



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED 11.07.2016

CORAM

WEB COPY

THE HONOURABLE MR.JUSTICE S.S.SUNDAR

W.P(MD)No.7235 OF 2014 & M.P(MD)No.1 of 2015

Synam Beevi

..Petitioner

.vs.

1.The Superintendent of Police,
Tirunelveli District,
Tirunelveli.

2.The Inspector of Police,
Achanpudur Police Station,
Tenkasi Taluk,
Tirunelveli District.

..Respondents.

Prayer: Writ Petition filed under Article 226 of the Constitution of India, praying this Court to issue a Writ of Mandamus directing the second respondent who is having the petitioner's house key without any lawful means or any direction or order from the Court to return back the key to her or permit her to break open her house situated at in S.No.572/17, New Ward Nos.15.4.18 in Achampudur Village, Senkottai Taluk, Tirunelveli District and pass further orders as this Court may deem fit and proper.

For Petitioner :Mr.J.C.Rathinavel Pandian

For Respondents :Mr.D.Muruganandam
Addl.Govt.Pleader.

ORDER

The petitioner has filed this Writ Petition for a Writ of Mandamus to direct the second respondent who is having the petitioner's house key without any lawful means or any direction or order from the Court to return back the key to her or permit her to break open her house situated at in S.No.572/17, New Ward Nos.15.4.18 in Achampudur Village, Senkottai Taluk, Tirunelveli District.



2. It is the case of the petitioner that she was in absolute possession and peaceful enjoyment of the house property situated in Survey No.572/17 along with her younger daughter. She admitted that a settlement deed was executed by her husband in favour of her elder daughter namely Southa Begum and she described the settlement deed as one executed under coercion and compulsion. It is also the further case of petitioner that the settlement deed was later cancelled by her husband by another document registered on 20.03.2013, vide document No.1185/2013.

3. The petitioner also contended that her husband has filed a civil suit before the Principal District Munsif, Sengottai, in O.S.No.85 of 2013, for declaration and consequential injunction against her elder daughter and her husband. It is further contended by the petitioner that after the death of her husband on 13.06.2013, the purchaser of the property from her elder daughter, by name, Kathizha Beevi and her son, namely, Meera Kani, trespassed into her house and damaged some of the properties, apart from causing injuries to her, despite the complaint that was given by her and registered by the second respondent.

4. According to the petitioner, the house property was taken forcibly from her by the purchaser of her elder daughter, with the assistance of the second respondent. Since the petitioner was forcibly vacated from the property, she alleges that she has no other option except to approach this Court by invoking Article 226 of the Constitution of India.

5. Heard the learned Counsel appearing for the petitioner and the learned Additional Government Pleader appearing for the respondents.

6. When the petitioner's husband has already filed a civil suit, the cause of action survives on the petitioner as a legal representative of her husband. Hence, it is only appropriate to the petitioner to prosecute the suit further and seek appropriate interim relief to protect her possession and right as derived from her husband. Even if forcible dispossession as pleaded by the petitioner is true her right is only to seek remedy by way of suit under Section 6 of the Specific Relief Act or by amendment of plaint in the pending suit. Though the petitioner alleges that the third party had taken possession with the aid of the second respondent, the petitioner has not even impleaded the subsequent purchasers so as to give an effective decision. Further the facts stated in her representations are different from the averments in the affidavit filed in support of the writ petition. Different version of petitioner prompts this Court to infer that she has not come to this Court with clean hands.



7. In view of the above reasons, this Court is not inclined to entertain this writ petition. Hence, the writ petition is dismissed, with a liberty to the petitioner to approach the civil Court for appropriate relief in accordance with law. No costs. Consequently, the connected Miscellaneous petition is also dismissed.

Sd/-
Assistant Registrar(P&A)

/True copy/

Sub Assistant Registrar

To

1.The Superintendent of Police,
Tirunelveli District,
Tirunelveli.

2.The Inspector of Police,
Achanpudur Police Station,
Tenkasi Taluk,
Tirunelveli District.

+1cc to Special Government Pleader SR.NO.36365

gsr

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W.P (MD) No.7235 OF 2014
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