

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 14.11.2017

Coram

The Honourable Mr.Justice RAJIV SHAKDHER
and

The Honourable Mr.Justice N.SATHISH KUMAR

Writ Appeal No.1301 of 2017

and

CMP.No.18115 of 2017

1. P.Chandrasekaran

2. C.Suseela

.. Appellants

Vs.

1. S.Sambandam

2. The Commissioner of Police,
Poonamallee High Road,
Vepery, Chennai - 600 015.

3. The Deputy Commissioner of Police,
L.B.Road, Adyar,
Chennai - 600 020.

4. The Assistant Commissioner of Police,
Neelankarai Range,
Neelankarai, Thiruvannamiyur,
Chennai - 600 041.

5. The Inspector of Police,
J-12 Kanathur Police Station,
ECR Road, Kanathur,
Muttukadu, Chennai - 603 112.

6. C.Damodaran

7. Lalitha

8. C.Sampathkumar

... Respondents

(R6 to R8 are arrayed as formal parties for
the purpose of cause title as the writ petitioner
arrayed R6 to R8 as respondent in W.A. and as they
are given up in this proceedings)

Prayer : Appeal filed under Clause 15 of the Letters Patent
against the order dated 18.09.2017 in W.P.No.771 of 2017 on the
file of this Court.

WP.No.771 of 2017: Writ petition filed under article 226 of
constitution of India praying to issue a writ of mandamus
directing the respondents 1 to 4 to give police protection to

the petitioner and his family members to enter into their residential units/plots bearing No's 13 to 16 situated in old.No.99/5C, as per patta No.422 new S.No.99/5C1C2A1, Muttukadu Village, Thirupatur Taluk, Kancheepuram Distrit and reside there peacefully, based on their complaint dated 05.01.2017 given to the fourth respondent under CSR.No.6 of 20177.

For Petitioners : Mr.Silambanan
SC for Ms.Kaavya Silambanan

For Respondent 1 : Mr.S.Thangavel

For Respondents 2 to 5 : Mr.K.Dhananjayan
Special Government Pleader

For Respondents 6 to 8 : Given up

J U D G E M E N T

(Judgement of the Court was delivered by RAJIV SHAKDHER, J.)

1. This is an appeal preferred against the judgement of the learned Single Judge dated 18.09.2017.

1.1. The first respondent in the captioned appeal is the original writ petitioner.

1.2. Respondent No.2 to 5 are the official respondents, while, respondent No.6 to 8 are the two sons and the daughter-in-law of the appellants. The first respondent had moved the learned Single Judge by way of a writ petition seeking the following prayer:

"Issue a Writ of Mandamus, directing the respondents No.1 to 4 to give police protection to the petitioner and his family members to enter into their residential units/plots bearing Nos.13 to 16 situated in old S.No.99/5C, as per patta No.422, new S.No.99/5C1C2A1, Muttukadu Village, Thiruporur Taluk, Kancheepuram District and reside there peacefully, based on their complaint dated 05.01.2017, given to the fourth respondent under CSR.No.6 of 2017"

1.3. The learned Single Judge has disposed of the writ petition with the following operative directions contained in paragraph No.8 and 9 of the order:

"8. There are sufficient materials produced before this Court to show that there has been frequent altercations between the petitioner and the fifth respondent in connection with the enjoyment of the said

properties. Both the parties have been consistently approaching the police complaining about each other. I am of the view that these kind of disturbances needed to be thwarted, unless and until the finality with regard to the title is arrived at by the appropriate civil Courts. Since the petitioner has proved beyond reasonable doubts that he is in physical possession of the suit property, it would be appropriate to direct the police to extend adequate protection to enable the petitioner and his family members to enjoy the subject property.

9. In the light of the above observations, there shall be a direction to the third respondent to provide necessary police protection to the petitioner and his family members to enter and enjoy the properties comprised in plot Nos.13 to 16 situated in old S.No.99/5C, as per patta No.422 new S.No.99/5C1C2A1, Muttukadu Village, Thiruporur Taluk, Kancheepuram District. The third respondent shall also ensure that unless and until the respondents 5 to 9 produce valid civil Court orders establishing their titles, they shall be refrained from causing disturbance or annoyance to the petitioner's right to enjoy the subject property."

