

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 25.4.2016

CORAM

THE HON'BLE MR.JUSTICE V.RAMASUBRAMANIAN

Writ Petition No.27991 of 2014 &
Contempt Petition No.3003 of 2014

1.N.Venkatesh .. Petitioner in WP and
contempt petition.

Vs.

1. The Commissioner of Police
Egmore, Chennai 600 008.

2. The Assistant Commissioner of Police
J-6, Thiruvanniyur
Chennai 600 041.

3. The Sub Inspector of Police
J6, Adyar Police Station
Adyar, Chennai 600 020. ... Respondents 1 to 3 in WP

4. N.S.Ganesh ... 4th Respondent/ 1st Respondent in
Contempt Petition

5. K.K.Ravichandran ... 2nd Respondent in Contempt Petition

Writ Petition:

Petition under Article 226 of the Constitution of India
praying for a writ of Mandamus directing the respondents 1 to 3
to take appropriate action on the petitioner's complaint dated
16.10.2014 in respect of petitioner's property at Survey
Nos.142/13, 142/9, 1st Cross Street, Sivakamipuram,
Thiruvanniyur, Chennai and take action on the same and thereby
ensure safety and give protection to the petitioner,
petitioner's family and petitioner's- property. Contempt
Petition filed under section 11 of the Contempt of court Act,
1971, to punish the respondents for wilful disobedience of the
order of this court dated 20.10.2014 passed in WP No.27991 of
2014.

For Petitioner : Mr.S.R.Rajagopal
For Respondents 1 to 3 : Mr.R.Vijayakumar, Addl.G.P.
For Respondent-4 : Mr.S.Jayakumar

C O M M O N O R D E R

The petitioner has come up with the above writ petition seeking a Mandamus to direct the respondents 1 to 3 to take appropriate action on his complaint dated 16.10.2014, to safeguard his property in survey Nos.142/13 and 142/9, 1st Cross Street, Sivakamipuram, Thiruvannamiyur, Chennai.

2. Heard Mr.S.R.Rajagopal, learned counsel for the petitioner, Mr.R.Vijayakumar, learned Additional Government Pleader for the respondents 1 to 3 and Mr.S.Jayakumar, learned counsel for the fourth respondent.

3. According to the petitioner, the land in Survey No.142/13 of an extent of 18 cents belonged absolutely only to the petitioner and his two brothers, by name N.Kasi Viswanathan and N.Ramesh. The case of the petitioner is that another land of the extent of 3730 sq.ft. in Survey No.142/9 located at 1st Cross Street, Sivakamipuram, Thiruvannamiyur also belongs to him. It is the case of the petitioner that the property in Survey No.142/13 belonged to one K.G.Srinivasan Pillai, who acquired the same from his paternal uncle K.K.Srinivasan Pillai, who died issueless on 29.12.1958. The said K.G.Srinivasan Pillai agreed to sell the property in Survey Nos.142/9, 142/10, 142/11, 142/13 and 142/14 to the petitioner's mother by name Indirani and received an advance of Rs.10,000/- on 11.12.1975. K.G.Srinivasan Pillai also issued a stamped receipt for the same. After the death of Indirani, the petitioner and his brothers filed a suit for specific performance in C.S.No.510 of 1984. The said suit resulted in a compromise decree passed on 17.10.1995. According to the petitioner, they filed E.P.No.265 of 2007 for execution of the decree and the draft sale deed is pending approval.

4. It is the further case of the petitioner that he owns 14 cents of land in Survey No.142/8 and he has also put up construction. His brother N.Kasi Viswanathan is the owner of 13 cents in S.No.142/8 and he has constructed a building. According to the petitioner, the land in S.No.142/13 was used by him for storing building materials when he was putting up the construction in S.No.142/8. The further case of the petitioner is that the residents of the apartments constructed by him in S.No.142/8 are using the land in S.No.142/13 as a car park.

5. But, a suit in O.S.No.8871 of 2009 was filed by one Muthukumaraswamy on the file of the City Civil Court for injunction. The Court granted an interim injunction against the petitioner herein on 15.10.2009. As against the order of injunction, the petitioner filed an appeal and obtained an order of status quo on 07.11.2009 in CMP No.1460 of 2009 in CMA No.120 of 2009. This status quo order has been made absolute.

