



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 17.10.2019

CORAM:

THE HONOURABLE MR. JUSTICE **G.K.ILANTHIRAIYAN**

Crl.O.P.(MD) Nos.8942 and 8943 of 2019

WEB COPY

1. C.Vadivel ...Petitioner in Crl.O.P(MD) No.8942 of 2019
2. Esakkiammal ...Petitioner in Crl.O.P(MD) No.8943 of 2019

Vs.

1. The Superintendent of Police
Thoothukudi District
Thoothukudi

- 2.The Deputy Superintendent of Police
No.7A, PSP Nagar
Korampallam
Thoothukudi District

3. The Inspector of Police
Murappanadu Police Station
Thoothukudi District

4. S.Velsamy
5. S.Sundalai @ Oomaiandi
6. S.Nainar
7. S.Murugan
- 8.Ganesan

...Respondents in both petitions

Prayer in Crl.O.P(MD) No.8942 of 2019: Criminal Original Petition filed under Section 482 Cr.P.C. praying to direct the 3rd respondent police to grant police protection to the petitioner as well as to his properties in Survey Nos.80/1, 83/2 and 81, 82/2, in Ulakudi Village, Srivaikundam Taluk, Thoothukudi District on the basis of the petitioner representation dated 27.04.2019 and 29.04.2019.

Prayer in Crl.O.P(MD) No.8943 of 2019: Criminal Original Petition filed under Section 482 Cr.P.C. praying to direct the 3rd respondent police to grant police protection to the petitioner as well as to his properties in Survey Nos.99/1, and Survey No.99/3 in Ulakudi Village, Srivaikundam Taluk, Thoothukudi District on the basis of the petitioner representation dated 27.04.2019 and 29.04.2019

(In both petitions)

For Petitioner : Mr.M.P.Senthil

For Respondents

No.1 to 3

: Mr.K.Suyambulinga Bharathi
Government Advocate(Crl.Side)



No.4 to 7
No.8

: Mr.G.Prabhu Rajadurai
: Mr.N.Tamilmani

ORDER

These petitions have been filed to direct the 3rd respondent police to grant police protection to the petitioners as well as to their properties in Survey Nos.80/1, 83/2 and 81, 82/2 and 99/1,99/3 in Ulakudi Village, Srivaikundam Taluk, Thoothukudi District on the basis of the petitioners representation dated 27.04.2019 and 29.04.2019.

2.The learned counsel for the petitioners would submit that petitioners purchased the properties comprised in Survey Nos.80/1, 83/2 and 81 from vendors in respect of items 1& 2 suit schedule property and items 3 and 4. From the very same vendor other petitioners in Crl.O.P(MD) No.8943 of 2019 purchased the property to an extent of one acre 60 cents comprised in Survey No.99/1 and Survey No.99/3 situated in Ulakudi Village, Srivaikundam Taluk, Thoothukudi District vide sale deed dated 29.12.2010. While being so, the respondents 4 to 7 without any tenable right interfered with the peaceful possession and enjoyment of the said property. Infact they also lodged a complaint as against the respondents 4 to 7 and the same was registered in Crime No.231 and 208 of 2013 on the file of the third respondent police. The petitioners were also constrained to file O.S.Nos. 68 and 69 of 2011 on the file of the Sub Court, Thoothukudi for injunction as against the respondents 4 to 7. The suit was decreed in favour of the petitioners vide judgment dated 16.10.2012. Aggrieved by the same, the respondents 4 to 7 filed suit in A.S.No.20 and 21 of 2012 and the same was dismissed by a judgement dated 13.06.2013, against which the respondents 4 to 7 filed appeal in S.A(MD)No.738 and 772 of 2013 before this Court and this Court vide common judgment dated 13.06.2018 dismissed the second appeal and confirmed the possession of the said property in favour of the petitioners. Infact again they disturbed the possession and enjoyment of the property and as such the petitioner lodged a complaint on 27.09.2018 and on receipt of the same issued CSR. Again on the complaint lodged by the petitioner First Information Report has been registered as against the respondents 4 to 7 in Crime Nos. 182 and 183 of 2018 which is pending on the file of the third respondent. In the meanwhile, they also filed Special Leave Petition before the Honourable Supreme Court and the same was also dismissed on 07.12.2018. While being so, the eight respondent who is none other than the brother of the fourth respondent filed a suit in O.S. Nos. 9 and 11 on the file of the District Munsif Court, Srivaikundam and both the suits are pending. Pending the suit against the respondents 4 to 8 are disturbing their possession and enjoyment of the petitioners. Therefore they lodged a complaint, in which the third respondent registered a case in Crime Nos. 30 and 54 of 2019 and both the crimes are pending for investigation. Therefore the petitioners



