

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 01.09.2020

CORAM

THE HONOURABLE THIRU JUSTICE N.ANAND VENKATESH

W.P.No.35806 of 2019

Mrs.T.Pushpa Bai, Age-59 years,
W/o.P.Thankaraj,
50, T.N.S.S.C.B.Complex,
Thirumangalam Signal,
Anna Nagar,
Chennai 600 040.

... Petitioner

versus

- 1.State of Tamil Nadu,
Rep by Secretary to Government,
Revenue Department,
Fort St.George,
Chennai 600 009.
- 2.The District Collector,
Nagapattinam.
- 3.The Sub Divisional Executive Magistrate,
Revenue Divisional Officer,
Mayiladuthurai,
Nagapattinam District.
- 4.The Inspector of Police (Law & Order),
Mayiladuthurai Police Station,
Nagapattinam District.
- 5.Raghumaran,
S/o.P.Balakrishnan,
No.44/A, Mariamman Koil Street,
Nallavadu, Singirigudi,
Cuddalore District.
- 6.R.Bharathidasan,
S/o.Ramalingam,
15, Kasi Koil Kuppam, Thiruvottiyur,
Chennai 600 019.

R5, R6 impleaded as per order dated 27.01.2020,
made in WMP.No.690/2020 in W.P.No.35806 of 2019.

...

Respondents

Prayer: This Writ Petition is filed under Article 226 of the Constitution of India, praying for issuance of Writ of Mandamus, directing the third respondent herein to hand over the possession of the property in dispute comprised in T.S.No.372/10B admeasuring 5025 Sq.ft situated at Ward No.3, Block No.10, Muthu Vakkil Salai, Mayiladuthurai Town and Taluk, Nagapattinam District, to the petitioner herein in conformity with the judgment dated 22.09.2014 of the Additional Subordinate Court, Mayiladuthurai passed in A.S.No.30/2012 which is confirmed by the judgment of this court dated 08.06.2016 passed in S.A.No.392 of 2015 and also upheld by the order of the Hon'ble Supreme Court of India dated 25.08.2017, passed in S.L.P.CC No.5766 of 2017.

For Petitioner : Mr.M.Kalyana Sundaram, SC for
Mr.R.Vasudevan

For Respondents: Mr.K.Parameshwaran, GA for R1 to 4

ORDER

This writ petition has been filed for issuance of writ of mandamus directing the third respondent to hand over the possession of the subject property in favour of the petitioner.

2. Mr.M.Kalyana Sundaram, learned senior counsel appearing for the petitioner submitted that the petitioner is the absolute owner of the subject property which measures an extent of 5025 Sq.ft. The learned senior counsel further submitted that the petitioner was residing in Chennai and had permitted her representative to take care of the property. All of a sudden, the fifth respondent started making claim over the property and was attempting to encroach upon the property. When it was questioned, he had represented that the original owner of the property had conveyed the property. The learned senior counsel further submitted that a police complaint was lodged before the fourth respondent and FIR came to be registered in Cr.No.752 of 2007 and proceedings were initiated under Section 145 of Cr.P.C., by the third respondent and the third respondent took control of the property. Thereafter, the third respondent ultimately passed an order on 31.07.2008. Aggrieved by the same, the petitioner filed Crl.R.P.No.40 of 2008 before the District and Sessions Court, Nagapattinam. A final order was passed in the said criminal revision petition on 25.11.2010.

3. The learned senior counsel appearing for the petitioner further submitted that the fifth respondent filed a suit in O.S.No.174 of 2010, through his power of attorney agent viz., the sixth respondent herein, seeking for relief of declaration

of the sale deed executed in favour of the petitioner as null and void and for other consequential reliefs. The suit was decreed by judgment and decree dated 21.03.2007. Aggrieved by the same, the petitioner filed an appeal in A.S.No.30 of 2012, on the file of the Additional Sub Court, Mayiladuthurai. This appeal was allowed by the judgment and decree dated 22.09.2014. This judgment came to be challenged by the fifth respondent before this Court in S.A.No.392 of 2015. The second appeal was dismissed by this Court by judgment and decree dated 08.06.2016.