6. According to the petitioner, the fourth respondent, all of a sudden landed up in a property along with an Advocate and 25 others and started demolishing the servant quarters. Since many of them claimed to be Advocates, the police did not take any action. When the petitioner dialled the emergency number 100, the police came and called both parties for a discussion in the office of the Assistant Commissioner, Adyar. The grievance of the petitioner is that instead of registering the complaint, the police tried to pacify both parties and called upon both parties to produce proof. Therefore, the petitioner has come up with the above writ petition seeking a Mandamus as indicated above.

7. The fourth respondent has filed a counter affidavit contending inter alia that one Kandasamy Gramani had title and possession of a property in Thiruvannamiyur situate in paimash No.445/A (Part) admeasuring 0.3.6 cawnie; that the said Kandasamy Gramani purchased it from one Gangadharam Pillai under a sale deed dated 01.8.1960. Kandasamy Gramani was also in possession of other lands in paimash Nos.488, 489, 490, 491, 492, 493, 494, 495 etc.; that the lands in S.Nos.419, 426, 429, 447 and 448 were purchased by Kandasamy Gramani under a sale deed dated 23.6.1960 from one C.S.Krishnamurthy Iyer; that Kandasamy Gramani thereafter prepared a layout in the lands comprised in various paimash numbers totalling to 14.16 acres and named the same as Sivakamipuram lay out; that these paimash numbers correlate to S.Nos.142, 143, 144, 138, 162 and 260; that various plots of the layout were sold to several persons during the period 1961 to 1966 and some plots were retained; that one Veera Bai filed a suit in O.S.No.719 of 1965 (later numbered as O.S.No.176 of 1976) seeking partition and allotment of 0.93 cents from and out of acres 1.31 in paimash Nos.438 and 445A equivalent to S.No.142/4 and certain other paimash numbers correlating to S.No.142/8; that in that suit Gangadharam Pillai and his family members, from whom Kandasamy Gramani purchased those properties, were made defendants; that the suit was dismissed on 19.11.1976; that Kandasamy Gramani executed a Will on 02.11.1960 bequeathing the property purchased by him in favour of his sons K.Ranganathan, K.S.Mani, K.Nithyanandham and K.Balasubramanian and the Will was probated in O.P.No.201 of 1972; that the vacant plots which were not covered in the list

of assets in O.P.No.201 of 1972 was orally partitioned among the legal heirs of Kandasamy Gramani; that in the said partition, the plot in T.S.No.140/1 equivalent to S.No.142/13 was allotted to U.Thirupurammal; that the said U.Thirupurammal was in uninterrupted possession of the property from 1972 and she conveyed the same under a deed of settlement in favour of her son U.Balasubramanian on 10.3.2014; that the male descendants of Kandasamy Gramani, after obtaining probate, sold 13 cents in favour of the writ petitioner's brother Kasi Viswanathan under a sale deed dated 14.02.1983; that another extent of 14 cents was sold to the writ petitioner on 14.02.1983; that in the settlement proceedings paimash No.445A, 436A and 436C are correlated to S.No.142/8; that the revenue authorities have certified that T.S.No.140/1 correlates to old S.No.142/13 and T.S.No.140/2 relates to old S.No.142/8 and T.S.No.140/3 correlates to old S.No.142/8 (Part), 142/9, 142/10 and 142/14; that therefore, U.Balasubramanian is the real owner of the property in S.No.142/13 and his relatives are the owners of the property in S.No.142/8 (Part), 142/9 (Part) and 142/4 (Part); that the actual owner U.Balasubramanian appointed the fourth respondent herein as Power Agent under a deed dated 17.3.2015; that on the basis of the power, the fourth respondent lodged a complaint on 18.10.2014 with the police and sought protection; that upon knowing about the fourth respondent's complaint, the writ petitioner lodged a counter complaint; that on both the complaints, the third respondent directed both parties to produce necessary documents; that though the fourth respondent produced documents, the writ petitioner did not produce documents; that the suit for specific performance appears to be a collusive suit inasmuch as a property which is worth several crores has been sold under a compromise decree for a paltry sum of Rs.75,000/-; that the Will set up by K.G.Srinivasan, on the basis of which the suit was filed, appears to be a fabricated one; that at the time of filing of the writ petition, no sale deed has been executed pursuant to the decree for specific performance and hence, the title had not passed on and that therefore, the suit is liable to be dismissed.

