



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 02.12.2016

CORAM:

THE HON'BLE MR.JUSTICE K.KALYANASUNDARAM

Crl.O.P.(MD)No.22397 of 2013

WEB COPY

Saraswathi Ammal

: Petitioner

Vs.

1.The Superintendent of Police,
Madurai Rural,
Madurai District.

2.The Inspector of Police, (L & O),
Kadupatti Police Station,
Madurai District.

(Cause title amended as per order of this Court
dated 10.01.2014 made in M.P.(MD)No.1 of 2014 in
Crl.O.P.(MD)No.22397 of 2013

3.P.Archunan

: Respondents

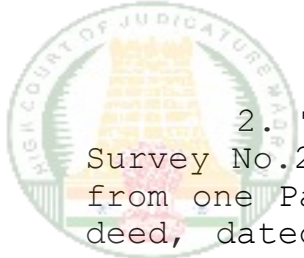
Prayer: This petition is filed under Section 482 of Cr.P.C to direct the respondents 1 and 2 to provide adequate Police Protection to life and limb of the petitioner and her family members so as to enable the petitioner and her family members to be in peaceful possession and enjoyment of the property in Survey No.215 in Melakkal Village, Vadipatti Taluk, Madurai District, to an extent of 1 acre and 20 cents.

For Petitioner : Mr.S.Subbiah

For respondent : Mr.K.Anbarasan
Government Advocate (Crl. Side) for R1 and R2
Mr.Ajmalkhan for R-3

O R D E R

The petition has been filed for a direction to the respondents 1 and 2 to provide adequate police protection to the life and limb of the petitioner and her family members so as to enable the petitioner and her family members to be in peaceful possession and enjoyment of the property in Survey No.215 in Melakkal Village, Vadipatti Tk, Madurai District to an extent of 1 acre and 20 cents.

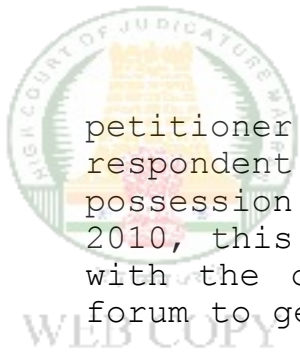


2. The case of the petitioner is that she purchased lands in Survey No.215 in Melakkal Village, Vadipatti Taluk, Madurai District from one Parvathammal, Wife of V.Rajamani Iyer, by registered sale deed, dated 25.02.1985 to an extent of 1.20 acres. At that time, the property was mortgaged with the mother of the third respondent herein viz., Pethaiyeeammal. So, the petitioner instituted a suit in O.S.No.289 of 1985 before the District Munsif Court, Thirumangalam for redemption of mortgage. After depositing the entire mortgage amount, she filed an Execution Petition in E.P.No.81 of 1988 for delivery of possession and on 02.07.1998, the bailiff delivered possession to the petitioner. Since then, she has been in continuous possession and enjoyment of the property.

3. The petitioner would state that the father of the third respondent, viz., Poremannan filed a petition in T.R.No.28 of 1985, before the Tahsildar, Vadipatti to record his name as a cultivating tenant in respect of the above land, which came to be dismissed on 27.04.1987. The appeal preferred by him in appeal No.46 of 1988 was dismissed by the Revenue Divisional Officer on 13.06.1989, which was also confirmed by the District Revenue Officer on 24.06.1992. After the demise of the said Poremannan, the third respondent filed a Writ Petition in W.P.No.8903 of 1994, forbearing the respondents therein from dispossessing him from the property and the writ petition was dismissed on 13.08.1994. The third respondent also filed a petition in T.R.No.80 of 1993 before the Tahsildar to enter his name in the Registry as cultivating tenant. The petition was dismissed by an order dated 21.06.2000 and the suit filed by the third respondent in O.S.No.280 of 1996 before the District Munsif Court, Thirumangalam, against the petitioner was dismissed for default on 17.10.2003.

