

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 29.10.2018

PRONOUNCED ON : 15.11.2018

CORAM :

THE HONOURABLE MR.JUSTICE P.N. PRAKASH

Criminal Original Petition No.3916 of 2018

M/s Raja Holdings
Rep. by its Managing Partner
R.V.Subramaniyam
No.69, Town Higher Secondary School Road
Kumbakonam 612 001.

... Petitioner

Vs.

1 The State
Rep by Inspector of Police
Thyagaraya Nagar Police Station
T.Nagar
Chennai 600 017

2 The Inspector of Police
R4, Soundarapandianar Angadi Police Station
Thyagaraya Nagar Police Station
Chennai 600 017

3 Dr.D.Jayashree

4 D.Sriranga

5 D.Srikrishna

... Respondents

Prayer:- Petition filed under Section 482 Cr.P.C., to direct the 1st and 2nd respondents herein to give adequate police protection forthwith to the petitioner to enable the petitioner to take possession of the property situate at No.155 G.N.Chetty Road, T.Nagar, Chennai 600 017.

For Petitioner	:	Mr.AR.L.Sundaresan Senior Counsel for Mrs.AL.Ganthimathi
For R1 and R2	:	Mrs.M.Prabhavathi Additional Public Prosecutor
For R5	:	Mr.Nithyaesh Natraj

ORDER

This petition has been filed to direct the respondents 1 and 2 herein to give adequate police protection forthwith to the petitioner to enable the petitioner to take possession of the property situated at No.155 G.N.Chetty Road, T.Nagar, Chennai 600 017.

2. For the sake of convenience, the parties will be referred to by their name.

3. The property in question measuring around 6 grounds and 834 sq.ft in G.N.Chetty Road, T.Nagar, ["the property" for brevity] belongs to one Dr.Desikacharulu. Desikacharulu received financial assistance to a tune of Rs.18.50 crores from Raja Holdings and Rs.1.50 crores from one Kalpana and executed a mortgage deed dated 09.11.2012 in their favour and the document was registered in the Office of the Sub Registrar, T.Nagar. Since Desikacharulu was in need of more funds, Raja Holdings and Kalpana advanced further sums and a second mortgage of the said property was done. Thereafter, Desikacharulu and his wife Jayashree filed a suit in C.S.No.395 of 2014 in the High Court for a declaration that the deeds of mortgages and the deeds of guarantee were illegal, they having been obtained under undue influence and coercion. They also filed interlocutory applications for

orders of injunction to restrain Raja Holdings and Kalpana from interfering with their peaceful possession and enjoyment of the property. Initially, interim orders were granted in O.A.Nos.473 to 476 of 2014 in C.S.No.395 of 2014, which were vacated on 07.09.2017. In the mean time, Desikacharulu died some time in the year 2015 leaving behind his wife Jayashree, sons Sriranga and Srikrishna as his legal heirs. Aggrieved by the order dated 07.09.2017 of the learned single Judge, Jayashree and other heirs took the matter on appeal in O.S.A.No.259 of 2017 and a Division Bench of this Court, vide judgment dated 22.09.2017, disposed of the appeal on the following terms, agreed to by both parties.

"i) The appellants will deposit a sum of Rs.15 Crores (Rupees Fifteen Crores only), towards principal, on or before 01.12.2017, to the credit of the suit.

ii) The appellants will also deposit a further sum of Rs.7 Crores (Rupees Seven Crores only), towards interest on or before 01.01.2018, to the credit of the suit.

iii) The appellants will not alienate or create any third party interest in the suit property, pending disposal of the suit.

iv) In case, the appellants fail to discharge the obligations reflected in Clauses (i) & (ii) above, respondent Nos.1, 2 and 5, will have the right to sell the suit property. This, though, will not prevent the appellants from redeeming the mortgage.

v) If the appellants fulfill the obligations reflected in Clauses (i) and (ii) above, respondent Nos.1,2 and 5 will not sell, transfer or alienate or, create third party interest in the suit property, pending disposal of the suit.

4.1. The said terms of agreement are taken on record by us.

5. To be noted, the suit property stand mortgaged with respondents Nos.1, 2 and 5. Given the precarious position, the parties are put in financially, the suit, according to us, needs to be expedited. The suit was instituted in 2014. It is still at the stage of completion of proceedings.

