860 of 2008, was filed by the petitioner to enforce the agreement of sale, dated 23.09.2004. The suit was decreed on 08.09.2010. The sale deed was executed on 04.01.2013 in favour of the petitioner. The plaintiffs in O.S.No.185 of 2015 and O.S.No.186 of 2015, claimed to be tenants under the lease deeds, dated 16.06.2010 and 18.02.2013, respectively and the plaintiff in O.S.No.7412 of 2014, claimed to be tenant under the rental agreement, dated 05.02.2010. All these agreements came into existence only after the filing of the suit. Insofar as the plaintiff in O.S.No.186 of 2015 is concerned, he claimed to be the tenant after the decree was passed in favour of the petitioner. Similarly, in A.No.3933 of 2014, filed by Khajamohideen representing Bay Shore Records, he claimed to be inducted into as tenant under the lease deed, dated 10.12.2010.

23. Therefore, the applicant in A.No.3933 of 2014, in CS.No.860 of 2008 and the plaintiff in O.S.No.186 of 2015, admittedly came into possession of the property after the suit was decreed. The plaintiffs in O.S.No.185 of 2015 and O.S.No.7412 of 2014, and the applicant in A.No.4627 of 2014, came into possession on various dates prior to the passing of the decree, but after the filing of the suit. Therefore, we will have to see whether such persons can obstruct the delivery of possession, in the light of provisions contemplated under Order 21, Rules 98 to 102 CPC.

24. As per Order 21 Rule 98 (2) CPC, when the Court is satisfied that the resistance or obstruction was occasioned without

any just cause by the judgment-debtor, or by some other person at his instigation, or on his behalf, or by any transferee, where such transfer was made during the pendency of the suit, or execution proceeding, the Court shall direct that the applicant be put into possession of the property, and if there is still resistance by the obstructor, or by the judgement-debtor, or by any other person acting at his instance, shall also be detained in the civil prison.

25. As per Order 21 Rule 102 CPC, nothing in Rules 98 and 100 shall apply to resistance or obstruction in execution of a decree for the possession of immovable property by a person to whom the judgment-debtor has transferred the property after the institution of the suit, in which, the decree was passed or to the dispossession of any person. As per Order 21, Rule 101 CPC, all questions arising between the parties to a proceeding on an application under Rule 97 or 99 or their representatives, shall be determined by the Court dealing with the application and not by a separate suit. As per Order 21 Rule 98, upon the determination of the questions referred to in Rule 101, the Court shall, in accordance with such determination and subject to the provisions of sub-rule (2), either make an order allowing the application and directing that the applicant be put into the possession of the property or dismissing the application or pass such other order, as the case may be.

26. Therefore, a reading of all these provisions will make it clear that whenever possession is claimed by decree-holder, and the person, who is obstructing claims any independent title, dehors, the judgment-debtor, he has to workout remedy as per Order 21 Rules 97 and 99. Such applications will be dealt with under the provisions of Order 21, Rules 98 to 102. But, such a right is not available to transferee pendente lite. It is also made clear under Order 21, Rule 101, that objection or all questions relating to right/title/interest over the property shall be determined by the Court dealing with application and not by separate suit. As stated supra, all the persons claimed to have been inducted into the property after the filing of the suit, and therefore, their alleged rights are affected by pendente lite, hence, they are not entitled to any protection as per Order 21, Rules 98 to 102 CPC. Further, separate suit is not maintainable and person, who claims to be in possession of the property on independent title, has to approach the Executing Court to get the relief. In this case, all the obstructors claim tenancy through the judgment-debtor after the filing of suit by petitioner.

27. Further, admittedly, no order has been passed in Application No.4627 of 2014 in C.S.No.860 of 2008 and Application No.3933 of 2014, by this Court. By reason of the provisions of Order 21, Rule 101 CPC, the suits filed by Akram Khan, Krisharajajulu and C.Asaithambi, in O.S.No.185 of 2015, O.S.No.186 of 2015 and

O.S.No.7412 of 2014, respectively are not maintainable. Therefore, alleged transferees have no legal right to obstruct the delivery of possession to the petitioner, as per the decree passed in C.S.No.860 of 2008. Hence, they cannot legally prevent the Bailiff from executing the warrant of delivery of possession, and if they prevent the Bailiff from executing the warrant, then, the Police are bound to give protection to the Bailiff in executing the warrant.