4. The petitioner further claims that the suit O.S.No.219 of 2000 instituted by her before the District Munsif Court for permanent injunction against the third respondent from disturbing her peaceful possession and enjoyment of the property was decreed on 16.03.2001. Since the third respondent repeatedly made attempts to disturb her possession even after the civil court decree, she preferred a complaint dated 02.06.2009 and also sent reminders on 11.11.2009, 07.12.2009 and 05.01.2010. As the first respondent did not take any action, she filed a writ petition in W.P.(MD)No.3717 of 2010 for issuance of a Writ of Mandamus to provide adequate police protection and the same was disposed of with a direction to the first respondent to consider her representation. Again on 18.11.2003, the petitioner gave a complaint to the first respondent seeking police protection to harvest the crop cultivated in the land and also for her life. Since no action was taken, the petitioner has come up with this petition.

5. The third respondent filed a counter refuting the allegations made in the petition. It is further stated that the original owner Mr.Rajamani alias Venkitaraman Ayyer sold the land in dispute to his father in the year 1967 through an unregistered sale deed. So, the sale made by his wife Parvathammal in favour of the



petitioner is illegal. As per the unregistered sale deed, the third respondent is the owner of the property and he has been in possession and cultivating the lands and in CrI.O.P.No.14871 of 2010, this Court has directed the respondent-Police not to interfere with the civil dispute. So, the petitioner has to approach civil forum to get remedy and prayed for dismissal of the petition.

6. Mr.S.Subbiah, learned counsel for the petitioner would submit that the petitioner is the absolute owner of the agricultural land by virtue of the registered sale deed dated 25.02.1985; the said property was already subjected to mortgage; the petitioner pursuant to the decree passed in O.S.No.289 of 1985 got delivery of the property in E.P.No.81 of 1988. It is further submitted that the petition preferred by the husband of the mortgagee and the father of the third respondent by name Poremannan before the Tahsildar, Vadipatti to record his name as cultivating tenant, was dismissed on 27.04.1987. The suit O.S.No.280 of 1996 filed by the third respondent against the petitioner for permanent injunction was dismissed, while the suit instituted by the petitioner O.S.No.219 of 2000 for permanent injunction against the third respondent and his mother restraining them from interfering with her possession and enjoyment of the property was decreed on 16.03.2001. Despite the judgment and decree has attained finality, the third respondent and his men attempts to disturb her possession and also attacked her, for which a case was registered by the Inspector of Police, Kadupatti Police Station under Sections 341, 323, 447 and 506(ii) IPC and final report was laid in C.C.No.304 of 2008, on the file of the District Munsif cum Judicial Magistrate, Vadipatti.

7. The learned counsel placing reliance on the decisions reported in **2006 (4) SCC 501, 2014 (2) CTC 695 and 2015 (3) CTC 807**, would further submit that the respondents 1 and 2 have obligations to give protection to the petitioner to enforce the decree.

8. Per contra, Mr.Ajmalkhan, learned Senior Counsel for the third respondent would submit that the father of the third respondent had purchased the property through an unregistered sale deed in the year 1967 and after his demise, it devolved on the third respondent and as on date, he is the owner of the property and the suit filed by the third respondent in O.S.No.15 of 2014 before the District Munsif Court, Vadipatti for declaration and consequential permanent injunction is still pending. It is further contended that the petitioner already filed a Writ Petition for the same relief, which was dismissed by this Court and if the petitioner wants to enforce a decree, he has to approach the Civil Court and this Court cannot issue a direction to give police protection in view of the orders of Andhrapradesh High Court in C.R.P.No.6251 of 2012 and C.R.P.No.2919 of 2014 and this Court in CrI.O.P.Nos.3081 and 3089 of 2015.



entitled to police help / assistance for protection of rights declared by the competent civil Court. The relevant paragraph of the judgment would run thus:-

"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 manner, and then too in furtherance of the decree or order."

10. In **2014 (2) CTC 695 (Radhika Sri Hari V. Commissioner of Police, Coimbatore)** in similar facts, a petition seeking police protection came to be filed based on civil Court decree. This Court taking note the facts of the case and Government Order in G.O.(3D) No.42, Home, dated 30.06.2008 has held as follows:-

"7. In the aforesaid circumstances, this Court considers it appropriate to refer to Report of the Committee constituted by the Government in G.O.(3D) No.42, Home, dated 30.06.2008, towards review of the system of treating complaints relating to money and land matters and to suggest a legally acceptable methodology. The Report of such Committee touching upon several issues, was accepted by Government. Having done so, under G.O.Ms.No.1580, Home (Pol.VII) Department, dated 24.11.2008, the Director General of Police was required to circulate the Report along with the 14 Point Guidelines annexed to such Government Order to Police Officers/Stations for appropriate adherence. Under C.No.43/CRB/CSP/2008, dated 08.12.2008, the Commissioner of Police, Chennai Sub-Urban, has caused communications to all Deputy Commissioners, Assistant Commissioners and Inspector of Police for necessary action. Guideline 111 issued by the Committee reads as follows:-

"11. When Police Protection is sought for the implementation of a Civil Court Order, it should be given readily. Police should not insist on a specific Court direction to give Police Protection."

