



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Monday, the Seventh day of August Two Thousand and Seventeen

PRESENT

The Hon`ble Mr.Justice S.S.SUNDAR

WEB COPY

CRL MP (MD) No.6135 of 2017
IN
CRL OP (MD) No.12613 of 2016

1.NESAMONY

2.KAMALABAI

... PETITIONERS

Vs

1.RUSSEL RAJ

2.THE SUPERINTENDENT OF POLICE,
KANYAKUMARI DISTRICT AT NAGERCOIL

3 THE INSPECTOR OF POLICE,
KOLLEMCODE POLICE STATION
KANYAKUMARI DISTRICT.

... RESPONDENTS

Prayer in CRL MP (MD).No.6135 of 2017:-

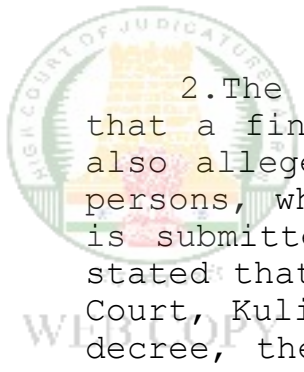
Criminal Miscellaneous Petition filed under section 482 of Criminal Procedure Code praying this Hon'ble Court to recall the order dated 26/07/2016 of this Court in the above Crl.O.P.(MD). No.12613 of 2016.

Prayer in CRL OP (MD). 12613/ 2016 :

Criminal Original Petition filed under section 482 of Criminal Procedure Code praying this Hon'ble Court to provide adequate police protection for fencing the patta land of the petitioner in R.S.NO.2/1C in Adaikakuzhi Village, Vilavancode Taluk, Kanyakumari District based on the representation of the petitioner dated 28.11.2015.

ORDER: This Petition coming on for hearing on this day, upon perusing the affidavit and material papers filed, and upon hearing the arguments of and of Mr.K.N.THAMBI, Advocate for the petitioner, and of Mr.K.ANBARASAN, Government Advocate (Criminal Side) on behalf of Respondents No.2 and 3, and of MR.S.SIVAKUMAR, Advocate for the Respondent No.1, this Court made the following Order:-

This petition is filed to recall the order passed by this Court in CRL.O.P(MD)No.12613 of 2016 dated 26.07.2016. The petitioners are not parties in CRL.O.P(MD)No.12613 of 2016. The first respondent in this petition is the petitioner in CRL.O.P(MD)No.12613 of 2016. The first petitioner is the 5th defendant in O.S.No.55 of 1977 on the file of the Sub Court, Kulithurai.



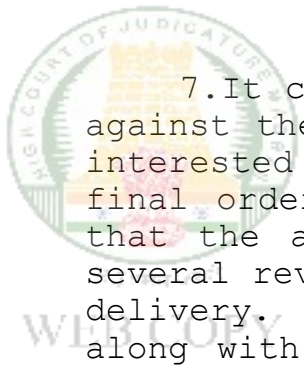
2.The second petitioner is not a party in the suit. It appears that a final decree was passed in the suit on 29.01.2014. It is also alleged that at the time of passing of final decree, several persons, who are parties in the proceedings are no more. Hence, it is submitted that the decree itself is a nullity. It is further stated that the appeal in A.S.No.120 of 2015 on the file of the Sub Court, Kulithurai is also pending. However on the basis of the final decree, the execution petition in E.P.No.66 of 2014 on the file of the learned Sub Court, Kulithurai was filed by the first respondent.

3.The first petitioner is the 162nd respondent in the execution petition. As against the order of delivery passed in the execution petition filed by the first respondent, it is stated that Civil Revision Petitions in C.R.P.(MD)No. 2382 of 2015 and C.R.P.(MD)Nos. 2378 to 2381 of 2015 were filed. It is also stated that after final hearing of all these Civil Revision Petitions, the matters were reserved for orders.

4.In the said circumstances, it appears that the first respondent herein, suppressing the proceedings in the first appeal and the Civil Revision Petitions filed the above Criminal Original Petition and obtained the order to give police protection to the first respondent to fence the property. Admittedly, the petitioners and other persons, who are interested in the proceedings are not parties in the Criminal Original Petition. The pendency of the first appeal and Civil Revision Petitions are not disclosed in the Criminal Original Petition.

5.It is contended by the learned counsel appearing for the first respondent that the petitioners are not the persons, who have preferred the Civil Revision Petitions referred to by the first petitioner. It is also his submissions that the final decree has become final as against the petitioners and that they have not filed any appeal challenging the final decree that was passed in O.S.No.55 of 1997.

6.The learned counsel for the petitioners submitted that the first respondent has not stated the particulars about the death of parties in the suit and the particulars relating to the submissions that the final decree itself is a nullity as several persons, who are parties were no more as on date of final decree. The learned counsel for the petitioners strongly relied upon the conduct of first respondent for obtaining orders behind their back suppressing material facts and the pendency of various proceedings. Having regard to the fact that the first respondent has obtained order affecting the interest of the several persons, who are interested and the first respondent has obtained the order behind the back of persons, who are interested, I am of the view that the petitioners are also interested in the subject matter. Of course petitioners have not filed any appeal as against the final decree that was passed in O.S.No.55 of 1997. However, pendency of appeal as against preliminary decree in the suit is relevant and the petitioners are entitled to raise their objections at every stage.



7.It cannot be stated that the final decree has become final as against the petitioners. In a suit for partition, the parties are interested in the subject matter till the matter is crystallized by final order binding on all the parties concerned. It is admitted that the appeal is pending as against the preliminary decree and several revision petitions have been filed, challenging the order of delivery. The petitioners are also necessary parties to be heard along with the others. It is also brought to the notice of this Court that the contempt petition filed by the first respondent was also closed by this Court by order dated 22.03.2017. It was also observed by this Court that this Court cannot give police protection to the first respondent in compliance with the order, dated 26.07.2016, since, the contesting parties were not made as parties in CRL.O.P.No.12613 of 2016. Hence, this Court is of the firm view that the order in CRL.O.P(MD)No.12613 of 2016, dated 26.07.2017 cannot be sustained especially, having regard to the material facts which are brought to the notice of this Court and the suppression of the facts while getting order. It is open to the first respondent to seek any relief, after impleading all the necessary parties not only the petitioners herein but also all the others, who are interested.

8.With the above observations, this Criminal Miscellaneous Petition is allowed and the order in Crl.O.P.No.12613 of 2016 dated 26.07.2016 is recalled.

sd/-

Assistant Registrar(RTI)

/ TRUE COPY /

Sub-Assistant Registrar

TO

- 1.THE SUPERINTENDENT OF POLICE,
KANYAKUMARI DISTRICT AT NAGERCOIL
- 2.THE INSPECTOR OF POLICE,
KOLLEMCODE POLICE STATION,
KANYAKUMARI DISTRICT.
- 3.THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT,MADURAI.

+1 cc to Mr.S.Sivakumar , Advocate in SR.No. 71002
+1 cc to Mr.K.N.Thambi , Advocate in SR.No. 70807

ORDER DATED :07/08/2017

RECALL THE ORDER

CRL MP(MD) No.6135 of 2017
IN

CRL OP(MD) No.12613 of 2016
GIVING DIRECTION ETC., AS
STATED WITHIN.