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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 28.09.2020

PRONOUNCED ON : 08.06.2021

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Crl.O.P.No.20427 of 2016 and
Crl.M.P.Nos.9548 of 2016 and 3851 & 4859 of 2017

Ramasamy

...Petitioner

Vs.

The State rep by its

1. The Superintendent of Police,
Erode District,
Erode.

2. The Inspector of Police,
Bhavanisaakar Police Station,
Sathyamangalam,
Erode District.

3. Umamaheswari

...Respondents

PRAYER: Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure, to issue direction to forbear the respondents from taking any coercive active in the light of the order passed by this Court in Crl.O.P.No.14020 of 2016, order dated 05.07.2016 till the disposal of petitioner representation dated 31.08.2016, 03.09.2016.

For Petitioner : Mr.R.Thirumoorthy

For 1st & 2nd Respondent : Mr.K.Prabakar,
Additional Public Prosecutor

For 3rd Respondent : Mr.K.S.Karthik Raja

ORDER

The petitioner has filed the present Criminal Original Petition seeking direction to forbear the respondents 1 and 2 from taking any coercive action till the disposal of the representations of the petitioner dated 31.08.2016 and 03.09.2016.

2.The brief facts of the case is that the 3rd respondent has filed a petition before this Court in Crl.O.P.No.14020 of 2016



seeking Police Protection for laying a fence/compound wall in the property which is the subject matter of the suit in O.S.No.208 of 2002 on the file of the District Munsif Court, Sathyamangalam. Since the judgment is in favour of the 3rd respondent, a complaint dated 27.06.2016 came to be lodged. The civil suit on adjudication in the Civil Courts had reached the finality. Initially, the suit for permanent injunction was decreed in favour of the petitioner by judgment dated 27.04.2004 in O.S.No.208 of 2002 by the learned District Munsif, Sathyamangalam, which was later set aside on appeal in A.S.No.33 of 2004 by the learned Principal Subordinate Judge, Sathyamangalam by judgment dated 25.11.2004 and the same was confirmed by this Court in S.A.No.581 of 2005, by judgment, dated 13.07.2012.

3.The 3rd respondent had sent a complaint dated 27.06.2016 to the 2nd respondent, which was not acted upon, hence she filed Crl.O.P.No.14020 of 2016 before this Court. This Court, by order, dated 05.07.2016 directed the 3rd respondent to appear in person before the 2nd respondent Police along with the copy of the order and lodge a fresh complaint containing the very same contents as stated in the previous complaint dated 27.06.2016 and on receipt of such complaint, the same to be enquired into by calling the petitioner and the 3rd respondent and to take action in accordance with law and if necessary to give police protection to the 3rd respondent for laying a fence/compound wall in the property. Pursuant to this order, the 2nd respondent on the complaint of the 3rd respondent, assigned C.S.R.No.136 of 2016 and conducted enquiry. During enquiry, the petitioner submitted his representations dated 31.08.2016 and 03.09.2016. In the interregnum, he has filed the above Criminal Original Petition.

4.The contention of the petitioner is that the petitioner purchased the property to the extent of 2 acres 97 cents in survey No.557/4 at Puthupeerkadavu Village, Sathyamangalam Taluk, Erode District on 16.05.1984 from one Najappa Gounder, Krishna Gounder and he also purchased adjoining property from one Dhennapapa Gounder in survey No.556/2 to the extent of 3 acres. From then on, the petitioner has been regularly carrying out his agricultural activities for three decades. Apart from the above two properties, the petitioner was in possession of 0.59 ½ cents in survey No.557/3 in Puthupeerkadavu Village, Sathyamangalam Taluk, Erode District, which is adjoining to the above said property. In the year 1987, the petitioner filed a suit in O.S.No.234 of 1987 against the erstwhile owner namely Rajammal, wife of Nanjappa Gounder seeking relief of permanent injunction restraining her from disturbing the peaceful possession and enjoyment of the property in survey No.557/3. The suit was allowed by the learned District Munsif,