8. The appellants, in the meanwhile, will have the right to interface with prospective buyers and remain in possession, subject to them discharging their obligations as provided in clause (i) and (ii) above.

9. We make it clear that the aforesaid agreement arrived at between the appellants and the contesting parties is a protem measure, which in no way would prejudice the rights and contentions of the parties in the pending suit."

The expression "appellants" means Jayashree and her sons and the expression

"respondents 1, 2 and 5" means Raja Holdings, Raja and Kalpana respectively.

4. Since Jayashree and party did not deposit Rs.22 crores (Rs.15 crores + Rs.7 crores) as undertaken by them, Raja Holdings gave a representation dated 29.01.2018 to the police seeking police protection for taking physical possession of the property and has thereafter, filed the present petition with the above prayer.

5. Mr.AR.L.Sundaresan, learned Senior Counsel appearing for Raja Holdings placed strong reliance on clauses 13 and 16 of the Mortgage Deed dated 09.11.2012 and submitted that the mortgagee has a right to bring the property to sale without the intervention of the Court under Section 69 of the Transfer of Property Act by appointing a Receiver to take possession of the property, to effect which, police ought to give protection. To appreciate this contention, it may be necessary to extract the relevant portion of clause 16 of the Mortgage Deed:

"16. It is further agreed that in the vent of the mortgagee exercising the right of private sales as aforesaid, either or all the mortgagees may execute and register the necessary documents like the sale deeds and such other documents as are necessary in favour of the purchasers at the expense of the mortgagor herein and that the mortgagor or any one claiming through or under them are hereby precluded from questioning any such transaction. The mortgagor further agree that the mortgagee shall be entitled to exercise any or all the powers conferred under Section 69 of the Transfer of Property Act for the appointment of a Receiver. It is hereby mutually agreed that in the event of this happening, Shri R.V.Subramaniam, Managing Partner of Raja Holdings Financiers and Merchants, No.69, Town High School Road, Kumbakonam is hereby nominated and designated as the RECEIVER to take possession of the mortgaged property together with all the movables if any standing thereon and belonging to the mortgagor."

6. He further contended that by virtue of the directions of the Division Bench

in paragraph 8 of the order dated 22.09.2017 (extracted above), Jayashree and party can remain in possession subject to them discharging their obligation by depositing Rs.22 crores and on their failure to deposit the amount, they have no right to continue in possession of the property and that they should be dispossessed by the Receiver, for which, police aid is a *sine qua non*.

7. Learned Senior Counsel also drew parallel by quoting Section 14 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 ("the SARFAESI Act" for brevity) and equating with Section 69-A of the Transfer of Property Act.

8. Mr.AR.L.Sundaresan placed strong reliance on the following judgments of the Supreme Court, wherein, the Supreme Court has directed eviction of persons in possession of the properties by police force.

1. Pushkar Singh vs. Ansuiya [(2006) 6 SCC 799]
2. Maragathammal vs. Kamalammal [(2006) 8 SCC 152]
3. Ram Prakash Sharma vs. Bulbul Birla (dead) by LRs. and others [(2011) 6 SCC 449]
4. P.R.Murlidharan and others vs. Swami Dharmananda Theertha Padar and others [(2006) 4 SCC 501].

9. Refuting his submissions, Mr.Nithyaesh Natraj, learned counsel for the fifth respondent, contended that admittedly Jayashree and party are in possession of the property and they are contesting the very validity of the mortgage in C.S.No.395 of

2014. Just because their injunction applications have been dismissed by the Court, it

will not give a new right to Raja Holdings to dispossess them with police aid. He placed strong reliance on a Division Bench judgment of this Court in **E.Sundaresan (deceased) S.Sankar (LR of the deceased) vs. Tamil Nadu Wakf Board, Chennai and 5 others [2014 (2) CTC 622]** in support of the above contention.

10. This Court gave its anxious consideration to the rival submissions.

11. Clause 17 of the Mortgage Deed dated 09.11.2012 reads as under:

"17. It is expressly clarified hereunder that no possession has been given by the Mortgagor to the Mortgagee under this deed."

12. As stated above, interim injunction was granted in favour of Jayashree and party, which was later vacated by the learned Single Judge holding that balance of convenience is not in their favour. The learned Judge has not given a finding that Jayashree and party are not in possession of the property. Denial of interim injunction to the plaintiff would not automatically mean that the defendant will be entitled to the possession of the property with police aid. Injunction is a discretionary relief and the grant or refusal of it is guided by well laid down legal principles. For instance, a Court may deny interim injunction pending disposal of suit, on the ground that there was no real threat of dispossession by the defendant and that it was only imaginary apprehension of the plaintiff.