8. What is informed above makes clear that the petitioner would be entitled to Police Protection as prayed for. Criminal Original Petition is allowed. There will be a direction to the respondents to provide Police Protection to the petitioners for a period of three weeks from the date of receipt of a copy of this order towards enable them raising fresh barbed wires fences on their property. The same will be at the cost of the petitioner."

11. In 2015 (3) CTC 807 (S.Asokan v. State) in that case, the rights of the respondents 4 to 7 therein culminated in Second Appeal in S.A.No.1458 of 2007, wherein a specific finding was given that the petitioner/defendant in that case was in possession and enjoyment of the property. Based on the judgment and decree, the defendant sought police protection. This Court, while rejecting objection that the petitioner was not a decree holder, so he is not

entitled for police protection, has allowed the Application. The relevant paragraphs of the judgment would run thus:-

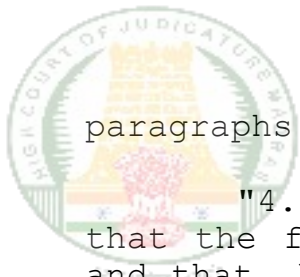
"30. Therefore, when the rights have not been determined by the Civil Court, police protection cannot be sought for. In this case, rights regarding possession and title were already decided by this Court in Second Appeal and confirmed by the Apex Court and the petitioners are found to be the lawful owners 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 482 Cr.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."

12. The learned counsel appearing for the third respondent relied upon an order of this Court in CrI.O.P.No.3081 and 3089 of 2015; judgment of Andhrapradesh High Court in C.R.P.No.2919 of 2014 and C.R.P.No.6251 of 2012.

13. In CrI.O.P.No.3081 and 3089 of 2015, the petitioner in that case sought for a direction to provide police protection to implement the judgement and decree passed in O.S.No.128 of 2007. The fifth respondent therein contended that he had filed an impleading application in O.S.No.128 of 2007 and when the application was pending, it would not be appropriate to issue a direction for police protection. This Court, accepting the case of the fifth respondent, dismissed the petitions. The relevant



paragraphs of the judgment would run thus:-

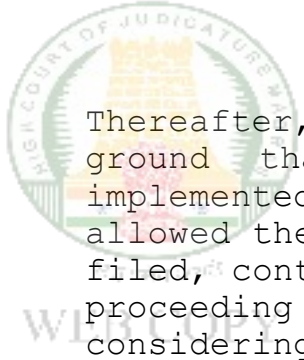
"4. The learned counsel for the fifth respondent submitted that the fifth respondent had purchased the property on 01.06.2011 and that, he has filed an impleading petition in O.S.No.128 of 2007 and the same is pending. Therefore, when the matter is seized by the Civil Court, it may not be appropriate for this Court, to give a direction to the police to give police protection to this petitioner. Moreover, the fifth respondent has purchased the property wayback in the year 2011, whereas, the petitioner has started agitating her rights under the decree only from 2014 onwards. Further, the petitioner is admittedly living in Chennai, but whereas the fifth respondent is living in Tiruvannamalai District, where the land is located."

14. Suit in O.S.No.103 of 2012 was filed by the respondent in C.R.P.No.2919 of 2014, seeking permanent injunction. In that suit, he filed I.A.No.278 of 2012 for interim injunction and the application was allowed on 13.03.2013. The plaintiff filed I.A.No.3 of 2014 under Section 151 of C.P.C. seeking police aid for implementation of the interim injunction order. The learned Junior Civil Judge allowed I.A.No.3 of 2014 granting police aid. Against the order, the revision was filed. The Andhrapradesh High Court has held as follows:-

"16. Of course, even the Division Bench accepted that the relief of police protection may be granted in a situation where an application is filed by the person obtaining ad interim injunction alleging that there is a threat of breach, disobedience or violation of order of injunction, subject to proof. I also agree with the view of the Division Bench that when a petition is filed seeking police protection, such order cannot be passed in a routine manner and a high degree of proof is necessary.