Sathyamangalam on 12.03.1993 by an exparte Judgment and decree. Thereafter, the petitioner was in possession and enjoyment of all the three properties. The 3rd respondent herein who is the subsequent purchaser of the property in survey Nos.557/2 and 557/3 measuring to the extent of 1.50 acres and 2.97 acres had attempted to dispossess the petitioner. Hence, the petitioner filed a suit for declaration and consequential injunction in O.S.No.208 of 2002. The learned District Munsif, Sathyamangalam on 27.04.2004 had decreed the suit in favour of the petitioner. Aggrieved against the same, the 3rd respondent filed an appeal before the learned Principal Subordinate Judge, Gobichettipalayam in A.S.No.33 of 2004. The learned Principal Subordinate Judge, Gobichettipalayam was pleased to set aside the judgment and decree passed by the learned District Munsif, Gobichettipalayam in O.S.No.208 of 2002, against which the petitioner preferred Second Appeal in S.A.No.581 of 2005 before this Court and this Court, by judgment, dated 13.07.2012 dismissed the second appeal confirming the judgment and decree passed by the first appellant Court/the Principal Subordinate Court, Gobichettipalayam in A.S.No.33 of 2004 setting aside the judgment of the trial Court/the District Munsif Court, Gobichettipalayam in O.S.No.208 of 2002.

5.The further contention of the petitioner is that the 3rd respondent has filed a suit before the learned District Munsif, Sathyamangalam in O.S.No.68 of 2013 seeking relief of mandatory injunction in respect of the pipeline passing through the land of the 3rd respondent to the land of the petitioner, which was dismissed for default on 11.04.2015. The 3rd respondent is not in actual physical possession of the property in survey No.557/3, later, attempted to fence and put a compound wall in the property with the help of the Police. The 3rd respondent had moved a direction petition before this Court in CrI.O.P.No.14020 of 2016 seeking Police protection to the property which is the subject matter of the suit in O.S.No.208 of 2002. This Court, by order, dated 05.07.2016 directed the 3rd respondent to appear in person before the 2nd respondent Police along with the copy of the order and lodge a fresh complaint, containing the very same contents as stated in the previous complaint dated 27.06.2016 and on receipt of such complaint, the same to be enquired into by calling the petitioner and the 3rd respondent and to take action in accordance with law and if necessary to give police protection to the 3rd respondent for laying a fence/compound wall in the property. The 2nd respondent contacted the petitioner and directed him to appear before him for enquiry. On 31.08.2013, the petitioner had appeared before the 2nd respondent Police and the 2nd respondent Police directed the petitioner to vacate the agricultural land in survey No.557/3 to the extent of 0.59 ½ cents at Puthupeerkadavu Village, despite the petitioner informing the 2nd respondent that he was in possession for two



decades and has been cultivating the lands by having coconut and plantation grove. The 2nd respondent Police failed to consider the representation given by the petitioner and threatened him to vacate the land within a week, failing which he would be forcibly thrown away and the trees would be cut. Thereafter, the 3rd respondent along with henchmen and the 2nd respondent had come to the petitioner's property along with the surveyor and demarcated the disputed property. The petitioner, thereafter, sent a representation on 03.09.2016 to the respondents 1 and 2 to stop the activities of the 3rd respondent, but the respondents 1 and 2 failed to take any action. It is to be seen that the 3rd respondent failed to take any action through Court of Law for recovery of possession from the petitioner. The possession of the property is in the hands of the petitioner. The respondents 1 and 2 being the Police authorities have no right to involve themselves in the civil matter and they have no authority to take possession of the disputed property. Hence, he has filed the above petition.

6. In support of his contention, the learned counsel for the petitioner relied upon the following citations:-

- P.R.Muralidharan and others Versus Swami Dharmanandha Theertha Padar and others reported in 2006 4 SCC 501.
- Sri-La-Sri Sivasubramanyananda Versus Sri Aurnachalasamy reported in 1993 1 MLJ 274.
- S.P.Chengalvaraya Naidu Versus Jaganath reported in 1994 (1) SCC 1.
- G.Meena Versus The Commissioner of Police in CrI.O.P.No.20980 of 2008 dated 08.12.2008 by this Court.

7. The learned counsel appearing for the 3rd respondent filed counter and submitted that the petitioner had himself admitted that he purchased the property only in survey No.557/2 and 557/4 in Puthupeerkadavu Village, Sathyamangalam Taluk, Erode District and he claims possession of the land in survey No.557/3, which is absolutely false. The land to the extent of 2.97 acres in survey No.557/3 was purchased by the 3rd respondent on 22.05.2001 by a registered sale deed and from the date of purchase, the 3rd respondent is in absolute possession and enjoyment of the property. The petitioner filed the civil suit in O.S.No.208 of 2002 before the learned District Munsif, Sathyamangalam against the 3rd respondent for the property in Survey No.577/3. The learned District Munsif, Sathyamangalam erroneously decreed the suit in favour of the petitioner, against which the 3rd respondent preferred an appeal in A.S.No.33 of 2004 before the learned Principal Subordinate Judge, Gobichettipalayam and the appeal was allowed. Aggrieved against the same, the petitioner



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preferred Second Appeal in S.A.No.581 of 2005 before this Court and the same was dismissed on 30.07.2012. This Court had finally concluded and held that the petitioner is not entitled for declaration and injunction with regard to the 3rd respondent's land in Survey No.557/3.