13. The directions issued by the Division Bench in paragraph 8 (extracted

above) have to be read in conjunction with the directions in paragraph 9, wherein, the Division Bench has stated that the agreement is a pro tem measure and that will not, in any way, prejudice the rights and contentions of the parties in the pending suit.

14. Even at the risk of repetition, it is necessary to reiterate that Jayashree and party are in possession of the property and Raja Holdings and party are seeking to dispossess the former with the aid of police. The first three Supreme Court judgments relied upon by Mr.A.R.L.Sundaresan relate to cases where in Rent Control proceedings, eviction orders were passed and the matters went up to the Supreme Court. In that context, the Supreme Court confirmed the eviction orders and gave time to the tenants to vacate and thereafter, gave the right to the landlord to have them evicted with police aid on the failure of the tenants to hand over possession within the give time period.

15. In this case, Raja Holdings have not obtained any decree for possession, but, on the contrary, Jayashree and party have filed the suit in C.S.No.395 of 2014 to declare the very Mortgage Deed as null and void. Of course, Raja Holdings and Kalpana may have the right to bring the property to sale by virtue of clause 16 of the Mortgage Deed dated 09.11.2012 through R.V. Subramaniam, the Receiver. But, the Receiver cannot be heard to say that, for getting a better price for the property, Jayashree and party should have to be forcibly removed with police aid even without there being a valid decree in favour of Raja Holdings for possession. In other words,

they can bring the property to sale acknowledging the fact that the possession is still with Jayashree and party. To facilitate Raja Holdings to get a better price for the property, this Court cannot exercise its power under Section 482 Cr.P.C. and give a direction to the police to give police aid to the Receiver for taking possession of the property from Jayashree and party. If that is done, there is no necessity for Order XXI C.P.C. at all and in every case where a decree is passed by a Court, the decree holder can approach this Court under Section 482 Cr.P.C. and carry out eviction with police aid. Even in **Murlidharan** (supra), the Supreme Court has struck the following caution:

"17.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."

16. If Raja Holdings has a grievance that Jayashree and party have not complied with the agreed terms which have been referred to in paragraph 4 (i) to (v) of the order of the Division Bench dated 22.09.2017, it is always open to them to file a contempt application or even file an application under Section 151 C.P.C. in O.S.A.No.259 of 2017 for police aid, especially in the light of the law laid down by a Division Bench of this Court in **Sri-La-Sri Sivasubramanyananda vs. Sri-La-Sri Arunachalasamy [(1993) 1 MLJ 274]**.

17. In paragraph 21 of the Division Bench judgment in **E.Sundaresan**

(supra) relied upon by Mr.Nithyaesh Natraj, it is held as follows:

"21. The power of this Court under Article 226 of the Constitution of India can be exercised to issue Mandamus to Police to give Police protection to persons, when they are in settled possession. It must be undisputed and unambiguous possession. When there are Decrees and Judgments of the Civil Courts declaring person's right to property and peaceful possession it may include Injunction Decree also, then there is occasion for the Court to ensure peaceful enjoyment of the property by issuing directions to the Police to protect such possession. But, Police can never be used/engaged to do a job, which a Civil Court should do. Police cannot be used indirectly to regain possession of the property. These are certain fundamental postulates governing exercise of jurisdiction both under Section 482, Cr.P.C. and under Article 226, Constitution of India. "

18. This Court is bound by the aforesaid statement of law and consequently, the relief claimed by the Raja Holdings cannot be granted.

In the result, this petition is dismissed. It is made clear that the observations made hereinabove are only for the limited purpose of deciding this case.

gms

15.11.2018

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P.N.PRAKASH, J.

gms

To

- 1 The Inspector of Police
Thyagaraya Nagar Police Station
T.Nagar
Chennai 600 017
- 2 The Inspector of Police
R4, Soundarapandianar Angadi Police Station
Thyagaraya Nagar Police Station
Chennai 600 017
- 3 The Public Prosecutor
High Court of Madras
Chennai 600 104



Pre-delivery order in
Crl.O.P.No.3916 of 2018

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