



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 20.04.2017

CORAM:

THE HONOURABLE MR.JUSTICE **P.N.PRAKASH**

W.P. (MD) No.22810 of 2016

and

WMP (MD) No.16325 of 2016

Panchavarnam

: Petitioner

-Vs-

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

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

3. The Sub Inspector of Police,
Thirupulani Police Station,
Ramanathapuram District.

4.Vairamuthu

5.Muthuchamy

6.Sanjay Gandhi

7.Vairavan @ Ezhian

8.Selvi

9.Palani

10.Nadhiya

11.Logeswari

12.Megala

13.Minor.Ranjith Kumar

: Respondents

(Rep. by his mother Palani)

PRAYER: Writ Petition is filed Article 226 of the Constitution of India to issue a WRIT OF MANDAMUS directing the respondents 1 to 3 to give police protection to the life and limb of the petitioner and her family members for the beneficial enjoyment of the properties in survey number 24/10, 25/1A2, 25/1D3B, 22/8, 25/4B1B, 24/4B2B, 52/7, 52/5B, 28/1B, Vannankundu Village, Keelakarai Taluk, Ramanathapuram District and the property in Survey No.611/1, Chakkrakottai Village, Ramanathapuram District allotted to the petitioner under the final decree dated 13.12.2010 passed in <https://hoseffices2004.in/hoseffices2004> in O.S.No.407 of 1988 on the file of the District Munsif, Ramanathapuram.



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For Petitioner
For Respondents

: Mr.T.R.Jeyapalam
:Mr.T.S.Mohammed Mohideen
Additional Government Pleader
for R.1 to R.3
:Mr.P.Subramanian
for R.6
:Mr.M.V.Venkataseshan
for R.7 to R.12

O R D E R

It is the case of the petitioner that he filed a suit in O.S.No.407 of 1988 for partition, in which a preliminary decree was passed on 28.10.1996. Thereafter a Commissioner was appointed and final decree was passed on 13.12.2010. The petitioner filed E.P.No.36 of 2011 in O.S.No.407 of 1988, in which delivery of possession was ordered on 11.06.2014. Challenging which, one Palani @ Palaniammal (9th respondent herein) and her legal heirs who are also respondents in this writ petition filed C.R.P.(MD) No.914 of 2014, which was dismissed by this Court on 04.12.2014. It may be relevant to extract the operative portion of the order, which was as follows:

" 4. It is a settled position that the Execution Court cannot go beyond the terms of the decree. In the case on hand, the final decree was passed pursuant to the preliminary decree passed by the trial Court. Admittedly, the revision petitioners have not challenged neither the preliminary decree nor the final decree passed by the trial Court. Without filing an appeal as against the final decree passed in the suit, the revision petitioners cannot contend before the Execution Court that the allotment of share by the trial Court is improper. If the parties are really aggrieved over the allotment of shares in the final decree, they should have filed an appeal against the final decree. But, the revision petitioners are contending that the allotment of shares by the trial Court in the final decree proceedings are improper which cannot be allowed to stand.

5. In these circumstances, the order of the Execution Court in ordering delivery is just and proper. I do not find any reason to interfere with the order passed by the Execution Court."

In the meantime the petitioner took the delivery of the property in question through the bailiff dated 11.06.2014.

2. It is the grievance of the petitioner that even after taking possession of the property, the respondents 4 to 13 are preventing the petitioner from enjoying the property. In this case, the petitioner gave a representation for police protection and has come forward with this Writ Petition for mandamus.



3. Heard the learned Counsel appearing for the petitioner, the learned Additional Government Pleader appearing for the respondents 1 to 3 and the learned Counsel appearing for the respondents 6 and 7 to 12.

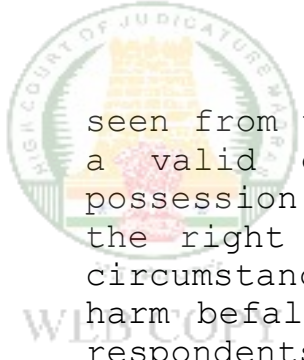
4. On instructions, the learned Additional Government Pleader submitted that the representation for police protection given by the petitioner to Thirupulani Police Station has been closed on 14.09.2016 on the ground that the matter is essentially civil in nature.

5. Per contra, the learned Counsel for the contesting respondents submitted that when according to the petitioner he has taken possession, there is no necessity for giving police protection.

6. The learned Counsel for the petitioner placed strong reliance on the decision of the Honourable Supreme Court in P.R.Murlidharan and Others Vs. Swami Dharmananda Theertha Padar and Others reported in (2006)4 Supreme Court Cases 501, wherein the Honourable Supreme Court has held as follows:

"17. A Writ petition under the guise of seeking a writ of mandamus directing the police authorities to give protection to a writ petitioner, cannot be made a forum for adjudicating on civil rights. It is one thing to approach the High Court, for issuance of such a writ on a plea that a particular party has not obeyed a decree or an order of injunction passed in favour of the writ petitioner, was deliberately flouting that decree or order and in spite of the petitioner applying for it, or that the police authorities are not giving him the needed protection in terms of the decree or order passed by a court with jurisdiction. But, it is quite another thing to seek a writ of mandamus directing protection in respect of property, status or right which remains to be adjudicated upon and when such an adjudication can only be got done in a properly instituted civil suit. It would be an abuse of process for a writ petitioner to approach the High Court under Article 226 of the Constitution seeking a writ of mandamus directing the police authorities to protect his claimed possession of a property without first establishing his possession in an appropriate civil court. The temptation to grant relief in cases of this nature should be resisted by the High Court. The wide jurisdiction under Article 226 of the Constitution would remain effective and meaningful only when it is exercised prudently and in appropriate situations."

7. On the considered opinion of this Court, it is not necessary to once again send the petitioner back to the civil Court praying for injunction against the respondents 4 to 13. As



seen from the above cited judgment, when a petitioner has obtained a valid decree in a partition suit and has also obtained possession through Court, it is the duty of the police to protect the right of the petitioner to enjoy his property. Under such circumstances, the second respondent is directed to ensure that no harm befalls the petitioner and there is no obstruction from the respondents 4 to 13 and ensure that the police protection is given to the petitioner for him to enjoy his property lawfully.

8. With the above observations, this Writ Petition is ordered accordingly.

Sd/-
Assistant Registrar(C)

/True Copy/

Sub Assistant Registrar

To

1. The Superintendent of Police,
Ramanathapuram District,
Ramanathapuram.
2. The Inspector of Police,
Thirupulani Police Station,
Ramanathapuram District.
3. The Sub Inspector of Police,
Thirupulani Police Station,
Ramanathapuram District.

+1cc to Special Government Pleader, SR.No.53441
+1cc to M/S.T.R.JEYAPALAM, Advocate SR.No. 53410
+1cc to M/S.V.RAGHAVACHARI, Advocate SR.No. 53350
+1cc to M/S.M.V.VENKATASESHAN, Advocate SR.No. 53258

W.P. (MD) No.22810 of 2016
Dated: 20.04.2017

JM/JC/02.05.2017/4P/8C