8.The learned counsel for the 3rd respondent further submitted that in S.A.No.581 of 2005, this Court had held that the property mentioned in the earlier suit in O.S.No.453 of 1984 in which the petitioner had obtained an exparte decree, is completely different and the property in survey No.557/3 to the extent of 59.5 cents are not the suit property in O.S.No.453 of 1984. It is admitted by the petitioner in the earlier suit in O.S.No.453 of 1984 that the survey No.557/3 was not subject matter of the suit property. From the categorical findings of the Civil Courts, it is proved that the property in survey No.557/3 is that of the 3rd respondent. Further, the 3rd respondent in his petition in Crl.O.P.No.14020 of 2016 in paragraph No.3 clearly mentioned that the suit in O.S.No.68 of 2013 was filed by her, which was pending before the learned District Munsif, Sathyamangalam for bare injunction. Hence, there has been no suppression of facts and this Court in Crl.O.P.No.14020 of 2016 on the finding of the Civil Courts and considering the merits of the case, had directed the 3rd respondent to lodge a fresh complaint containing the same contents of the complaint dated 27.06.2016 to the 2nd respondent Police. Thereafter, the petitioner lodged a complaint and after taking the service of surveyor and following the due process of law, the lands were surveyed and earmarked. Thereafter, the 3rd respondent had taken possession of the same. During the enquiry conducted by the 2nd respondent Police, the petitioner submitted his representation with false allegation and failed to mention about the earlier findings of the civil proceedings. Thus, the petitioner to circumvent the law and to somehow continue to encroach upon the property of the 3rd respondent by all means has filed the above petition.

9.The learned Additional Public Prosecutor appearing for the respondents 1 and 2 submitted that the 3rd respondent is the lawful owner of the survey No.557/3. The petitioner himself admitted that he purchased only the property in survey Nos.557/2 and 557/4 and now, he is claiming adverse possession of the land in Survey No.557/3. Earlier, in the civil suit filed by the petitioner in O.S.No.453 of 1984, it is admitted that 59.5 cents in survey No.557/3 is not the suit property. The learned District Munsif, Sathyamangalam in O.S.No.208 of 2002 proceeded on a wrong premise which has been set aside by the learned Principal Subordinate Judge, Gobichettipalayam in A.S.No.33 of 2004 and the same has been confirmed by this Court in Second Appeal No.581 of 2005 and thereby, the rightful ownership of the



land in survey No.557/3 is of the 3rd respondent. Considering all these aspects, this Court in Crl.O.P.No.14020 of 2016 had passed an order in favour of the 3rd respondent. The petitioner having lost in the civil forum is now attempting to convert the same into criminal case by using his might and encroaching upon the lands of the 3rd respondent. The categorical findings of this Court in Crl.O.P.No.14020 of 2016 is that on receipt of the complaint, the same to be enquired by calling upon the petitioner as well as the 3rd respondent to take action in accordance with law and if necessary to give police protection to the 3rd respondent for laying a fence/compound wall in the property. In obedience to the order of this Court, on the complaint of the 3rd respondent, C.S.R.No.136 of 2016 was assigned and enquiry was conducted and the representation of the petitioner was also received. The petitioner wanted to keep the petition enquiry pending for obvious reasons and take advantage to continue to encroach upon the land in survey No.557/3. After enquiry, C.S.R.No.136 of 2016 has been converted into a case in Crime No.223 of 2016 for offence under Sections 147, 148, 294 (b), 324 and 506(ii) IPC and the counter case in Crime No.224 of 2016 for offence under Sections 294(b), 324 and Section 3 of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act. After due enquiry in Crime No.224 of 2016, the case has been referred as 'Mistake of Fact' on 07.11.2016. The closure report has been made ready and whether it has been filed or not, before the concerned Court, the learned Additional Public Prosecutor is unable to confirm the same.

