

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.02.2020

THE HONOURABLE Mr.JUSTICE P.RAJAMANICKAM

Crl.OP.No.2256 of 2020

1. Samakkal
 2. A.Kanagaraj
 3. Samudi
 4. Kumar
- ... Petitioners

Vs.

1. The State Rep.by
The Superintendent of Police,
Vellore District, Vellore.
 2. The Inspector of Police,
Thimmampettai Police Station,
Thimmampettai,
Vellore District.
 - 3.Tirupathi
- ... Respondents

PRAYER: Criminal Original Petition filed under Section 482 Cr.P.C, to direct the respondents to give police protection to the petitioners' property comprised in S.No.283/12A, 283/12B, 283/3C, 283/3B2 and 283/3B1, situated at Nayanaseravu Village, Natarampalli Taluk on the basis of the petitioners' complainant dated 04.12.2019.

For Petitioners: Mr.S.Gowri Shankar
for M/s.G.Jeremiah

For Respondents: Mr.M.Mohamed Riyaz
Additional Public Prosecutor
for R1 and R2

ORDER

This petition has been filed to direct the respondents to give police protection to the petitioner's property comprised in S.No.283/12A, 283/12B, 283/3C, 283/3B2 and 283/3B1, situated at Nayanaseravu Village, Natarampalli Taluk on the basis of the petitioner's complaint dated 04.12.2019.

2. Heard the learned counsel for the petitioners and the learned Additional Public Prosecutor for respondents 1 and 2.

3. The learned counsel for the petitioners has submitted that already the first petitioner has filed a suit and obtained a decree for the relief of permanent injunction on

18.08.2008. He further submitted that without respecting the said decree, the third respondent has disturbed the petitioners' peaceful possession of the properties and hence, the petitioners have lodged a complaint before the second respondent on 04.12.2019 seeking police protection to the petitioners' property, but, the second respondent has not given police protection to the petitioners and hence, he requests to direct the respondents 1 and 2 to provide police protection to the petitioners' property.

4.The learned counsel for the petitioners in support of his contentions, relied upon the following decisions:

- (i) Radhika Sri and another Vs. Commissioner of Police, Coimbatore City, Coimbatore in 2014(2) CTC 695 (MAD)
- (ii) E.Sunderasan (deceased) and another Vs. Tamilnadu Wakf Board 2014 (2) CTC 622 (MAD)

5. Per Contra, the learned Additional Public Prosecutor has submitted that if the petitioners got decree before the Civil Court, they can very well file an execution petition before the same court and enforce the said decree and instead of that, they cannot file this kind of petition.

6. In Radhika Sri and another Vs. Commissioner of Police, Coimbatore City, Coimbatore (Cited supra), the right to the property of the petitioners stands secured and it culminated in the judgment of this court in SA.No.855 of 1977. A Special Leave Petition preferred against such order was dismissed. As per the Order passed in WP.No.7356 of 2012 dated 31.07.2012, demarcation of the property was done by the Town Sub-Inspector of Survey, Coimbatore East. Thereafter, the petitioners filed CrI.OP under Section 482 of Cr.P.C before this court seeking police protection for fencing over the property. Taking into consideration of the aforesaid facts, a learned Single Judge of this court has passed an order directing the police to give protection for fencing. सत्यमेव जयते

7. 8. In E.Sunderasan (deceased) and another Vs. Tamilnadu Wakf Board (cited supra), a Division Bench of this court has held as follows:-

"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. There are certain fundamental postulates governing exercise of jurisdiction both under Section 482 Cr.P.C and under Article 226, Constitution of India".

8. In Sri-La-Sri Siva Subramanyanda Vs. Sri-La-Sri Arunachalasamy (1993) 1 MLJ 274, a Division Bench of this Court has held as follows:

" In appropriate cases, the civil court has the power and is indeed under a duty, to issue suitable directions to the police officials, as servants of law, to extent their aid and assistance in the execution of decrees and orders of the civil courts or in implementing an Order of Injunction passed by it"

9. In G.Meena Vs. The Commissioner of Police (Crl.OP.No.20980 of 2008 dated 08.12.2008) a learned Single Judge of this court after referring to the Division Bench decision of this court in Sri-La-Sri Siva Subramanyanda Vs. Sri-La-Sri Arunachalasamy (cited supra) has held that when an effective and alternative remedy is available to the petitioner to approach the civil court under Section 151 CPC and seek police protection by satisfying the court that she is not in a position to have the full benefit of the order granted in her favour because of the obstructions or non-cooperation of the defendants. He further held that it is not open to the petitioner to approach this court under Section 482 Cr.P.C.

10. In A. Dravida Mani Vs. Chitradevi, 2008 (4) LW 470 a learned single judge of this court has observed that even for executing the decree for permanent injunction the execution proceedings as provided under Order 21 Rule 32 CPC is available and therefore without resorting to such execution proceedings one cannot straight away for police aid under Section 151 CPC.

11. From the aforesaid decisions, it is clear that the civil courts are having power to order police aid for enforcing the decrees and orders. In the case of permanent injunction, the decree holder has to file EP by invoking Order 21 Rule 32 of CPC and if he experiences any difficulty in enforcing the said decree, he can file petition under Section 151 CPC before the same court to provide police aid for enforcing the said decree. It is also clear, when alternative remedy is available, the decree holder cannot approach this court by filing petition under Section 482 Cr.P.C.

12. In this case, according to the petitioner, she got a decree before the Civil Court for permanent injunction and in such a case, she has to file an execution petition by invoking the provisions of Order 21 and Rule 32 of CPC. At the time of executing the said decree if the petitioner experiences any difficulty in enforcing the said decree, she can very well file a petition under Section 151 of CPC before the same court to provide police protection for enforcing the civil court's decree, and instead of that, she cannot file this kind of

petition before this court.

13. For the aforesaid reasons, this Criminal Original Petition is dismissed.

Sd/-

Assistant Registrar (CS-III)

//True Copy//

Sub Assistant Registrar

Vv

To

1. The Superintendent of Police,
Vellore District, Vellore.
2. The Inspector of Police,
Thimmampettai Police Station,
Thimmampettai,
Vellore District.
3. The Public Prosecutor,
Madras High Court,
Chennai.

Cr1.O.P.No.2256 of 2020

RGN(CO)
GN(25/06/2020)

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