

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.10.2017

CORAM

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

Crl.O.P No.10156 of 2010

A.E.Rathina Naicker Petitioner

VS.

1.State rep. by the
Deputy Commissioner of Police /
Superintendent of Police – Sub-Urban,
St. Thomas Mount, Chennai.

2.The Inspector of Police,
T-6, Avadi Police Station,
Avadi, Chennai.

3.S.V.Thirumalai ... Respondents

Prayer: Criminal Original Petition filed under Section 482 of Criminal Procedure Code, to restore status quo ante and restore possession to the Petitioner of the 8 cents of land in Survey No.148/6, Patta No.162, No.25, Paruthipattu Village, Poonamallee Taluk, Thiruvallur District, with all its survey stones, as it existed up to 27.03.2010, the date on which, the Respondents 1 and 2 herein with their men, took forceful possession of

the above said property, by dispossessing the Petitioner – A.E.Rathina

Naicker, and handed over possession of the same to the 3rd Respondent herein.

For Petitioner : Mr.R.Gunasekaran

For Respondents : Mr.B.Ramesh Babu (for R1 and R2)
Government Advocate (Crl. Side)
Mr.S.N.Ravichandran (for R3)

JUDGMENT

The petitioner has filed this Criminal Original Petition praying to restore status quo ante and restore possession to the Petitioner of the 8 cents of land in Survey No.148/6, Patta No.162, No.25, Paruthipattu Village, Poonamallee Taluk, Thiruvallur District.

2.The petitioner by invoking inherent powers of this Court under Section 482 Cr.P.C. seeking for restoration of possession to the petitioner in respect of 8 cents land situated in Paruthipatti Village belonging to him in S.No.148/6.

3.It is the case of the petitioner that the above 8 cents of land situated in S.No.148/6 belongs to him and the same was demarcated with survey stones. Whereas on 27.03.2010 the respondents 1 and 2, being

the police authorities forcibly disposed the petitioner and handed over the possession of the same to the 3rd respondent herein. Therefore he is before this Court praying for a direction to restore his possession.

4. According to the petitioner the property stated above, stood along as a larger extent of 78 cent when purchased by his grandfather. However some error crept in the revenue records as if the S.No.148/6 consist of only 70 cents, for which the petitioner or his predecessors cannot be faulted. Taking advantage of the said mistake one Mr.Arjunan Naicker, the adjacent land owner laid a false claim as if the 8 cents remaining in the survey number belonged to him. In the meantime one Mr.Tirumalai Naicker purchased the land belonging to Mr.Arjunan Naicker.

5. Therefore, the petitioner filed a suit in O.S.No.1819 of 1981 on the file of District Munsif, Poonamallee by arraying all of them, including the District Collector Thiruvallur as defendants. The said suit came to be decreed ex-parte, due to the non-appearance of the defendants. Thereupon execution petition was filed and the same was allowed by the Executing Court. In consequence, the revenue records pertaining to the 8 cent was mutated in the name of the petitioner and the boundaries were also fixed. In the meantime said Thirumalai Naicker and his sons attempted to commit criminal trespass on 05.03.2010, with the aid of

rowdy elements into the 8 cents. However, the police authorities remained inactive in hand in glove with the 3rd respondent and thereby the perpetual prayers before the police authorities remained heedless.

6. Being so, on 27.03.2010 the respondents 1 and 2 the police authorities all of a sudden forcibly dispossessed the petitioner from the above 8 cents and has illegally put the 3rd respondent in possession. Therefore the present Criminal Original Petition filed seeking for the relief mentioned above.

7. I heard Mr. R. Gunasekaran, learned counsel appearing for the petitioner, Mr. B. Ramesh Babu, learned Government Advocate (Criminal Side) appearing for the respondents 1 and 2 and Mr. S. N. Ravichandran, learned counsel appearing for the 3rd respondent and perused the entire records.

8. The learned counsel for the petitioner submitted that the petitioner is the absolute owner of the property and he is forcibly dispossessed by the respondents 1 and 2 for extraneous reasons. The respondents 1 and 2 being police authorities ought not have illegally taken the possession of the premise and handed over the same to the 3rd

respondent.

9.It was further contended that law being such that even an unauthorized occupant cannot be dispossessed without following due process of law, the petitioner is thrown out from possession. The same is warranted interference by this Court by restoring the possession of the petitioner, so as to undo the injustice caused to him.

