



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on :15.02.2018

Pronounced on:12.03.2018

CORAM

THE HON'BLE MR.JUSTICE P.RAJAMANICKAM

WEB COPY

Crl.O.P.(MD) No.8959 of 2017

T.Sankaramani

... Petitioner

-Vs-

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

2. The Deputy Superintendent of Police,
Rajapalayam Town,
Virudhunagar District.

3. The Inspector of Police,
South Police Station,
Rajapalayam Town,
Virudhunagar District.

4. The District Collector,
Virudhunagar District,
Virudhunagar.

5. The Tahsildar,
Rajapalayam Taluk,
Rajapalayam Town,
Virudhunagar.

6.The Block Development Officer
Rajapalayam Panchayat Union,
Rajapalayam Town,
Virudhunagar District.

(R-4 to R-6 impleaded as per order of this Court made in
Crl.M.P.(MD).No.6572 of 2017 in Crl.O.P.(MD).8959/2017,
dated 30.08.2017)

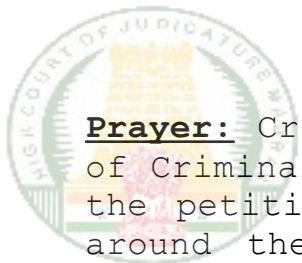
7.Solaimalai

8.R.S.Murugan,

9.M.Vijaya Raghunathan

... Respondents

(R-7 to R-9 impleaded as per order of this Court made in
Crl.M.P.(MD).No.9741/2017 in Crl.O.P.(MD).No.8959/17,
dated 20.12.2017)



Prayer: Criminal Original petition filed under Section 482 of Code of Criminal Procedure, to direct the respondents herein to provide the petitioner adequate police protection to put up iron fencing around the petitioner's patta land comprised in S.No.508/A and 528/3 in Samusigapuram Village, Rajapalayam Taluk.

WEB COPY

For Petitioner : Mr.I.Sankaramani
(Party-in-person)
For Respondent : Mr.A.P.G.Ohm Chairma Prabhu
Government Advocate (Crl.Side)
for RR-1 to 6
Mr.B.Prahalad Ravi for R-7
Mr.J.Munirkhan for RR-8 & 9

ORDER

This Criminal Original petition has been filed to direct the respondents 1 to 3 to provide police protection for putting up fence around the petitioner's land situated in Sy.Nos.508/A and 528/3 in Samusigapuram Village, Rajapalayam Taluk.

2.Heard both sides.

3.The case of the petitioner in brief is as follows:

One Thillainayagiammal, who is petitioner's sister had purchased 10 ½ cents of land in Sy.Nos.508/A and 528/3 of Samusigapuram Village, vide two sale deeds in document Nos.1158/1946 and 1470/1946. The said Thillainayagiammal was in possession and enjoyment of the said property. She died issueless and her husband pre-deceased her. Therefore, the said properties have been inherited by the petitioner and her brother Natarajan and they have been in possession and enjoyment of the same. Whiles, one Perumal Chettiyar purchased one another stretch of property in Sy.Nos.508/A. Though he has purchased only 42 cents, in the UDR, he got patta including the petitioner's property of 6½ cents. He also included some other lands in the patta and totally, he got patta for 95 cents. He had sold 7.85 cents of land in Sy.No.508/A to one Thiyagarajan by a forged document, which belongs to the petitioner. Hence, the petitioner and his brother Natarajan have filed a suit in O.S.No.247 of 1989 on the file of the Sub-Judge, Srivilliputhur for declaration of their title over the suit property and also for injunction. Alternatively, they have asked for recovery of possession. But the said suit came to be dismissed. As against the same, the petitioner and his brother have filed an appeal in A.S.No.423/1995 before this Court. This Court has allowed the said appeal declaring that the petitioner and his brother are owners of the suit property and consequently, granted the relief of injunction restraining the defendants therein from interfering



with the plaintiff's possession and enjoyment of the said properties.

4.His further case is that the petitioner has submitted an application to the Tahsildar, Rajapalayam to survey and demarcate his land, in the light of the decree and judgment passed by this Court and the same was rejected on 06.02.2012. hence, the petitioner has filed a writ petition in W.P.(MD).No.19633 of 2014 and the same was allowed by the order dated 04.12.2014, directing the Tahsildar of Rajapalayam to survey and demarcate the petitioner's property within a period of four weeks from the date of receipt of a copy of that order. Even thereafter, the Tahsildar remained inactive and hence, the petitioner has filed a contempt petition No.537 of 2015 and only thereafter, the Tahsildar surveyed and demarcated the petitioner's property by erecting stone pillars on 13.06.2015.

5.The further case of the petitioner is that in the mean while, the Block Development Officer, Rajapalayam has laid a gravel road in the petitioner's patta land. Hence, the petitioner has filed a writ petition in W.P.No.(MD).22275 of 2015 and in that writ petition, this Court has passed an order directing the District Collector, Virudhunagar District to consider the petitioner's representation and pass appropriate order within a period of 12 weeks and the said order was not complied with by the District Collector and hence, the petitioner has filed contempt petition No.568/2015 and only after receipt of the notice in the said contempt petition, the District Collector, Virudhunagar District has directed the revenue and police officials to remove the gravel road formed in the petitioner's land and thereafter, on 26.07.2016, the Block Development Officer, Rajapalayam, the Tahsildhar, Rajapalayam, the respondents 2 and 3 have removed the gravel road formed in the petitioner's land.

