



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 28.09.2017

CORAM:

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

Crl.O.P.(MD)No.12926 of 2017

R.Samaya Kaveri

.... Petitioner

Vs.

1.The Superintendent of Police,
O/o Superintendent of Police,
Ramanathapuram,
Ramanathapuram District.

2.The Inspector of Police,
Thangachimadam Police Station,
Ramanathapuram District.

3.O.S.K.David

.... Respondents

Prayer: Petition is filed under Section 482 of Cr.P.C., to direct the respondents 1 and 2 to provide adequate police protection to the petitioner's life and property on the basis of her complaint, dated 24.09.2017.

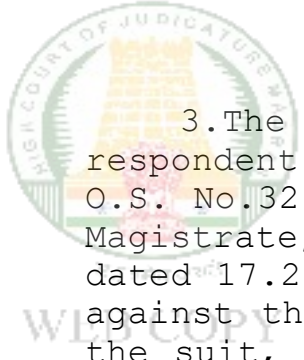
For petitioner :Mr.S.Mohamed Kadhar

For respondents :Mr.K.Anbarasan
Govt. Advocate (crl.side)
(for R1 and R2)
Mr.T.Pon Ramkumar (for R3)

O R D E R

This petition has been filed to direct the respondents 1 and 2 not to interfere in civil dispute by extending their support to the third respondent to take forcible possession of the properties measuring an extent of 2.50 Acres in S.No.693/20 of Thangachimadam Village, Rameswaram Taluk, Ramnad District by considering the petition dated 24.09.2017, in the absence of any decree for possession in favour of the third respondent.

2.Mr.K.Anbarasan, learned Government Advocate (crl.side) takes notice for the respondents 1 and 2 and Mr.T.Pon Ramkumar, learned

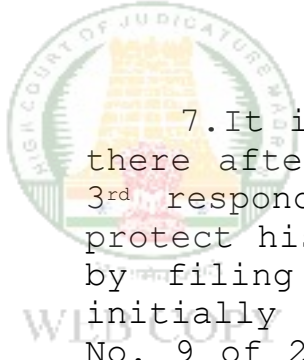


3.The learned counsel for the petitioner states that the 3rd respondent herein has filed a suit for permanent injunction in O.S. No.32 of 2008 before the learned District Munsif-cum-Judicial Magistrate, Rameswaram. The said Court, by judgement and decree dated 17.2.2010 allowed the suit in O.S.No.32 of 2008. Aggrieved against the above, the petitioner herein who is the defendant in the suit, has filed an appeal in A.S. No. 9 of 2012 on the file of the learned Principal Subordinate Judge, Ramnad and the same was allowed by setting aside the decree and judgment in O.S.No.32 of 2008 dated 17.02.2010. Aggrieved against the same, the 3rd respondent herein filed a second appeal before this Court in S.A.(MD) no 317 of 2015 and the same was dismissed on 20.9.2017. on 24.9.2017 the petitioner's appointed workers went to the above said property for uprooting the seemai Karuvelam trees and for pelting stones to make fence around her landed property to avoid anti social elements enter into her property. The 3rd respondent and his son put up the hut and residing permanently in the petitioner's property and they prevented the petitioner. Hence, the petitioner has filed the present petition for the above prayer.

4.I have heard the learned Government Advocate (Crl. Side) appearing for the respondents 1 and 2 and reports that issue involves civil in nature and the petitioner has to approach purely contempt of civil Court.

5.The learned counsel for the 3rd respondent contended that the subject matter of land is a Government Puramboke land and it was occupied by one A.M. Raman somewhere in the year 1975, and that he sold the property to M.A. Victor Boopala Royar by virtue of two sale deeds dated 23.04.1975 and 08.10.1975, and the purchaser sold it to one S. Karuppiyah Konar through a registered sale deed dated 07.02.1985. From the said S. Karuppiyah Konar, the petitioner's father purchased the property by way of a sale deed dated 21.10.1988.

6.The learned counsel for the 3rd respondent submits that the petitioner's father executed two sale deeds dated 07.11.1990 for a valid sale consideration to the father of the 3rd respondent, and the 3rd respondent's father was in possession and enjoyment till his death, thereafter, the 3rd respondent is continued to be in possession and enjoyment excluding the petitioner from the year 1990. It is his further submission that the petitioner constructed a small house and also got an E.B. connection, and in support of his possession, he has referred the B memo receipts, electricity bills and house tax payment receipts. The learned counsel has submitted that the 3rd respondent has been enjoying the income from the coconut trees for the past 27 years to the knowledge of the 3rd respondent.

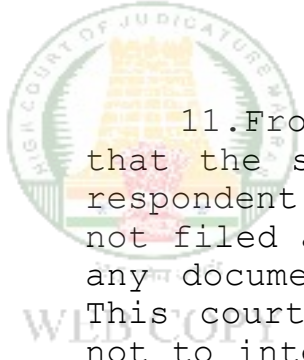


7. It is the further contention of the 3rd respondent that even there after an attempt was made by the petitioner to disturb the 3rd respondent's possession in the year 2008, and in order to protect his possession, he approached the jurisdiction civil court by filing a suit in O.S. No. 32 of 2008 which was decreed initially and reversed in appeal filed by the petitioner in A.S. No. 9 of 2012. It is a matter of record that the 3rd respondent has filed S.A. (MD) No. 317 of 2015 before this Hon'ble court and obtained an order of interim injunction and also filed direction petitions to prevent the police from interfering with the civil dispute. The learned counsel has submitted that the second appeal was dismissed on 20.09.2017, but, the copy was not made ready. The learned counsel for the petitioner submits the petitioner herein has filed Crl.O.P. (MD) No 4829 of 2017 seeking police protection for life and property and the same was dismissed that already the 2nd respondent has closed the complaint on 10.4.2017 with liberty to the petitioner to work out her remedy in the manner known to law. The learned counsel for the petitioner submits again petitioner has approached for the same relief.

