

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 06.02.2019

CORAM :

THE HONOURABLE MR. JUSTICE T.S.SIVAGNANAM
and
THE HONOURABLE MRS. JUSTICE V.BHAVANI SUBBAROYAN

W.A.No. 312 of 2019 and
C.M.P.No. 2956 of 2019

L.Sivaraj

...Appellant

Vs.

1.The Commissioner of Police,
Coimbatore District,
Coimbatore.

2.The Superintendent of Police,
Coimbatore District,
Coimbatore.

3.The Inspector of Police,
Periyanaickenpalayam Police Station,
Coimbatore - 19.

4.R.Vijayakumar

....Respondents

PRAYER: Writ Appeal filed under Clause 15 of Letters Patent,
praying to set aside the Order dated 10.12.2018 in W.P.No.12736
of 2016 and allow the Writ Appeal.

Prayer in WP No.12736 of 2016 : Writ Petition filed under
Article 226 of the Constitution of India praying for issuance of
a writ of mandamus to Directing the respondents 1 to 3 to
restore the possession of the petitioners shop namely Fresh N
Fresh Supermarket No.4 Veerapandi Pirivu Coimbatore District
from the clutches of the 4th respondent and consequently direct
the respondents 1 to 3 to initiate action against the petitioner
and similarly indemnify the loss that had been sustained by the
petitioner at the instance of the 4th respondent owing to his
unlawful locking of the shop.

For Appellant : Mr. D. Ashok kumar

For Respondents : Mr. R.P. Prathap Singh,
Government Advocate for R1 to R3

JUDGMENT

Judgment of the Court was delivered by T.S.SIVAGNANAM, J.

This Writ Appeal is directed against the order in the Writ Petition No. 12736 of 2016 filed by the appellant praying for the direction upon the respondents to restore possession of his shop namely 'Fresh N Fresh Supermarket', No. 4, Veerapandi Pirivu, Coimbatore District from the clutches of the fourth respondent and consequently direct the respondent to initiate action so as to make good the loss suffered by the appellant at the instance of the fourth respondent owing to his unlawful locking of the premises.

2. The appellant also filed a petition under Section 482 of the Criminal Procedure Code in Crl.O.P.No.4798 of 2017 praying for a direction to the third respondent/Police to reopen the investigation in Crime No. 531 of 2016 and secure the accused namely the fourth respondent at the earliest. Both the Writ Petition and the Criminal Original Petition were heard together and they were dismissed by common order dated 10.12.2018. Admittedly as against the order passed in Criminal Original Petition, if the appellant is aggrieved, then his remedy lies only before the Hon'ble Supreme Court. The appellant has filed this appeal as against that portion of the order dismissing the Writ Petition.

3. We have carefully gone through the facts of the case, the various orders passed earlier, the civil dispute between the parties etc.. and we have given our anxious consideration to the submission made by Mr. D. Ashok kumar, learned counsel appearing for the appellant.

4. The learned Single Bench which dismissed the Writ Petition pointed out that there are two disputes in the matter. The first of which being a dispute between the appellant, R. Karuppasamy and Jogaraj. The second dispute is between the appellant and the fourth respondent, who is the owner of the property in which the appellant is stated to have established the Super Market. The appellant would admit that the said R. Karuppasamy and Jogaraj claiming themselves to be partners in business, they filed a suit in O.S.No.1899 of 2015 and obtained an ex-parte order of interim injunction and forcibly dispossessed the appellant from the premises. Subsequently, the

suit was dismissed as withdrawn and interim injunction order was vacated. The second dispute is that the landlord namely the fourth respondent forcibly took possession and the shop itself was closed.

5. The learned Single Judge, in our considered view, rightly held that the dispute is entirely of civil nature. Further, it was pointed out that if the appellant was aggrieved by the closure of the FIR as "mistake of fact", there were other remedies available to the appellant, which the appellant had failed to avail. Therefore, we are in entire agreement with the learned Single Judge in dismissing the writ petition and we find no grounds to entertain this appeal.

6. Accordingly, this Writ Appeal fails and it is dismissed. No costs. Consequently, the connected Miscellaneous Petition is closed. However, we observe that this Judgment will not be a bar for the appellant to workout his remedies before the appropriate forum as he may be advised.

Sd/-

Assistant Registrar (CS-VI)

//True copy//

Sub Assistant Registrar

mbi/mrm

To

1. The Commissioner of Police,
Coimbatore District, Coimbatore.
2. The Superintendent of Police,
Coimbatore District, Coimbatore.
3. The Inspector of Police,
Periyanaickenpalayam Police Station,
Coimbatore - 19.

+1cc to Government Pleader SR.No.11399

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PM(CO)
GMY(15/03/2019)