6.It is his further case that the District Collector has stated in his communication, dated 26.07.2016, which was sent to the Block Development Officer, Rajapalayam, that the general public of PTR Nagar have submitted a written letter stating that they have no objection to remove the aforesaid gravel road which was laid erroneously in the petitioner's land. Thereafter, the petitioner prepared to fence his patta land. But some of the bad elements at the instigation of the few adjacent land owners planned to desert the petitioner's act of fencing in one way or other. Hence, the petitioner has submitted a petition to the respondents 1 to 3 on 28.05.2017 to provide police protection. But the third respondent by his order dated 01.07.2017 has informed the petitioner that he should get necessary order from the High court and hence, the writ petition. Originally, the writ petition was filed against the respondents 1 to 3 and subsequently, the respondents 4 to 9 were impleaded as parties.

7.The learned Government Advocate (Crl.Side), who is



appearing for the respondents 1 to 6 has submitted that since the respondents 7 to 9 have raised objection with regard to fencing, the police directed the petitioner to obtain necessary order from the Court.

8. The learned counsel for the 7th respondent has submitted that the petitioner herein and his brother have filed a suit in O.S.No.247 of 1989 on the file of the Sub-Judge, Srivilliputhur for the relief of declaration and permanent injunction alternatively for recovery of possession and it shows that they are not in possession of the aforesaid property. He further submitted that in the said suit, the 7th respondent is not at all a party and hence, the decree passed in A.S.No.423 of 1995 will not bind on the 7th respondent and therefore, he requests to dismiss the aforesaid petition.

9. The learned counsel for the respondents 8 and 9 has submitted that since the respondents 8 and 9 herein are not parties in A.S.No.423 of 1995, the decree passed in the said appeal will not bind upon them. He further submitted that the petitioner has no right to put up a fence in respect of the properties situated in Sy.No.508/A and 528/3 in Samusigapuram Village, Rajapalayam Taluk.

10. A perusal of the judgment passed by this Court in A.S.No.423 of 1995 shows that the petitioner herein and his brother Natarajan have filed a suit in O.S.No.247/1989 on the file of the Sub-Judge, Srivilliputhur for declaration of title in respect of the properties in Sy.Nos. 508/A and 528/3, measuring 10½ cents of Samusigapuram Village, Rajapalayam Taluk alternatively, they have asked the relief of recovery of possession. The trial court has dismissed the suit in toto. As against the said dismissal of the said suit, the petitioner herein and his brother have filed an appeal in A.S.No.423 of 1995 before this Court. This court has allowed the said appeal by the judgment dated 31.10.2011 and declared that the petitioner herein and his brother are the absolute owners of the suit properties and also they are entitled to the relief of permanent injunction so as to restrain the defendants from interfering with the possession and enjoyment of the said properties. Therefore, it is not open to the respondents 7 to 9 to take a plea that the petitioner is not in possession of the aforesaid property.

11. Admittedly, the suit in O.S.No.247/1989 was filed against one Perumal Chettiyar, Thiyyagaran, Pandian Thondiamman. The 7th respondent herein is the son of the said Perumal Chettiyar. Therefore, the decree passed in A.S.No.423 of 1995 will bind upon the seventh respondent.

12. Though the respondents 8 and 9 are not parties in the suit



in O.S.No.247 of 1989 or in A.S.No.423 of 1995, the respondent No.8 has filed a sub-application (MD).No.68 of 2016 in Contempt Petition (MD).No.568 of 2015 seeking to implead him as second respondent in the contempt petition and the same was dismissed by this Court on 27.07.2016. Likewise, the respondent No.9 has filed a writ petition in W.P.No.13609 of 2016 to forbear the respondent thereon (District Collector and other officials) from laying boundary stones blocking their ingress and egress in the property situated in S.No.508/A and 528/3 of PTR Nagar, Samusigapuram Panchayat. The said writ petition was dismissed as withdrawn on 09.09.2016. Therefore, now, the respondents 8 and 9 cannot prevent the petitioner from putting up a fence around his land. It is also to be pointed out that the orders passed by this Court in the writ petitions filed by the petitioner and submissions made by the District Collector would show that the petitioner is in possession and enjoyment of the 10½ cents of land situated in Sy.Nos. 508/A and 528/3 of Samusigapuram Village, Rajapalayam Taluk. So, the petitioner is entitled to put a fence around his land. Therefore, the third respondent is directed to provide necessary police protection to the petitioner for fencing his lands.

13.With the aforesaid observation, this petition is disposed of. No costs.

Sd/-

Assistant Registrar(W)

/True Copy/

Sub Assistant Registrar

To

1. The Superintendent of Police,
Virudhunagar District,
Virudhunagar.
2. The Deputy Superintendent of Police,
Rajapalayam Town,
Virudhunagar District.
3. The Inspector of Police,
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4. The District Collector,
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5. The Tahsildar,
Rajapalayam Taluk,
Rajapalayam Town,
Virudhunagar.

6. The Block Development Officer
Rajapalayam Panchayat Union,
Rajapalayam Town,
Virudhunagar District.

+1cc to Mr.I.Sankaramani, Advocate Sr.No.54718
+1cc to Mr.B.Prahalad Ravi, Advocate Sr.No.55278
+1cc to Mr.J.Munirkhan, Advocate Sr.No.55279

VS

VB/KK/SAR1/26.03.2018/6P/10C

order made in
Crl.O.P. (MD) No.8959 of 2017
12.03.2018