28. Further, as stated supra, having regard to the reports of the Bailiff, these alleged obstructors could not have in possession of the property, as per the lease deeds alleged by them and they should have come into possession only after 21.01.2015.

29. Therefore, according to me, having regard to the aforesaid facts, cognizable offence is made out by the petitioner, in the complaint given to the respondent-Police and the respondent-Police ought to have registered the crime and ought to have taken action against those persons, who are obstructing the execution of the judicial orders.

30. In the result, Crl.O.P.No.755 of 2015 is allowed and the second respondent-Police is directed to register a case and help the decree holder/petitioner in executing the decree and also take appropriate action against those persons, who are preventing the execution of the decree by the decree-holder/petitioner. Consequent to the order passed in Crl. O.P.No.755 of 2015, Crl.O.P.No.936 of 2015, filed for provision of police protection to the petitioner and his property until delivery of possession of the suit property is handed over to the petitioner, is also allowed.

Sd/-

Asst.Registrar (CO)

/true copy/  
सत्यमेव जयते

Sub Asst. Registrar

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To

1.The Commissioner of Police,  
Greater Chennai,  
No.132, Commissioner Office Building,  
EVK Sampath Road,  
Vepery, Chennai - 600 007.

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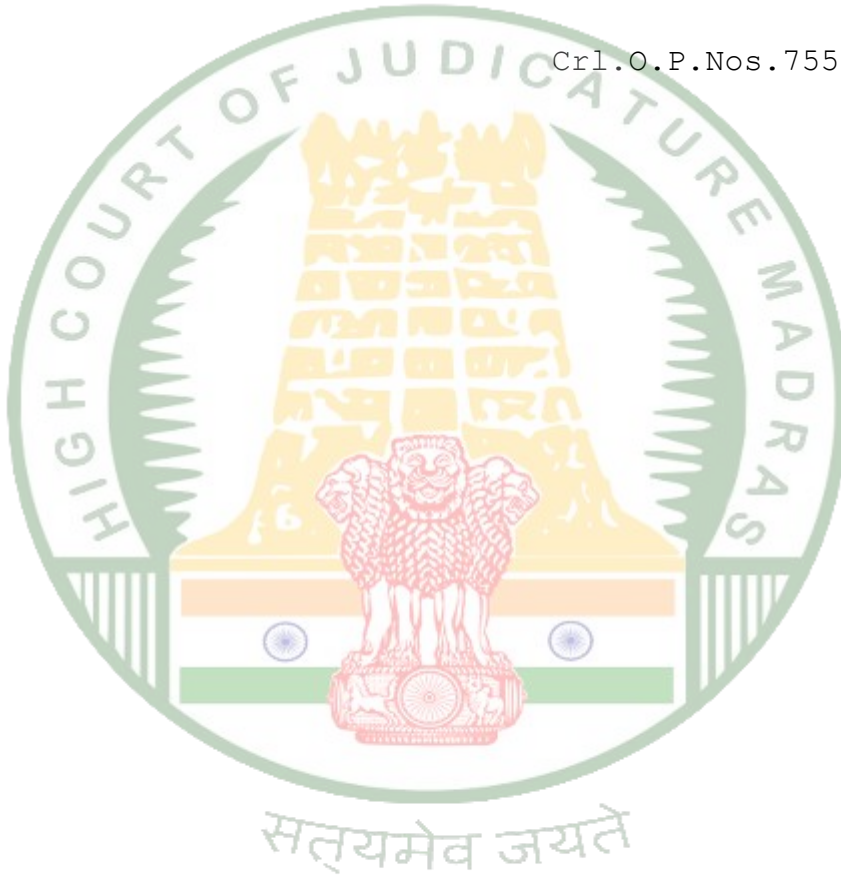
2. The Inspector of Police,  
F1 Police Station,  
Chindatripet, Chennai - 600 002.

3. The Public Prosecutor,  
High Court, Madras.

2 ccs to Mr. M. Venkteswaran, Advocate, Sr. 6825, 6826

Cr1.O.P.Nos.755 and 936 of 2015

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