8. Even at the time when the writ petition came up for admission on 20.10.2014, the fourth respondent was represented by Mr.S.Jayakumar, learned counsel and he took notice. Therefore, I passed an interim order on 20.10.2014 to the following effect:

"Mr.R.Vijayakumar, AGP takes notice for respondents 1 to 3. Mr.S.Jayakumar, learned counsel takes notice for the fourth respondent.

It is argued by Mr.S.Jayakumar, learned counsel for the fourth respondent who is instructed by Mr.K.K.Ravichandran against whom allegations are made that they will not enter into the property until further orders. Post on 27.10.2014."

9. Therefore, complaining of wilful disobedience of the said order, the petitioner filed a contempt petition in Contempt Petition No.3003 of 2014. Therefore, the contempt petition was tagged along with the writ petition and the writ petition itself was taken up for final disposal.

PRELIMINARY OBJECTION ABOUT THE MAINTAINABILITY OF THE WRIT PETITION

10. Mr.S.Jayakumar, learned counsel for the fourth respondent took a preliminary objection about the maintainability of the writ petition, on the grounds inter alia (i) that a civil dispute cannot be converted into a criminal case and a writ of Mandamus cannot be sought for; (ii) that the survey numbers mentioned in the writ prayer are not mentioned in the complaint dated 16.10.2014; (iii) that co-owners have not been made parties to the writ petition; (iv) that in the complaint dated 16.10.2014, threat to life is not mentioned, but the same is mentioned in the writ petition; (v) that the entire writ petition is based upon a decree, which merely conferred a right to get a sale deed in respect of the property, but did not confer a title; and (vi) that a title dispute cannot be decided in a writ petition.

11. But, I do not think that the above grounds are sustainable in law. As I have pointed out earlier, the prayer in the writ petition is only to direct the respondents 1 to 3 to take appropriate action on the complaint dated 16.10.2014 and to ensure safety and give protection to the petitioner, his family and his property.

12. The petitioner is not seeking either a declaration of title or an injunction, so as to make the co-owners parties or to correlate of survey numbers. The law is well settled by the Supreme Court in its decision in Lalitha Kumari v. Government of Uttar Pradesh [(2014) 2 SCC 1], as to the circumstances under which and the procedure to be followed for the registration of a criminal complaint. Once an allegation is made in the affidavit in support of the writ petition, that the petitioner is facing a threat to his life, the same should be taken to be an allegation of infringement of Article 21 of the Constitution. Then the writ Court cannot close its eyes and direct the parties to file a civil suit.

13. The writ petition proceeds on the basis that the petitioners are the owners of a property in Survey Nos.142/13 and 142/9, 1st Cross Street, Sivakamipuram, Thiruvannamiyur, Chennai. The writ petitioner claims title to the property on the basis of a decree for specific performance passed by a civil Court. The plaint in C.S.No.510 of 1984, which was for specific performance of the agreement of sale, contained a Schedule which makes a mention about survey Nos.142/9 and 142/13. Though at the time when the writ petition was filed, the decree had not been executed, it is submitted at the time when the writ petition was finally heard, that the Executing Court had in fact executed a sale deed in E.P.No.265 of 2007.

14. It is true that such a decree cannot improve the rights of the writ petitioner, if the fourth respondent is the actual owner and if the fourth respondent was also not a party to the suit for specific performance. Therefore, what has to be seen in the second stage of my enquiry is as to how the fourth respondent claims title to the property.