sought for police protection.

3. The learned counsel for the respondents 4 to 8 would submit that though civil court decree is in favour of the petitioners, it is only injunction suit and no declaration suit was filed by the petitioners. Further it is submitted that to execute injunction they once again approached the civil court under order 21 Rule 32 of CPC for execution of injunction decree inspite of being to the petitioners straight away approached this Court seeking police protection. He further submitted that the eight respondent on 30.01.2019 he initiated suit for tenancy right before the District Munsif Court, Srivaikundam as against the petitioner in O.S.Nos.9 and 11 of 2019 and both the suits were pending. Admittedly the petitioners filed injunction suit and both went up to the Honourable Supreme Court and decreed in favour of the petitioners. The learned counsel for the respondents 4 to 8 also relied upon the common judgement passed by this Court in SA(MD) Nos.738 and 773 of 2013 dated 13.06.2019, which reads as follows:

"7. From a reading of the written statement and evidence of D.W.1, the impression one gets is that D.W.1 is not speaking truth and that the defendants were really interested in grabbing others lands by taking advantage of the fact that the predecessors in title of the plaintiffs were residing far away from the suit properties. Though the title of the plaintiffs is specifically denied in the written statement, the ownership by any one else is not substantiated by any document. Merely because, there was some dispute between the plaintiff and the defendants in both the suits regarding possession and the plaintiffs have given criminal complaints against the defendants alleging trespass, the trial Court has given a finding that the plaintiffs have not proved their possession.

8. Admittedly, the defendants have not produced any document to show that they are in possession of the property as cultivating tenants. Even cultivation by the defendants in both the suits has not been established by any acceptable independent evidence. This is a case where the ownership has been established by registered sale deeds, Revenue records apart from oral evidence. Hence this Court has no reason to interfere with the findings of the appellate Court regarding title. In such circumstances, the Court can also presume that the plaintiffs are in possession by applying the principle 'possession follows title'. In this case, the evidence of P.W.1 is corroborated by other witnesses regarding title. There is no document produced by the defendants to



prove their source of claim either as a cultivating tenant or as a person in lawful possession and enjoyment of the suit properties. The lower appellate Court has categorically found that the defendants have not produced any document to prove their enjoyment or their claim as cultivating tenants.

9. The trial Court, mainly relying upon the complaints lodged against the defendants describing the defendants as trespassers, held that the plaintiffs have not proved their possession. In a case, where the defendants have not proved their possession, but the plaintiff has proved his or her title, the Court would further examine the issue on probabilities and can presume possession in favour of the plaintiff. The defendants relied upon the documents Ex.B1 and Ex.B2, which are the plaints in the two suits filed by the predecessors in interest of the plaintiff as against the defendants. It is demonstrated before the lower appellate Court that the properties, which are the subject matters of the two suits are not the suit properties and that therefore, the contention of the defendants that they are in enjoyment as cultivating tenants has no merit. The evidence of D.W.1 would clearly establish that the claim of the defendants as cultivating tenants cannot be believed and hence the findings of the lower appellate Court that the findings of the trial Court is against the documentary evidence are absolutely right"

