

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.01.2020

CORAM:

THE HONOURABLE MR.JUSTICE ABDUL QUDDHOSE

W.P.No.29995 of 2014
and
M.P.Nos.1 of 2014 & 1 of 2015

T.P.Balamurugan @
T.P.Balamurugananthan

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Petitioner

Vs.

1.The Assistant Commissioner of Police
Selaiyur Range,
Selaiyur, Velachery Main Road,
East Tambaram, Chennai.

2.The Inspector of Police,
S15 Selaiyur Police Station,
Velachery Main Road,
Selaiyur, East Tambaram, Chennai.

3.T.P.Ganapathy

...

Respondents

Prayer: Writ petition filed under Article 226 of the Constitution of India for a writ of Mandamus directing the respondents 1 & 2 not to interfere with the petitioner's peaceful possession and enjoyment of the shop in the name and style as "Pondy Bazaar Store" at No.179B, Velachery Main Road, Selli Nagar, Selaiyur, Chennai - 600 073 in doing the business lawfully without following due process of law by threatening him to close the shop and withdraw the pending suits without suitable orders from the competent court while various civil suits are pending.

For Petitioner : Mr.D.Arunkumar

For Respondent : Mr.K.Ravi Kumar
Nos.1 & 2 Additional Government Pleader

For Respondent : K.Kathiresan
No.3

ORDER

The instant writ petition has been filed for a mandamus to direct respondents 1 & 2 not to interfere with the petitioner's peaceful possession and enjoyment of the shop

running in the name and style of "Pondy Bazaar Stores" at No.179B, Velachery Main Road, Selli Nagar, Selaiyur, Chennai - 600 073.

2.It is the case of the petitioner that there are disputes with the third respondent who is his brother. It is his case that he has the absolute right to run the aforementioned shop "Pondy Bazaar Stores". According to him, the third respondent's henchman on 14.11.2014 illegally trespassed into his shop "Pondy Bazaar Stores" and attempted to close down the shop by dispossessing him. According to him, he immediately preferred a complaint with the second respondent who acknowledged receipt of the same. According to the petitioner, after receiving the complaint, instead of taking action against the trespassers, the second respondent started to threaten the petitioner to close down the shop. According to the petitioner, without any humanitarian consideration while his wife and children were inside the shop, the Sub-Inspector of Police of the second respondent Police Station Mr.Dhanasekaran closed down his shop and threatened the petitioner that if he opens the shop he would face dire consequences.

3.It is also the case of the petitioner that prior to the filing of the writ petition, he has filed a suit O.S.No.232 of 2013 before the District Munsif Court, Tambaram seeking for the relief of permanent injunction restraining the third respondent from interfering with the petitioner's peaceful possession and enjoyment of his shop. It is also his case that subsequently, the third respondent also filed a suit against the petitioner in O.S.No.6603 of 2013 pending on the file of the XIV Assistant City Civil Court, Chennai. It is the case of the petitioner that the third respondent has also illegally induced his other brothers and other Directors of Ponny Retails Private Limited to file a case against him. It is also his case that in respect of the family properties and business, there are number of civil suits are pending. However, he submits that in respect of shop "Pondy Bazaar Stores" at No.179B, Velachery Main Road, Selli Nagar, Selaiyur, Chennai - 600 073, excepting the petitioner no one else has any right in respect of the said shop. In such circumstances, the writ petition has been filed.

4.Heard Mr.D.Arun Kumar, learned counsel appearing for the petitioner, Mr.K.Ravi Kumar, the learned Additional Government Pleader appearing for the first & second respondents and Mr.K.Kathiresan, the learned counsel appearing for the third respondent.

5.Admittedly, the writ petition has been filed subsequent to the filing of the suit O.S.No.232 of 2013 by the petitioner before the District Munsif Court, Tambaram, against the third respondent. The petitioner has filed the suit for bare injunction restraining the third respondent not to interfere