10.It is further submitted that the 3rd respondent had taken the service of surveyor and demarcated the land and now, the compound wall/fencing has been done in survey No.557/3. If the petitioner as well as the 3rd respondent are aggrieved by the action of the 2nd respondent in Crime No.223 & 224 of 2016, they can approach the concerned Court by filing appropriate petition. Since the cases already filed, investigated and reports are made ready, nothing survives in the above petition and the same is liable to be dismissed.

11.This Court considered the rival submissions and perused the materials available on record.

12.It is admitted by the petitioner that the petitioner had purchased the property in survey No.557/2 and 557/4 from one Nanjappa Gounder, Krishna Gounder and Dhennapapa Gounder and he was carrying on the agricultural activities for three decades. The petitioner admitted that he was only in possession and enjoyment of the property lying in Survey No.557/3 to the extent of 0.59.5½ cents. The petitioner has also filed a civil suit in O.S.No.234 of 1987 and obtained an exparte decree in his favour and thereafter, he has filed O.S.No.208 of 2002 before the



learned District Munsif, Sathyamangalam against the 3rd respondent for the property in survey No.577/3. The learned District Munsif, Sathyamangalam initially passed the judgment in favour of the petitioner and thereafter, the same has been taken up by way of appeal by the 3rd respondent as A.S.No.33 of 2004 before the Principal Subordinate Judge, Gobichettypalayam, which was allowed. Aggrieved over the same, the petitioner filed S.A.No.581 of 2005 before this Court and the same was dismissed, confirming the judgment of the first appellate Court.

13.The clear and categorical finding of the civil Courts and on the admission of the petitioner, it is proved that the property in survey No.557/3 is not a suit property in O.S.No.234 of 1987. The learned District Munsif, Sathyamangalam on a wrong premise had passed a judgment which was set aside by the first appellate Court as well as this Court. The petitioner admitted that he did not prefer any SLP against the judgment of this Court in S.A.No.581 of 2005. In view of the same, finding of this Court in S.A.No.581 of 2005 has reached finality, which is in favour of the 3rd respondent. The other contention of the petitioner is that the 3rd respondent suppressed the dismissal of the suit in O.S.No.68 of 2013 before the learned District Munsif, Sathyamangalam is not correct. In his petition in CrI.O.P.No.14020 of 2016 in paragraph No.3, the petitioner has clearly mentioned about the suit in O.S.No.68 of 2013. Further, with regard to the representation of the petitioner as well as the 3rd respondent, C.S.R.No.136 of 2016 has been assigned and thereafter, cases have been registered in Crime Nos.223 & 224 of 2016. Now, it is seen that the fence/compound wall already put up by the 3rd respondent after taking service of surveyor and now, the 3rd respondent is in possession and enjoyment of the property in survey No.557/3. The petitioner has got no right over the said property and he cannot make any claim in view of the categorical finding of the Civil Courts.

14.The petitioner has to approach the Civil Court only by invoking Section 151 of C.P.C., and thereafter only he can approach the criminal jurisdiction. This Court as well as the Hon'ble Apex Court have clearly held that "a Litigant who had secured an order from the Court is not in a position to have itself full benefit owing either to obstruction or non cooperation of other side, it is always open to the Court to resort to the law enforcement machinery to see that its order is obeyed and there is nothing illegal or irregular in that." Further, it had held that "no technicality can prevent the Court from doing justice in exercise of its inherent powers". Therefore, the citations referred by the learned counsel for the petitioner are not helpful to the present facts and circumstances of the case.



15. It is seen that the representation of the petitioner dated 31.08.2016 and 03.09.2016 have been disposed. In view of the same, this Court finds that earlier order passed by this Court in Crl.O.P.No.14020 of 2016 and subsequent action taken by the 2nd respondent Police are perfectly in order. Hence, the above petition filed by the petitioner does not have any merit for consideration and the same is liable to be dismissed and, is dismissed. Consequently, the connected Criminal Miscellaneous Petitions are closed.

Sd/-
Assistant Registrar

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Sub Assistant Registrar

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To

1. The Superintendent of Police,
Erode District, Erode.
2. The Inspector of Police,
Bhavanisaakar Police Station,
Sathyamangalam, Erode District.
3. The Public Prosecutor,
High Court, Chennai.

Crl.O.P.No.20427 of 2016

SR-II (CO)
RGA (22/07/2021)