10.In this context the learned counsel for the petitioner relied upon the decision of this Court in the matter of ***The Commissioner, Theni Allinagaram Municipality, Theni and another v. Mrs.Rajeswari*** reported in **2005 (3) CTC 683**, wherein the Tenant who failed to pay the rents to the Municipality (Land lord) was restored with possession on payment of cost.

11.The other Judgment reported in **2002 (3) Crimes 6** in the matter of ***Vijay Raj Jain v. The Secretary, Home Department & Others***, wherein it was held that:

“If a person is ejected from the disputed premises illegally sometimes with the police help, the possession should have been restored to the said person with the police help if

necessary”.

12.Per contra, the learned counsel for the 3rd respondent filed counter and submitted that the entire case of the petitioner is utter false and the above suit in O.S.No.1819 of 1981 and the decree obtained thereon was by fraud and suppression of material facts. The 3rd respondent is the bonafide purchaser of the property measuring an extent of 20 cents from Arjunan Naicker for a valid sale consideration.

13.It is the further case of the respondents that the above suit is filed by suppressing the earlier civil Court decree made in O.S.No.190 of 1969 dated 18.01.1974 on the file of the District Munsif Court, Poonamallee. The said suit was filed by the petitioner herein along with his sisters for the relief of declaration and recovery of possession in respect of the very same subject property of 8 cents which is in question. The said suit was dismissed by the trial Court on due appreciation of the fact that the 3rd respondent's vendor Arjunan Naicker had an absolute title over 8 cents and he was in peaceful possession. The appeal filed as against the same in A.S.No.116 of 1974 on the file of the learned Subordinate Court, Chenglepet was also dismissed on 01.08.1979 and therefore the same became final.

14. That apart after the purchase of the property by the 3rd petitioner the revenue records were duly mutated and stands in the name of the 3rd respondent. The petitioner has filed one another suit in O.S.No.238 of 2010 on the file of the Sub-Court, Poonamallee against the 3rd respondent for the relief of declaration and permanent injunction in respect of the suit property. The above said factual background would demonstrate that the petitioner was not at all in possession and he has no title over the property.

15. On perusal of the typed set of papers and Additional typed set of papers, this Court is able to see that the contention of the respondent requires due consideration for the following reasons that the very same petitioner has filed two earlier suits in O.S.No.190 of 1969 and O.S.No.238 of 2010 for the relief of recovery of possession in respect of the above 8 cents in question. It is obvious for this Court to say that in the suit in O.S.No.190 of 1969 the trial Court vide its judgment dated 18.01.1974 has held that the 3rd respondent's vendor Arjunan was in possession. That apart in the latter suit in O.S.No.238 of 2010, the petitioner by admitting the possession of the 3rd respondent has prayed for the relief of recovery of possession. The same is found in Page No.32

hereunder "declaring that the plaintiff is the lawful owner of the 'C' Schedule property and recovery of possession of 'C' Schedule of the suit property from the defendant and hand over the vacant possession to the plaintiff".

16. Besides that this Court is able to notice that in a Criminal Original Petition under Section 482 of Cr.P.C in CrI.O.P.No.356 of 2010 filed by the petitioner for Police Protection to his property, this Court by dismissing the earlier petition filed has held that "in respect of possession, the petitioner can very well move before the Civil Court by filling a Civil suit. Yet it is noticed by this Court that a Writ Petition in W.P.No.10340 of 2014 filed by the petitioner praying to direct the revenue authority to prepare an F.M.B sketch for 8 cents for the above disputed 8 cents stand dismissed in the light of the pendency of an Appeal Suit in A.S.No.23 of 2013 filed by the petitioner.

17. Therefore this Court is of the opinion that the issue on hand requires a proper adjudication of the civil rights of the parties herein. Admittedly there are civil litigations pending as on today between the parties herein.

18.For the foregoing reasons, this Court is of the view that this Criminal Original Petition is devoid of merits and hence the same is hereby dismissed.

04.10.2017

Note:Issue order copy on 09.10.2017.