with the peaceful possession and enjoyment of his shop "Pondy Bazaar Stores" at No.179B, Velachery Main Road, Selli Nagar, Selaiyur, Chennai - 600 073. It is the case of the petitioner that subsequent to the filing of the aforementioned suit, at the behest of the third respondent, the first and second respondents have attempted to interfere with the peaceful possession and enjoyment of the aforementioned shop by the petitioner. As seen from the counter affidavit filed by the first and second respondents before this Court, the petitioner lodged a complaint against the third respondent and similarly, the third respondent has also lodged a counter complaint against the petitioner before the second respondent. Similarly, suits are also pending which have been filed both by the petitioner as well as the third respondent. The rights of the parties can be adjudicated only in the said civil suits as disputed questions of fact are involved. Without oral evidence, the contentions raised by the petitioner in this writ petition cannot be adjudicated in a writ petition. The averments contained in the affidavit filed in support of this writ petition will clearly indicate that there are disputed questions of fact involved which can be adjudicated only in a civil suit. In such circumstances, this writ petition is not maintainable and the petitioner as well as the third respondent will have to redress their respective grievance only before the Civil Court. The relief which the petitioner claims in this writ petition could have been claimed in the civil suit filed by him in O.S.No.232 of 2012 on the file of the District Munsif Court, Tambaram by impleading the first and second respondents in the said suit. Instead of that, he has filed this writ petition which is not maintainable in view of the disputed questions of fact.

6. For the foregoing reasons, there is no merit and the writ petition is dismissed. However, liberty is granted to the petitioner to implead the first and second respondents in the civil suit O.S.No.232 of 2013, pending on the file of the District Munsif Court, Tambaram within a period of four weeks from the date of receipt of a copy of this order, failing which, the liberty granted by this Court shall stand cancelled. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CCC)

//True Copy//

Sub Assistant Registrar

sms

To

1.The Assistant Commissioner of Police
Selaiyur Range,
Selaiyur, Velachery Main Road,
East Tambaram, Chennai.

2.The Inspector of Police,
S15 Selaiyur Police Station,
Velachery Main Road,
Selaiyur, East Tambaram, Chennai.

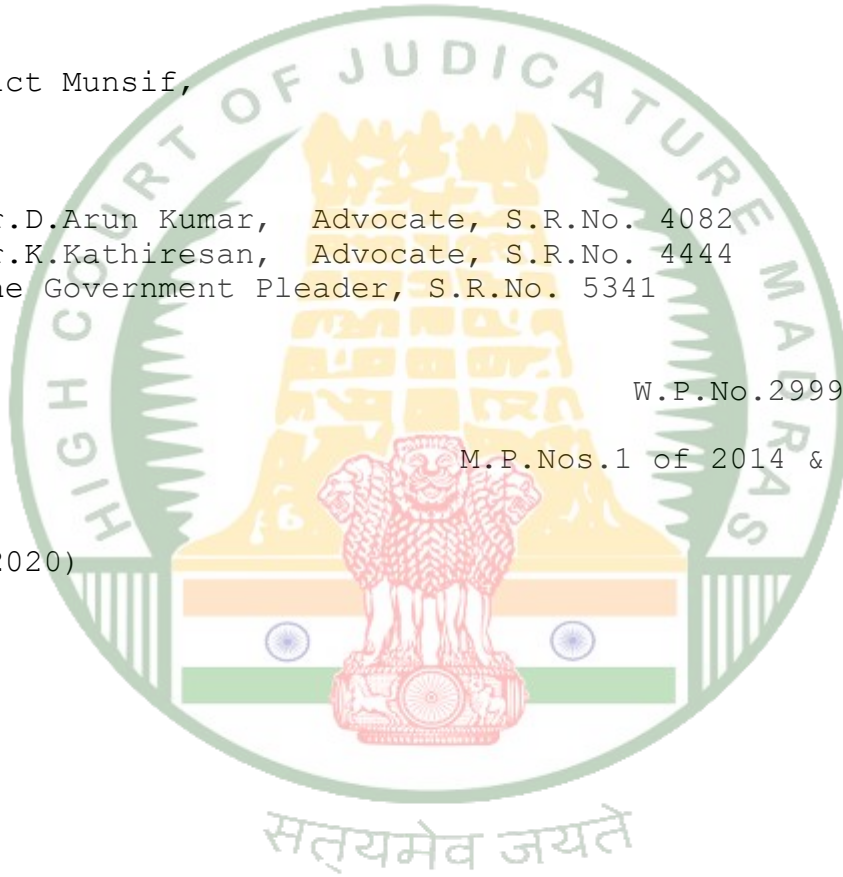
Copy To

The District Munsif,
Tambaram.

+2cc to Mr.D.Arun Kumar, Advocate, S.R.No. 4082
+1cc to Mr.K.Kathiresan, Advocate, S.R.No. 4444
+1cc to the Government Pleader, S.R.No. 5341

W.P.No.29995 of 2014
and
M.P.Nos.1 of 2014 & 1 of 2015

NR(CO)
GN(26/02/2020)



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