4. This Court comes to conclusion that the petitioners are very much in possession and enjoyment of the above said property and no documents were produced by the respondents to show that they are in possession of the property. In this regard it is relevant to rely upon the judgement of this Court reported in 2014(2) CTC 695 in the case of Radhika Sri Hari and another -vs- Commissioner of Police, Coimbatore City, Coimbatore, wherein it is held as follows:

"6. The reliance placed on decision referred to by the learned counsel for the contesting respondents is misplaced. While it is true that pending civil proceedings, this Court would not interfere in exercise of jurisdiction under Section 482 of Cr.P.C this instant is a case, wherein the right of the petitioners to property stand crystallised under Order of .S.No. 855 of 1977. Pursuant to subsequent proceedings in W.P.No.7356 of 2012 the property of the Appellate Authorities viz, Town Sub Inspector of Survey, Coimbatore East. Such official act has been challenged by way of contempt proceedings, and the same stand dismissed. It is not the



contention of learned counsel for contesting respondents that pursuant to the order in Cont.P.No.1444 of 2012, they moved the Court any civil forum. However, he would submit that conteting respondents are poor people pitted against the affluent persons in whose aid the police agency also is working.

7. In the aforesaid circumstances, this Court considers it appropriate to refer to Report of the committee constituted by the Government in G.O.(3D) No.42 Home dated 30.06.2008 towards review of the system of treating complaints relating to money and land matters and to suggest a legally acceptable metholodgy. The report of such committee touching upon several issues, was accepted by Government. Having done so under G.O.Ms.No.1580, Home (Pol.VII) Department dated 24.11.2018, the Director General of Police was required to circulate the report along with 14 point guidelines annexed to such Government Order to Police Officers/Stations for appropriate adherence. Under C.No.43/CRB/CSP/ 2008 dated 08.12.2008, the Commissioner of Police, Chennai Sub Urban has caused communication to all Deputy Commissioner, Assistant Commissioners to all Deputy Commissioners and Inspector of Police for necessary action. Guideline 11 issued by the Committee reads as follows:

"11 When Police protection is sought for the implementation of a Civil Court order, it should be given reality. Police should not insist on a specific Court direction to give police protection.

8. When it is informed about makes clear that the petitioner would be entitled to police protection as prayed for. Criminal Original Petition is allowed. There will be a direction to the respondents to provide police protection to the petitioners for a period of three weeks from the date of receipt of a copy of this order towards enabling them raising fresh barbed wire fences on their property. The same will be at the cost of the petitioner"

5. The above case is squarely applicable to the case of hand and therefore the petitioners are entitled for police protection. That apart having regard to the fact that in the second appeal the petitioners herein found to be in possession of the property and they were also found to be owners of the property having title of the same and the respondents 4 to 8 were not in possession of any property and they cannot any claim any right over the property. Therefore this Court is of the considered opinion that the petitioners are entitled for police protection.



(*)6. Hence, these Criminal Original Petitions are allowed and the third respondent is directed to give adequate police protection to the petitioners to enjoy the property situated in Survey Nos.80/1, 83/2 and 81/2, 99/1 and 99/3 in Ulakudi Village, Srivaikundam Taluk, Thoothukudi District.

Sd/-

Assistant Registrar (CS-III)
Dated: 07/11/2019

(*) Amended as per order of
this Hon'ble Court dated 14.11.2019

Sd/-

Assistant Registrar (CO)
Dated: 29.11.2019

// True Copy //

Sub Assistant Registrar(CS)

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To

(*) to be substituted the order already despatched on 08.11.2019

1. The Superintendent of Police
Thoothukudi District
Thoothukudi

2.The Deputy Superintendent of Police
No.7A, PSP Nagar
Korampallam
Thoothukudi District

3. The Inspector of Police
Murappanadu Police Station
Thoothukudi District

4.The Additional Public Prosecutor
Madurai Bench of Madras High Court, Madurai

+2 CC to M/s.N.TAMILMANI, Advocate (SR-92633)
+1 CC to M/s.G.PRABHU RAJADURAI, Advocate (SR-98471)
+1 CC to M/s.M.P.SENTHIL, Advocate (SR-92795)