17. As held by the Division Bench of this Court in **Satyanarayana Tiwari v. SHO, PS, Santhoshnagar; AIR 1982 AP 394 (DB)**, no authority in the State, Revenue or Police, can ignore the finding of the Civil Court or refuse to take steps to see that the order of the Civil Court is implemented and the party, in whose favour there is an order of the Civil Court should get all help to maintain the law and order and the other party cannot be allowed to contravene the injunction order and create law and order problem. No doubt, these observations were made in the context of the power of the High Court under Article 226 of the Constitution of India to issue writ or direction to police to enforce the orders of the Civil Court to provide protection in furtherance of an order of injunction, but in my opinion, the said observations equally apply to a situation where a party approaches a Civil Court for police protection having obtained an interlocutory order for temporary injunction."

15. The respondent in C.R.P.No.6251 of 2012 instituted the suit O.S.No.240 of 2009 for permanent injunction. In that suit, he filed an application I.A.No.1071 of 2009 for ad-interim injunction.



Thereafter, filed I.A.No.175 of 2010 for grant of police aid on the ground that the order of interim injunction could not be implemented. The learned Additional Junior Civil Judge, Nandyal allowed the application. Assailing the order, the above revision was filed, contending that in case of violation of interim injunction, a proceeding under Order XXXIX Rule 2A could be initiated. After considering the catena of judgements of Hon'ble Supreme Court and the Andhrapradesh High Court, while repelling the contentions and dismissing the revision, the learned Judge has held as follows:-

"27. Consequently there is no specific provision to deal with the question of implementing an order of interim injunction in case it is violated. Order XXXIX Rule 2A deals with punishment by attachment of the property or by detention in civil prison of the person who committed breach. It does not provide for the implementation of order of injunction. It is only a provision which provides penalty for the disobedience of the order. As laid down in RAYAPATI AUDEMMA's case, in such a case there being no express provision in the Code for the enforcement of the order, it is not only proper but also necessary that the Court should render all aid to the aggrieved party to derive full benefits of the order. Though the order of injunction under Order XXXIX of Civil Procedure Code is only interim in nature, still it clothes the person who obtained the order with certain rights and he is entitled to enforce the aforesaid right against the party who is bound by the order. No doubt in such a case, the aggrieved party himself could approach the police authorities to prevent the obstruction to the enforcement of the order or to the exercise of the right which he derives under the order of Court. But when the same person brings to the notice of the Court that the enforcement of the order is sought to be prevented or obstructed, the Court should exercise its inherent power under Section 151 CPC and direct the police authorities to render all aid to the aggrieved party in the implementation of the Court's order. If the police authorities are under a legal duty to enforce the law and the public or the citizens are entitled to seek direction under Article 226 of the Constitution for the discharge of such duties by the Police Authorities the civil Courts can also give appropriate directions under Section 151 CPC to render aid to the aggrieved parties for the due and proper implementation of the orders of Court. It cannot be said that in such a case the exercise of the inherent power under Section 151, Civil Procedure Code is devoid of jurisdiction. There is no express provision in the code prohibiting the exercise of such a power and the Court can give appropriate directions at the instance of the aggrieved parties to the police authorities to render its aid for enforcement of the Court's order in a lawful manner. The exercise of such power is necessary for the ends of justice or to prevent abuse of the process and the civil Court has ample jurisdiction to pass such orders under Section 151 CPC."



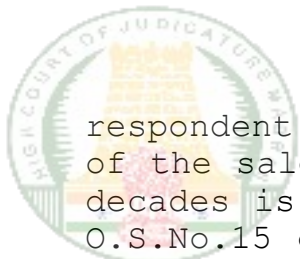
"29. However, whereas great caution is to be taken for granting ex parte ad-interim injunction equal measures are to be taken while granting police aid to enforce that order. Under the guise of an order of ad-interim injunction and also the corresponding police aid granted there may be a possibility of vacating from the property in the litigation a person who is in actual possession of the property as of right. Therefore, whenever such order of granting police aid is resisted it is advisable to hear both the parties to the litigation and dispose of the petition filed for interim injunction pending disposal of the main proceedings itself. Further some times question of identity of the property in dispute arises. Thereby unless there is clear identity of the property in dispute mere granting of Police aid would not be suffice. In such case, an Advocate Commissioner is to be appointed necessarily to localize the property and only subject to the localization of the properties, necessary Police aid can be granted or both the Police aid and localization of the property can be granted simultaneously to do what is needed. "