4. The learned senior counsel appearing for the petitioner would further submit that the Hon'ble Supreme Court also dismissed the SLP filed by the fifth respondent. The learned senior counsel after bringing to the notice of this Court all the relevant documents, submitted that the title of the petitioner has been confirmed upto the Hon'ble Supreme Court and the sale deed executed in favour of the petitioner has also been upheld and therefore, the third respondent cannot continue to hold possession of the property and the property has to be handed over to the petitioner. The learned senior counsel brought to the notice of this Court the various representations made in this regard and submitted that the same were not acted upon. Therefore, left with no other option, the present writ petition has been filed before this Court.

5. Mr.K.Parameshwaran, learned Government Advocate appearing on behalf of the respondents 1 to 4 submitted that even though the suit filed by the fifth respondent was dismissed and it was confirmed upto the Hon'ble Supreme Court, there was no direction to the third respondent to hand over the possession of the property to the petitioner. Therefore, the third respondent was not in a position to hand over the possession of the property to the petitioner.

6. The fifth and sixth respondent have been served notice and their names have also been printed in the cause list. There is no representation either in person or through counsel for the fifth and sixth respondents.

7. The proceedings initiated under Section 145 of Cr.P.C., is more in the nature of a temporary step taken to control the likely hood of breach of peace. The Executive Magistrate is expected to maintain equilibrium to ensure that the parties do not resort to any violence for the purpose of resolving their disputes over the property. In the present case, after the orders were passed by the third respondent in M.C.No.26 of 2007, the petitioner challenged the said order by filing CrI.R.P.No.40 of 2008, before the District and Sessions Judge, Nagapattinam. After hearing all the parties, the final order was passed on

25.11.2010. The operative portion of the order is extracted hereunder:-

"From the statement of parties and documents adduced and filed on their side, it is very clear that both 'A' party and 'B' party never in possession of the property at any point of time. They claim their right to the property based on the two power of attorneys, originally executed by the original owner Kannan and the entire dispute seems to be civil dispute regarding the title to the property. Statements of the party clearly shows that both 'A' party and 'B' party after their purchase never exercised control or possession of the property at any point of time. Therefore, the order of the Sub Divisional Executive Magistrate-cum-Revenue Divisional Officer which was under challenge, holding that Rahumaran one of the 'B' party was in possession is not correct. The Sub Divisional Executive Magistrate-cum-Revenue Divisional Officer having held that 'A' party is not in possession of the property, he ought to have held that the 'B' party also not in possession of the property. On the other hand, the Sub Divisional Executive Magistrate-cum-Revenue Divisional Officer has given a finding to the effect that Rahumaran was in possession of the property, further he has restrained the 'A' party from interfering with the possession of the property. Such finding by the Sub Divisional Executive Magistrate-cum-Revenue Divisional Officer, is without any materials. Therefore, such finding alone, in my view, is not at all correct. The Sub Divisional Executive Magistrate-cum-Revenue Divisional Officer ought to have held that these parties are not in possession of the property and should have restrained both of them from involving activities to commit any breach of peace in the area and referred both parties to prove their rights in a competitive civil court. Therefore, the finding of the Sub Divisional Executive Magistrate-cum-Revenue Divisional Officer that one of the 'B' party namely Rahumaran was in possession of the property is not at all maintainable. Therefore, this Court is of the view that such finding requires to be set aside. However, keeping in mind the apprehension of the Police Officer and Tahsildar that there is likelihood of breach of peace in view of the rival claimants, in order to maintain the peace and tranquility, this Court holds that both parties are restrained from exercising their rights over the property till their rights are properly adjudicated in a competent civil court. With this observation, the finding of the Sub Divisional

Executive Magistrate-cum-Revenue Divisional Officer that 'B' party namely Rahumaran was in possession of the subject matter alone is hereby set aside. Accordingly, the point is answered accordingly.