8. The learned counsel for the 3rd respondent further submits that in earlier occasion this court by order dated 15.04.2015 in Crl.O.P No.6728 of 2015 directed the 2nd respondent not to harass the 3rd respondent. Even thereafter the petitioner herein on collusion with the officials of the 2nd respondent tried to disposes the petitioner illegally. Hence he filed a writ petition in W.P.(MD) No.10185 of 2017 before this Court seeking direction to the respondents not to interfere in the civil dispute and harass the 3rd respondent. By order dated 05.6.2017 this Court was pleased to pass an elaborate order by recording an undertaking given by the respondent police. In the meantime taking advantage of dismissal of second appeal, the petitioner has attempting to dispossess the 3rd respondent with the help of the 2nd respondent police. Therefore, the 3rd respondent prayed for dismissal of this Criminal Original Petition.

9. I have heard Mr.S.Mohamed Kadhar, learned counsel for petitioner, Mr.K.Anbarasan, learned Government Advocate (crl.side) appearing for respondents 1 and 2 and Mr.T.Pon Ramkumar, learned counsel for third respondent and perused all the relevant records.

10. Admittedly, the subject matter of property is a Government promboke which was occupied by one A.M. Raman who sold the property under two sale deeds to one M.A. Victor Boopala Royar, from whom, the petitioner's vendor S. Karuppiyah Konar had purchased the property. Ultimately, the petitioner and the 3rd respondent are trying to trace their source of title from the initial occupier namely A.M. Raman. The fact that petitioner's father executed two unregistered sale deeds on 07.11.1990 in the name of the 3rd respondent's father, whereupon, the 3rd respondent has been in possession and enjoyment for all these years are not in serious dispute.



11. From the materials available on record, it could be seen that the suit was filed only for permanent injunction by the 3rd respondent against the petitioner. Admittedly, the petitioner has not filed any suit for delivery of possession and has not produced any documents to prove his possession in O.S. No. 32 of 2008. This court in two occasions gave direction to the 2nd respondent not to interfere in civil disputes in Crl.O.P No.6728 of 2015 and W.P.(MD) No 10185 of 2017. That being the position, it is impermissible for the police to support the petitioner to take possession without the process of law. The learned counsel for the 3rd respondent has cited the judgment of the Hon'ble Supreme Court in Bondar Singh case reported in 2003 (4) SCC 161 in support of his submission that an unregistered sale deeds can be used for the purpose of proving his possession. He has also cited the decision of this Court in R. Mala case reported in 2007 (3) L.W. 68 to the effect that the police have no power to interfere in civil disputes. I find some force in the submission made by the counsel for the 3rd respondent.

12. The learned counsel for the 3rd respondent bring attention of the order passed in order dated 21.4.2017 in Crl.O.P.(MD) No 4829 of 2017 held as follows:-

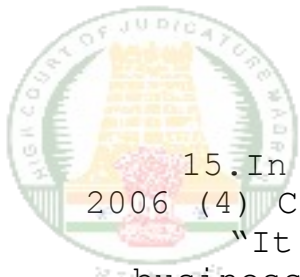
2. It is represented by the Learned Government Advocate (Crl Side) that on the complaint given by the petitioner, a petition enquiry has been conducted and the same was closed on 10.4.2017. a copy of the closure report has been furnished to the learned counsel for the petitioner across the bar.

3. Recording the same, this petition is closed with liberty to the petitioner to work out her remedy in the manner known to law.

13. It is also brought to my knowledge, even averments made in para no 5 of the petition it is clearly stated as follows :

---- that 3rd respondent and his son put up hut and residing permanently in the petitioner's property and they prevented the petitioner's men from doing so.

14. It is well settled proposition of law that right to property is not a fundamental right. Notwithstanding the merits and demerits of the claim made by the petitioner and the 3rd respondent, it is not fair on the part of the 2nd respondent police to support the petitioner to interfere with or to take forcible possession of the subject matter property from the hands of the 3rd respondent. Though there is no legal impediment for the true owner to take possession by following the due process of law, no person is entitled to approach the police to take possession of the immovable property without an order from the competent civil court.



15. In Indian Oil Corporation Vs. NEPC India Ltd., reported in 2006 (4) CTC 60, the Apex Court held as follows:-

"It is necessary to take notice of a growing tendency in business circles to convert purely civil disputes into criminal cases. This is obviously on account of a prevalent impression that civil law remedies are time consuming and do not adequately protect the interests of lenders/creditors."

16. This court, in Subhiksha Trading Services Ltd., case reported in 2010 (4) CTC 324 has followed the said legal position.

17. In the light of the above discussion, this court is of the view that the police protection for the property is dismissed in the absence of any decree for recovery of possession in favour of the petitioner. Accordingly, this petition stands dismissed.

Sd/-

Vacation Officer/
Assistant Registrar

/True Copy/

Sub Assistant Registrar.

To

1. The Superintendent of Police,
O/o Superintendent of Police,
Ramanathapuram,
Ramanathapuram District.
2. The Inspector of Police,
Thangachimadam Police Station,
Ramanathapuram District.
3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+1CC to Mr.S.Mohamed Kadhar, Advocate, SR.No. 81354

+1CC to Mr.T.Pon Ramkumar, Advocate, SR.No.81346

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28.09.2017

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