1.4. We may note that the learned Single Judge in paragraph 6 of the impugned order has observed that appellant No.1 herein had instituted a suit being O.S.No.54 of 2017, before the learned District Munsif, Chengalpattu, against respondent No.1 and his wife seeking a permanent injunction restraining them from interfering with their peaceful possession and enjoyment of the property referred to in the said suit. In O.S.No.54 of 2017, the suit schedule property has been described as follows:

"All that piece and parcel of the land at Kancheepuram District, Thiruporur Sub Registration District, Tiruporur Taluk Revenue District, Muttukadu Village, Survey No.S.No.99/5C1C4, S.No.99/5C1C6, S.No.99/5C2A4 and S.No.99/5C2B6, Chandra Sekaran Firm, Ocean Site Road, Muttukadu Village, Chengalpatu Taluk, Kancheepuram District, measuring an extent of 38 Cents, Patta No.93 Sq.ft. bounded on
East by : Plot No.11 and Plot No.12
West by : Plot No.17 and Plot No.18
South by : 20 feet Road

North by : Vijayavani Land"

2. It is the submission of the learned counsel for the appellants, before us, that the Survey Numbers i.e. S.No.99/5C1C4, S.No.99/5C1C6, S.No.99/5C2A4 and S.No.99/5C2B6 given in the schedule appended to the plaint filed in O.S.No.54 of 2017 are the correct survey numbers and that they pertain to the property which was the subject matter of the writ petition filed before the learned Single Judge.

3. On the other hand, Mr.S.Thangavel, learned counsel who appears for respondent No.1 contest the said position.

3.1. According to the learned counsel, the property which is the subject matter of the writ petition was purchased from a partnership firm, known as, Messrs Sundar-Sekhar, vide sale deed dated 17.08.1990.

3.2. The said property was purchased in the name of Messrs Sabhthagiri Estates, which is a partnership firm comprising of respondent No.1 and his wife Smt.S.Meenakshi.

3.3. It is also the contention of the learned counsel for respondent No.1 that the said property ad-measures 1 acre and 25 cents. It is further submitted by the learned counsel that respondent No.1 has in his possession, the relevant revenue records including patta in respect of the said property.

3.4. Furthermore, it is contended that a superstructure stands erected on the property, which is the subject matter of the writ petition and that qua the said superstructure, electricity and water connection has been obtained by respondent No.1.

4. During the course of the argument, it was conceded by the learned counsel for the appellants that the superstructure has been built by respondent No.1, albeit, illegally as the land underneath and the abutting land belongs to the appellants.

5. It may also be relevant to note that while the appeal was pending before us, vide order dated 24.10.2017, we had directed that parties would maintain status quo as regards possession, and furthermore, by the very same order, we had appointed Ms.R.M.Subathra, Deputy A.G. & O.T. as the Court Commissioner.

5.1. The Court Commissioner was mandated to visit the property which is a subject matter of the writ petition and, thereafter, revert to the Court as to who was in possession of the subject property.

6. The Court Commissioner has filed a report dated 02.11.2017. The Court Commissioner inter alia in paragraph 8 of her report has made the following observations:

"6.... The Exterior of the house was

dirty, that looked like it had not been cleaned in the near past. It had cob webs.

The house was dirty with dust and the blobs of paints on the floors of the rooms, indicating the house is being whitewashed presently. It had a refrigerator with no usual stuffs, as found in the residential houses.

.....The vacant place had four cows and four calves. The cows and calves were found fastened to the nearby bush and trees. The trees and shrubs to which the cows were tied did not show any marks that would appear by regular fastening to the same place. The soil and the hay that were found on the grass was new and seemed like recently cut, spread and made bed, for the cows. The tent had a cow and a calf with a big casserole for mixing the fodder for the cows. In the site was freshly cut grass, and uprooted bushes that were cleared to make bed of sand and hay for the cows and calves. It looks like efforts had been made to present the place as if it is put to regular use.

7.....They stated that they were residing in the houses from 15.10.2017 to paint the houses. They stated that the house had Gas Stove and Cylinder, Refrigerator. They further stated that there were no Air conditioner installation holes in the houses. They further stated that (house no.II) the house had nothing and further the fan, light was not in working condition.