16. In the instant case, indisputably the property in dispute was originally owned by one Rajamani Iyer. According to the petitioner, after the demise of Rajamani Iyer, his wife Parvathammal sold the property to the petitioner, by a registered sale deed, dated 25.02.1985. It is not in dispute that the petitioner filed the suit O.S.No.289 of 1985 against mortgagee / Pethaiyeeammal, for redemption of mortgage. The suit was decreed and based on the decree, the petitioner levied an Execution Petition in E.P.No.81 of 1988 and the Execution Petition was closed recording delivery of possession to the petitioner.

17. Admittedly, the suit filed by the petitioner O.S.No.219 of 2000 against the third respondent and his mother Pethaiyeeammal, for permanent injunction restraining them from interfering with the possession and enjoyment of the property in question was decreed on 16.03.2001. It is to be noted that during the pendency of the suit, O.S.No.289 of 1985, father of the third respondent viz., Poremannan filed a petition in T.R.No.28 of 1985 to record his name as a cultivating tenant. Subsequently, the third respondent also filed a similar petition, which was dismissed.

18. The grievance of the petitioner is that even after the Civil Court Decree and even after disposal of the proceedings initiated by the third respondent herein, the third respondent has been repeatedly making attempts to interfere with the possession and enjoyment of the petitioner. Though the respondents 1 and 2 have legal obligation to give police protection to the life and property of the petitioner to enforce the decree, they do not respond.

19. It is the specific case of the third respondent that the disputed land came to be purchased from the original owner Rajamani Iyer, through an unregistered sale deed in the year 1967. But, it is pertinent to note that the father of the third respondent, who is said to have purchased the property has not claimed exclusive title over the property till his life time. On the other hand in T.R.No.28 of 1985, he sought to register his name as cultivating tenant of the property in dispute. So, the present stand taken by the third



respondent that he is the absolute owner of the property by virtue of the sale of the property by an unregistered document after three decades is only an after thought. Further, the pendency of the suit O.S.No.15 of 2014 cannot be a ground to reject the request of the petitioner for providing police protection, as the decree passed in the suit filed by the petitioner admittedly reached finality. It has been consistently held by the Apex Court and this Court that the decree holder is entitled for police protection to enforce the decree passed by the competent Civil Court. Even in the judgments relied on by the learned Senior Counsel for the respondents, the Andhrapradesh High Court had taken the view that the Civil Court has ample jurisdiction to pass such orders under Section 151 to secure the ends of justice. This Court in **2015 (3) CTC 807** (supra), has observed that even the defendant is entitled for police protection based on the findings of the Civil Court.

20. It is contended by the learned Senior Counsel for the respondent that the third respondent is in possession of the property and to enforce the decree, the petitioner has to approach the Civil Court. Even assuming that the third respondent is in possession of the property, it would be construed as an unlawful possession and he is bound by the decree passed in the earlier suits. In the light of the decision cited above and in view of my finding supra, I am of the considered opinion that the petitioner is entitled for police protection for implementation of the decree passed in O.S.No.289 of 1995 and O.S.No.219 of 2000. The order passed in CrI.O.P.Nos.3081 of 2015 and 3089 of 2015 have no application to the facts of this case for the reason that the decree passed in the suits have attained finality.

21. In such view of the matter, this Criminal Original Petition is allowed and the respondents 1 and 2 are directed to provide police protection to the petitioner.

SD/-

ASSISTANT REGISTRAR(RTI)

/TRUE COPY/

SUB ASSISTANT REGISTRAR

To

1.The Superintendent of Police,
Madurai Rural,
Madurai District.

2.The Inspector of Police, (L & O),
Kadupatti Police Station,
Madurai District.

+1 CC TO MR.R.RAMASAMY,ADVOCATE,SR NO.79737

+1 CC TO MR.S.SUBBIAH,ADVOCATE,SR NO.79240

Rns

MAS/MR:20.03.2017:9P-5C