



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 19.09.2017

CORAM:

WEB COPY

THE HONOURABLE MR.JUSTICE S.S.SUNDAR

CRL. O.P. (MD) (MD) No.12912 of 2015

- 1.Thankappan
- 2.Sheeja
- 3.Krishnamma
- 4.Santha
- 5.Lekshamma

... Petitioners

Vs.

1. The State of TamilNadu,
Represented by
The Superintendent of Police of Kanyakumari,
At Nagercoil,
Kanyakumari District.

2. The Sub-Inspector of Police,
Arumanai-629151,
Kanyakumari District.

3. C.Thangaraj
4. Ratha

... Respondents

PRAYER: Criminal Original Petition is filed under Section 482 of Cr.P.C., pleaded to direct the respondents 1 and 2 to give necessary police protection to the petitioners to fence their property of twenty-four cents of land with trees including 13.280 cents in Re-survey No.540/5 and 10.720 cents in Re-survey No.540/14, both of Vellamcode Village, Vilavancode Taluk, Kanyakumari District and possess and enjoy the same.

For Petitioners	: Mr.K.N.Thambi
For R-1 & R-2	: Mr.K.Anbarasan
	Government Advocate (Crl. Side)
For R-3 & R-4	: Mr.N.S.RamaKrishnadas

ORDER

This petition is filed for a direction to the respondents 1 and 2 to give police protection to the petitioner's property of 24 cents of land in Re-survey No.540/5 and 10.720 cents in Re-survey No.540/14, both of Vellamcode Village, Vilavancode Taluk, Kanyakumari District.



2(i). The petitioners 1 and 2 are the plaintiffs 1 and 2 and the petitioners 3 to 5 are the defendants in the suit in O.S.No.395 of 1997 on the file of the learned II Additional District Munsif, Kuzhithurai. It is stated by the petitioners that final decree was passed in the suit in O.S.No.395 of 1997 on 27.11.2013. The above referred properties were allotted to the petitioners as per the final decree. The petitioners further stated that the petitioners took possession of the properties as per the delivery list dated 15.10.2014 in E.P.Nos.84 and 85 of 2014 in O.S.No.395 of 1997.

2(ii). Though the petitioners are in possession and enjoyment of the property, as per the delivery list in E.P.Nos.84 and 85 of 2014 in O.S.No.395 of 1997, the petitioners state that the respondents 3 and 4, who claimed to have purchased the property from the defendants 2 and 4 in O.S.No.395 of 1997, are trying to interfere with the possession and enjoyment of the properties on the basis of collusive transactions between respondents 3 and 4 and the other defendants in the suit in O.S.No.395 of 1997. Despite the fact that the petitioners' possession and enjoyment is crystallised in the proceedings in O.S.No.395 of 1997, it is stated that the petitioners' possession is sought to be interfered with by the persons, who are only purchasers and they do not have any independent right to defeat the rights of the petitioners.

2(iii). The petitioners have also requested the respondents 1 and 2 to provide police protection and take action against the respondents 3 and 4 for trying to disturb the possession, despite the orders of the civil Court, in which, the vendors and the respondents 3 and 4 are the parties. Since the prayer sought for by the petitioner is not considered, the petitioners have approached this Court in the above original petition seeking police protection to the petitioners to fence their property, which was allotted to them.

2(iv). The contesting respondents, namely, the respondents 3 and 4 admit that their vendors have executed a sale deed in their favour during the pendency of the suit in O.S.No.395 of 1997 on the file of the learned II Additional District Munsif, Kuzhithurai. They also admit that their vendors are also parties in O.S.No.395 of 1997. The respondents 3 and 4 have no independent right, since their vendors are the parties in O.S.No.395 of 1997. Decree passed in O.S.No.395 of 1997 is binding and Section 52 of Transfer of Property Act gives protection to the parties to the litigation as against the purchasers. The sale deed or any transactions, transfer or alienation, pending the suit cannot defeat the rights of the petitioners, who got their allotment in the final decree in O.S.No.395 of 1997.

3(i). The learned counsel for the respondents 3 and 4 submitted that another suit has been filed challenging the decree in O.S.No.395 of 1997. It is stated that the third respondent has filed



a suit in O.S.No.76 of 2015 and the fourth respondent has filed another suit in O.S.No.131 of 2015 on the file of the District Munsif Court, Kuzhithurai for declaration and injunction.

3(ii). It was further stated that the right, title and interest is the subject matter of the suit filed by them. He also stated that a transfer petition was filed by the fourth respondent in Tr.O.P.No.299 of 2016 to transfer the suit in O.S.No.76 of 2015 pending before the I Additional District Munsif Court, Kuzhithurai to the Principal District Munsif Court, Kuzhithurai for joint trial of the suit along with O.S.No.131 of 2015.

4.The contention of the respondents 3 and 4 has no merit as the respondents 3 and 4 have no independent right. They are bound by the Judgment and decree and orders passed in the execution petitions filed by the petitioners in O.S.No.395 of 1997.

5.Having regard to the status that they are only *pendente lite* purchasers, the suits filed by them cannot be a reason to challenge the right conferred on the petitioners pursuant to the order passed in execution petitions for taking delivery of the properties. The proceedings in O.S.No.395 of 1997 and the delivery cannot be challenged by the respondents 3 and 4 unless the decree in O.S.No.395 of 1997 is set aside by any independent suit or proceedings. There is no scope for the respondents 3 and 4 to claim any independent right. In this case, no material is produced by the contesting respondents namely the respondents 3 and 4 to sustain their claim of title or enjoyment. In that view of the matter, the respondents 1 and 2 are bound to consider the petitioners' request and to give police protection to the petitioners to fence their properties.

6. In view of the above, this Criminal Original Petition is allowed and the respondents 1 and 2 are directed to give police protection to the petitioners to fence the petitioners' properties which was taken delivery by them as per the orders of the Court in Execution petitions in O.S.No.395 of 1997 on the file of the II Additional District Munsif, Kuzhithurai. **(*) In case, the petitioner's possession is interfered with or disturbed by the private respondents or by any one, respondents 1 and 2 shall provide police protection."**

(Amended as per order of this Hon'ble Court dated 21.09.2017)

Sd/-

Assistant Registrar (Writs)

/True Copy/

Sub Assistant Registrar



To

1. The Superintendent of Police of Kanyakumari,
At Nagercoil,
Kanyakumari District.

2. The Sub-Inspector of Police,
Arumanai-629151,
Kanyakumari District.

3. The Additional Public Prosecutior,
Madurai Bench of Madras High Court,
Madurai.

+ 1 CC TO Mr.K.N.THAMBI, ADVOCATE IN SR No. 80234

+ 1 CC TO Mr.N.S.RAMAKRISHNADOSS, ADVOCATE IN SR No. 79924

SM

TE/JC/SAR-I : 01/11/2017 : 4P/6C

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