In the result, the order dated 31.07.2008 in M.C.NO.26 of 2007 B.1 on the file of Sub Divisional Executive Magistrate-cum-Revenue Divisional Officer, Mayiladuthurai in holding that one of the party Rahumaran in 'B' Party is in possession of the property alone is set aside and it is further ordered that in order to maintain the peace and tranquility both 'A' party and 'B' party are restrained from exercising their rights over the property till their rights are properly adjudicated in a competitive civil court. With this observation, this criminal revision petition is disposed of."

8. It is clear from the above order that the order passed by the third respondent was modified to the extent that the parties were directed to approach the competent Civil Court. The learned senior counsel invited the attention of this Court to the various orders passed by the Civil Court and it is seen that the title of the petitioner has been confirmed and the sale deed executed in favour of the petitioner has been upheld.

9. In view of the same, the ultimate consequence would be that the petitioner will be entitled for the possession of the property which is under the control of the third respondent. Since the petitioner had established the right and title over the property, she will also be entitled for the possession of the property.

10. In view of the above discussion, this Court has no hesitation in ordering the writ petition as prayed for by the petitioner. There shall be a direction to the third respondent to pass appropriate orders and hand over the possession of the subject property to the petitioner. This process should be completed within a period of four weeks from the date of receipt of a copy of this order.

11. This writ petition is allowed with the above direction. No costs.

Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

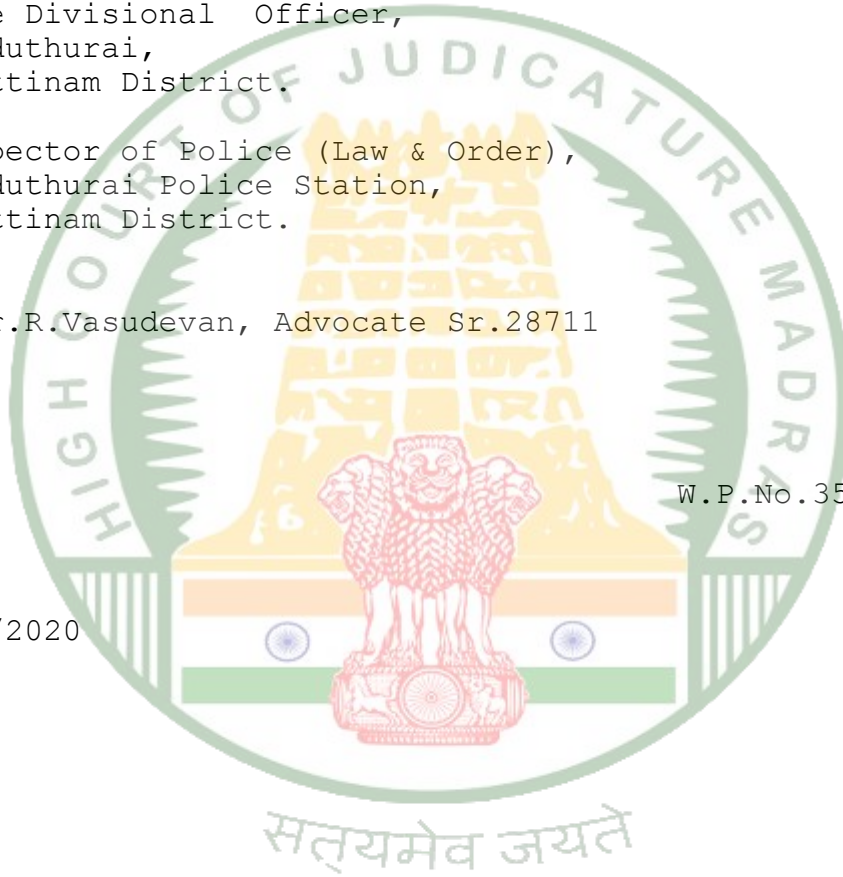
To

- 1.The Secretary to Government,
Revenue Department,
Fort St.George,
Chennai 600 009.
- 2.The District Collector,
Nagapattinam.
- 3.The Sub Divisional Executive Magistrate,
Revenue Divisional Officer,
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- 4.The Inspector of Police (Law & Order),
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+1cc to Mr.R.Vasudevan, Advocate Sr.28711

W.P.No.35806 of 2019

mr[col
srg 16/10/2020



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