8. I further humbly state that both the houses/residential units were found not being occupied by any person except for the painting and white washing. The pictures show that the buildings are new and fresh and unoccupied. I further submit that the bureau (sic), fridge, cot, cupboards, pooja room, bathrooms do not look like it had been in use for quite a long time.

xxxxx

11. I further submit that when I inspected the premises, the Tashildhar was present with his officers. When I tried to ascertain the survey number in the Field measurement book and the sketch, the

Tashildhar explained that the present survey number of the premises had been amalgamated from combining various survey numbers. The Tashildhar had not produced the relevant records pertaining to the clubbing of the survey numbers. The head surveyor had submitted in writing that he had not submitted the same during inspection and further requested that he would submit the same."

6.1. The Court Commissioner also seems to have recorded the statements of nearby residents and, has also, videographed the site and placed a Compact Disk (CD) on record.

7. A consideration of the aforesaid facts and submissions would show that while the superstructure may have been built by respondent No.1, there is a dispute with regard to the underlying land and the land abutting the superstructure.

7.1. The superstructure, prima facie, is not in frequent use and respondent No.1 appears to have engaged labour force to get it painted etc., in the recent past.

7.2. The Tahsildar, has given a statement to the Court Commissioner that the present survey numbers of the subject property stand combined with various other survey numbers.

7.3. That there is a suit pending adjudication i.e. O.S.No.54 of 2017, which has been filed by the appellant No.1 has also emerged during the course of proceedings.

7.4. Furthermore, there is a dispute pending between the appellants and respondent No.1 as to whether or not the property referred to in O.S.No.54 of 2017 is the same as the property which is the subject matter of the writ petition.

8. Given these circumstances, we are of the view that while the learned Single Judge was right in his approach in directing the parties to access Civil Courts to have their rights adjudicated upon, he has gone on to observe, to our minds erroneously, in paragraph 8 of the impugned judgement that, since, respondent No.1 had proved "beyond reasonable doubt" that he was in physical possession of the suit property, it would be appropriate to direct the police to extend adequate protection to the first respondent and his family members to enable them to enjoy the subject property. The subject property, as indicated above, consists of not only the superstructure but also the land underneath and the land which abuts the superstructure.

9. According to the learned counsel for the appellants, the observations made by the learned Single Judge would adversely affect the interest of appellant No.1 in the pending suit and/or in proceedings that he and appellant No.2 may wish to initiate hereafter before a Civil Court.

10. It is in this background, that the appellants have preferred the instant appeal.

11. Thus, having regard to the aforesaid facts and circumstances, we are persuaded to dispose of the appeal with the following directions:

(i) The respondent No.1 will not create any third party interest pending adjudication of O.S.No.54 of 2017, either in the superstructure or in the land lying beneath or even the land abutting the superstructure.

(ii) Any observations made in the impugned order by the learned Single Judge which could be construed as conferring title on respondent No.1 with regard to the land beneath the superstructure or the land abutting the superstructure, would be disregarded by the Civil Court i.e., in O.S.No.54 of 2017 or any other proceedings that the appellants may institute in a Civil Court, albeit, in accordance with law.

(iii) The appellants, pending the adjudication in O.S.No.54 of 2017, will not have their cattle graze on the land abutting the superstructure.

(iv) Needless to say parties will be free to approach the Civil Court to establish their title and ownership to the land underneath the superstructure and that which abuts the superstructure.

(v) The concerned Court will also ensure that O.S.No.54 of 2017 is disposed of expeditiously, though not later than a period of one year.

12. Parties are left to bear their own costs. Consequently connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

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To

1. The Commissioner of Police,
Poonamallee High Road,
Vepery, Chennai - 600 015.
2. The Deputy Commissioner of Police,
L.B.Road, Adyar,
Chennai - 600 020.
3. The Assistant Commissioner of Police,
Neelankarai Range,
Neelankarai, Thiruvannamiyur,
Chennai - 600 041.

4. The Inspector of Police,
J-12 Kanathur Police Station,
ECR Road, Kanathur,
Muttukadu, Chennai - 603 112.

5. The District Munsif, Chengalpattu.

+1cc to Government Pleader Sr.No.81454

+1cc to M/s.Kaavya Silombanan Associates SR.No.81235

+2cc to Mr.S.Thangavel, Advocate SR.No.80739

W.A.No.1301 of 2017

GMR (CO)
sm:18.12.2017



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