



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED:21.09.2017

CORAM:

THE HONOURABLE MR.JUSTICE S.S.SUNDAR

CRL.O.P.(MD)No.11881 of 2017

R. Vijayalakshmi

... Petitioners

-Vs-

1. The Superintendent of Police,
Trichy District, Tricy.

2. The Inspector of Police,
Pulivalam Police Station,
Trichy District.

3. S.Mohamed Bilal

4. Farook

5. Shiek Dawood

6. S.V.S. Subramaniam Chettiyar

... Respondents

PRAYER: Criminal Original petition filed under Section 482 of Criminal Procedure Code, to direct the 2nd respondent to provide adequate police protection to the petitioner and her children lives and limb based on her representation dated 31.08.2017.

For Petitioner : Mr.T. Leninkumar

For Respondents 1 & 2 : Mr.K.Anbarasan,
Government Advocate(Crl.Side).

For respondents 3 to 5 : Mr.M. Saravanan

O R D E R

This petition is filed for issuing a direction to the second respondent to provide adequate Police Protection to the petitioner and her children, especially to their life and limb.

2. The petitioner is the wife of one Raja, who is the son of one Raju. It is not in dispute that the petitioner's husband and her father-in-law are no more.

3. From the facts narrated in the petition and the documents furnished by the private respondents, this Court could see that the petitioner's father-in-law got the property under a deed of settlement. The petitioner herself admit that her father-in-law got the property by way of settlement deed, dated 28.09.1995 executed by the mother of the petitioner's father-in-law. It is contended by the contesting respondent that the father-in-law of



the petitioner died and that thereafter, the property devolved on the petitioner's husband and mother-in-law of the petitioner. It is to be noted that the petitioner's husband has also executed a release deed in favour of his mother on 07.07.2006. Though this release deed was executed in the year 2006 the same was not challenged by any one either by the petitioner's husband or by the petitioner herself, after the life time of her husband. It is in these circumstances the contesting respondent entered into a sale agreement on 12.02.2017 with the mother of the petitioner's husband, who is the mother-in-law of the petitioner in favour of the 5th respondent.

4. It is also stated by them that by sale deed dated 03.04.2017, the property was purchased by the third respondent, who is the son of the fifth respondent, from the mother-in-law of the petitioner. Ignoring the subsequent transaction, it appears that the petitioner has claimed ownership over the property only as the legal heir of her husband deceased Raja. The petitioner has also filed a suit for partition in O.S.No.23 of 2017 before the Sub Court, Trichy. Despite the fact that suit has been filed it appears that the petitioner has not obtained any interim order either to protect her possession or to claim exclusive ownership over the property. She herself admits that the suit filed by her is only for partition and his claim is also only as a co-owner. However, the fact is that the petitioner is in enjoyment of a portion of the property.

5. It is also admitted by the petitioner that the commercial portion is in the enjoyment of the tenants. Even the petitioner admit that it is only her mother-in-law, who was receiving rent. After the property was sold in favour of the 3rd respondent, it is only the purchaser viz., 3rd respondent is entitled to collect the rent. In such circumstances, it is evident that the petitioner has raised only a claim, in view of the pendency of the suit for partition. Prima facie, this Court is also of the view that she has no right, title or interest in any portion of the property as a legal heir of her deceased husband for the following reasons:-

(i) The property was acquired by the petitioner's father-in-law in the year 1995. Since the father in law of petitioner acquired the property by way of settlement deed from his mother, the property can never be the joint family property of the petitioner's father-in-law and the petitioner's husband.

(ii) Prima facie the claim of the petitioner that the property is an ancestral property is not sustainable unless the petitioner challenges the very gift deed dated 28.09.1995 stating that the gift deed dated 28.09.1995 was only a sham and nominal document and that the petitioner's father inherited the property along with his son as ancestral with the documents available, there is no



scope for claiming that the property in dispute is an ancestral property of her husband.

(iii) Secondly, even assuming that the property in dispute is ancestral the petitioner's husband has got no right in the property, as the same is released by the registered release deed alleged to have been executed on 07.07.2006. The release deed is not in dispute or questioned in any civil forum so as to ignore the legal implications of the registered release deed.

6. In the above circumstances, the petitioner's claim that she is entitled to the property cannot be accepted. However, in view of the fact that she is in possession in respect of a portion of the property otherwise than by due process of law her possession cannot be disturbed. Since the petitioner has no right to be in possession of the property viz., portion of building as pointed out earlier, though she is in physical possession and enjoyment of the portion of the property bearing Door. No.3/58 in S.No.456/2 Trichy main road, Thuraiyur, this Court is not in a position to give any legal status to her possession. A trespasser is entitled to protect his / her possession against everyone except true owner.

7. Since the possession of the petitioner at the time of entry is lawful she is entitled to protect her possession unless or otherwise she is vacated by following due process of law. Hence, private respondents cannot interfere with the right of the petitioner to be in possession in respect of that portion of the building. The petitioner can be given police protection for herself and children if there is any serious threat to the life and limb of the petitioner and her children in relation to the property dispute highlighted above.

8. It is open to the respondents to file a suit for recovery of possession as against the petitioner and seek appropriate relief with regard to the remaining portion of the building which was admittedly in the enjoyment of the petitioner's mother-in-law. The petitioner shall not claim any right over the property either as co-owner or as a person who is entitled to claim ownership over the property. However, the Civil Court may decide the issues independently as this Court at this stage is not competent and the observations made above are only for the purpose of this petition.

9. With the above direction, the Criminal Original Petition is disposed of.

Sd/-

Assistant Registrar



To

1. The Superintendent of Police,
Trichy District, Trichy.

2. The Inspector of Police,
Pulivalam Police Station,
Trichy District.

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

+ 1 CC TO MR.T. Leninkumar, ADVOCATE IN SR No.80269

+ 1 CC TO MR.M. Saravanan, ADVOCATE IN SR No.80503

trp

MK/KK/SAR-4/05.10.2017/4P/6C

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