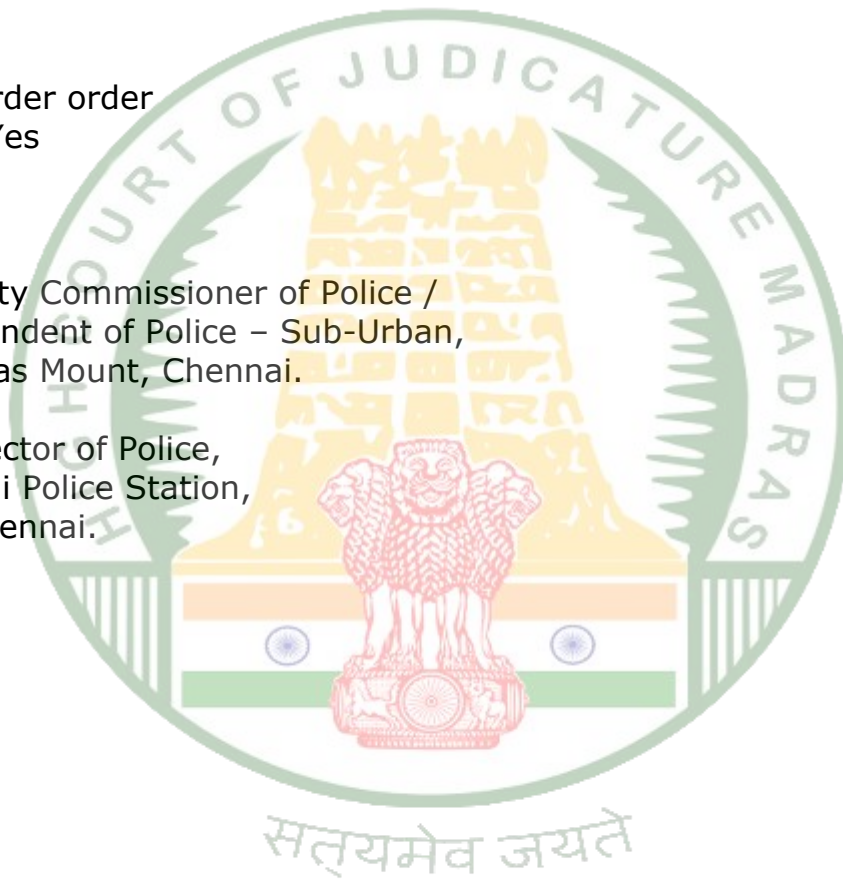
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Speaking order order

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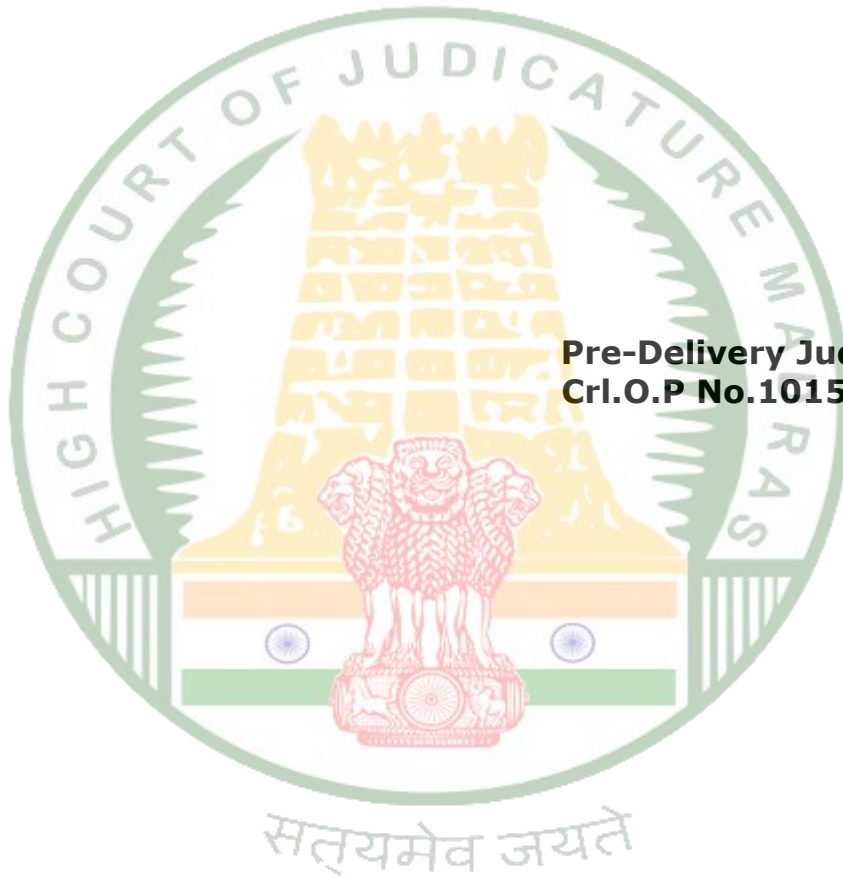
- 1.The Deputy Commissioner of Police /
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M.V.MURALIDARAN,J.

VS



**Pre-Delivery Judgment in
Crl.O.P No.10156 of 2010**

04.10.2017

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