



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 11.07.2017

CORAM:

THE HONOURABLE MR.JUSTICE **S.S.SUNDAR**

W.P. (MD) No.12252 of 2017

WEB COPY

A.Palanivelamsamy

... Petitioner

Vs.

1. The Inspector General of Police,
Madurai.
2. The Deputy Inspector General of Police,
Palayamkottai,
Tirunelveli District.
3. The Superintendent of Police,
Tirunelveli,
Tirunelveli District.
4. The Inspector of Police,
Puliyarai Police Station,
Tirunelveli District.

... Respondents

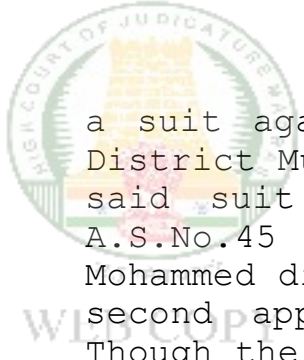
Prayer: Writ Petition filed under Article 226 of the Constitution of India praying for the issuance of a Writ of Mandamus, to direct respondents 1 to 3 to take appropriate action against the 4th respondent on the basis of the representation given by the petitioner dated 25.01.2017 and give adequate police protection to the petitioner and his family members for enjoying his property.

For Petitioner : Mr.G.Thiruvartselvan
For Respondent : Mr.A.Muthukaruppan,
Additional Government Pleader.

O R D E R

This petition is filed seeking for a mandamus to direct the respondents 1 to 3 to take appropriate action against the fourth respondent on the basis of the representation given by the petitioner, dated 25.01.2017 and to give adequate police protection to the petitioner and his family members for enjoying his property.

2.The petitioner submits that he purchased the property along with his wife in the year 1972 and that he is in possession of the property. He further submits that one Divan Mohammed filed



a suit against the petitioner in O.S.No.173 of 2004 before the District Munsif Court, Shenkottai for permanent injunction and the said suit was dismissed. Even the appeal filed by him in A.S.No.45 of 2007, was dismissed and thereafter, the said Divan Mohammed died in the year 2008 and his legal heirs have prepared a second appeal before this Court in S.A.(MD) No.176 of 2015. Though the dispute is settled in the Civil Suit, the relatives and friends of said Divan Mohammed namely Umar, Abdul Saleem and his family members are continuously disturbing his peaceful possession by way of trespass into the petitioner's land and by causing damages to the properties. It was therefore the petitioner submitted that he lodged a complaint before the fourth respondent and the fourth respondent registered a case in Crime No.5 of 2014 for alleged offences under Sections 147, 148, 447, 294(b) and 506 (ii) of IPC against six named accused. Even after registration of criminal case, the accused in the first complaint did not change their attitude and therefore there was subsequent complaint. The same petitioner also filed a direction petition before this Court in CrI.O.P.(MD) No.3798 of 2014 and this Court passed an order on 03.03.2014, giving direction to the police to give protection to the petitioner to the extent of life and limb.

3.The petitioner further submitted that the fourth respondent police despite the direction of this Court in the earlier criminal original petition have not taken any action and as a result, the petitioner is put to harassment by the named individuals, even though they have no semblance of right over the property. Though there are several allegations in the affidavit filed in support of this petition, this Court is able to see that the dispute is regarding the property which is allegedly owned by the petitioner's father and his wife. The petitioner is litigating from 2004, from his own statement. Even according to him, though he succeeded in the suit filed by a third party and his possession is questioned and there is constant attempt to dispossess him by strangers. Since for the past ten years, there is threat of dispossession it is stated that the petitioner is not in a position to enjoy the property. A prudent man should have gone to Civil Court to establish his right, title and interest over the property in dispute without resorting to the remedy which is now sought by the petitioner. The petitioner has filed several criminal complaints and has approached the police officials for protection after disclosing that his possession is being disturbed by the named individuals under a false claim of title.

4.It is not in dispute that the Civil Court alone is competent to decide the title or possession of the petitioner or any one. The question of possession or title should be decided after framing necessary issues and letting in evidence. The Civil Court is competent to grant interim injunction if the petitioner proves that he is in lawful possession of the property in dispute. Even if the Civil Court order is not obeyed the



petitioner is also entitled to seek appropriate remedy for police protection before the Civil Court itself. In such circumstances, especially when there are contentious issues, the petitioner should only approach the Civil Court. Instead the petitioner has made representations / criminal complaints which are pending. Even without impleading the parties concerned, the present Writ Petition has been filed before this Court seeking action against the fourth respondent and for giving adequate police protection to the petitioner and his family members for enjoying his property.

5.No prudent man will try to establish his right by initiating proceedings under Criminal Procedure Code without resorting to the Civil Court for getting his right declared.

6.The learned Additional Government Pleader appearing for the respondents submitted that there are several criminal cases pending and that the petitioner has not even produced the relevant document which were sought by the police in connection with the enquiry.

7.In such circumstances, this Court is able to find that the petitioner does not deserve to get any order from this Court that too in the absence of necessary party. Hence, this Writ Petition is dismissed with cost of Rs.2,000/- (Rupees two thousand only) payable to the Chief Justice Relief Fund.

Sd/-

Assistant Registrar (Records)

/True copy/

Sub Assistant Registrar

To

1. The Inspector General of Police,
Madurai.
2. The Deputy Inspector General of Police,
Palayamkottai,
Tirunelveli District.
3. The Superintendent of Police,
Tirunelveli,
Tirunelveli District.
4. The Inspector of Police,
Puliyarai Police Station,
Tirunelveli District.

Copy To:

<https://hcservices.hc.madras.gov.in/sermes> (Administration),
Maduri Bench of Madras high Court, Madurai.



2. The Section Officer, Accounts Section,
Madurai Bench of Madras High Court, Madurai.

+1 CC to M/s.G.THIRUVARUTSELVAN, Advocate, SR No. 64796.

+1 CC to THE SPECIAL GOVERNMENT PLEADER, SR No. 64987

SRM/IA

PSM/SV/SAR2/24.07.2017/4P/9C

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