15. As I narrated earlier, the fourth respondent claims that the land in survey No.142/13 correlates to T.S.No.140/1 and that the land in survey No.142/9 correlates to T.S.No.140/3. According to the fourth respondent, one Kandasamy Gramani became the original owner of these properties under a sale deed dated 23.6.1960 and that he left behind a Will dated 02.11.1960. Though this Will of Kandasamy Gramani is stated to have been probated in O.P.No.201 of 1972, the property in Survey Nos.142/9 and 142/13 were not admittedly covered by the Will left behind by Kandasamy Gramani. This is clear from the averments contained in paragraphs 8 and 9 of the counter affidavit filed by the fourth respondent. As per the averments contained in these two paragraphs, the vacant plots not covered by the last Will and Testament of Kandasamy Gramani dated 02.11.1960, were orally partitioned among the legal heirs of Kandasamy Gramani. According to the fourth respondent, survey No.142/13 was allotted to U.Thirupurammal and she conveyed the same under a deed of settlement in favour of her son U.Balasubramanian on 10.3.2014. The fourth respondent merely claims to be the Power Agent of the said U.Balasubramanian by virtue of a deed of Power of Attorney dated 17.3.2015.

16. When we compare the averments made by the petitioner with the averments made by the fourth respondent, the following conclusions become inevitable:

(i) The case of the petitioner rests upon a decree for specific performance and a sale deed executed by Court, wherein,

the very same survey numbers, namely survey Nos.142/9 and 142/13 are mentioned;

(ii) The case of the fourth respondent rests first upon a Will dated 02.11.1960 executed by Kandasamy Gramani, which was probated in O.P.No.201 of 1972, but which unfortunately did not include the lands in survey Nos.142/9 and 142/13;

(iii) The case of the fourth respondent further rests upon an alleged oral partition among the legal heirs of Kandasamy Gramani in respect of properties not covered by the last Will and Testament of Kandasamy Gramani;

(iv) One more complication in the case of the fourth respondent is that the description of properties contained in the Will dated 02.11.1960 mentioned only Paimash numbers and not survey numbers.

17. To put it in simple terms, the claim of the writ petitioner can be decided on the strength of the decree for specific performance and the sale deed executed in execution proceedings, wherein the very same survey numbers are mentioned. On the contrary, the case of the fourth respondent can be accepted only if fourth respondent passes three stages, namely (a) correlating the old Paimash number with the new survey number, (b) explaining why Kandasamy Gramani disposed of a few plots of lands under a Will and kept some other plots of vacant land outside the bequest, and (c) establishing the alleged oral partition among the legal heirs of Kandasamy Gramani of lands which were not allegedly covered under the last Will and Testament of Kandasamy Gramani.

18. Therefore, it is clear that the fourth respondent has a long way to go, while the writ petitioner has made out a prima facie case. I am not for a moment recording a finding that the petitioner is the lawful owner of the property in question. I have entered into an extremely preliminary discussion and that too, with regard to the manner in which both parties claim title and possession to the lands in question. This exercise I have done only for the limited purpose of finding out whether the writ petitioner is entitled to the relief that he seeks.

19. In simple terms, the decree passed in favour of the writ petitioner and the sale deed executed by the Court pursuant to the decree are sufficient for the petitioner at least to press into service, the ratio laid down by the Supreme Court in Lalitha Kumari. On the other hand, the devolution of title set up by the fourth respondent is not sufficient enough to persuade me not to invoke the ratio laid down in Lalitha Kumari.

20. Therefore, the respondents 1 to 3 are directed to examine the complaint given by the petitioner in the light of

the principles laid down in Lalitha Kumari and take appropriate action. However, the parties shall also approach the civil court for appropriate orders of protection with regard to their respective claims for possession within two months. Until expiry of two months from today, both parties shall not create any law and order problem in the property. If either of the parties approach the civil court and obtain any interim order of protection, the police shall take care to ensure the implementation of such orders. No costs. Consequently, the connected miscellaneous petitions and the contempt petition are closed.

Sd/-

Assistant Registrar(CS-III)

//True Copy//

Sub Assistant Registrar

kpl/RS

To

1. The Commissioner of Police, Egmore, Chennai 600 008.
2. The Assistant Commissioner of Police, J-6, Thiruvanmiyur Chennai 600 041.
3. The Sub Inspector of Police, J6, Adyar Police Station Adyar, Chennai 600 020.

1 cc to Government Pleader, sr.26337

2 ccs to Mr.S.Jayakumar, Advocate, sr.25609

W.P.No.27991 of 2014 &
Cont.P.No.3003 of 2014

sns co

kra 25.05.2016

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