

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 26.08.2021

CORAM

THE HONOURABLE MR. JUSTICE M.DHANDAPANI

Crl.O.P.No.29731 of 2018

T.Rajendran

.. Petitioner

Vs.

1. State Rep by
The Commissioner of Police,
Office of the Commissioner of Police,
Greater Chennai City,
Vepery, Chennai.

2. The Assistant Commissioner of Police,
R.K.Nagar Rang, R.K.Nagar,
Chennai.

3. Inspector of Police,
R.K.Nagar Police Station,
R.K.Nagar, Chennai.

.. Respondents

PRAYER: Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, to direct the 3rd respondent to monetary investigate and provide a police protection to vacate illegally occupy and stored thing by Sivakumar and Saravanan in the way of the petitioner house, based on the petitioner complaint dated on 15.06.2018.

For Petitioners : Mr.S.Chandranathan

For Respondents : Mr.C.E.Pratap
Government Advocate(Crl.Side)

O R D E R

The petitioners have filed this petition seeking appropriate action on the petitioner complaint dated 15.06.2018.

2. The learned counsel appearing for the petitioner submitted that the petitioner's father one Mr.Thangavel owns a property in his name situated at No.94/154, First Street, Nethaji Nagar, Tondiarpet, Chennai 600 081 and the petitioner's

father have 5 sons and 5 daughters. After the death of the father, with the consent of the two daughters, the said property was equally divided and settled to their five sons and they are in possession and enjoyment of the said property. All of a sudden, the petitioner's brother namely Sivakumar and Saravanan had illegally trespassed into the property which was partitioned in favour of the petitioner. Therefore, the petitioner has filed a Suit in O.S.NO.6338 of 2013 before the II Assistant Civil Court at Chennai and the said Suit got decreed as exparte before the Trial Court and it has become final, no challenge was made to the said exparte order. However, the petitioner's brothers continues to disturb the possession of the petitioner by illegally occupying his land. Aggrieved by the same, the petitioner has preferred a complaint before the law enforcing agency on 15.06.2018. Though the said complaint was lodged on 15.06.2018, till date the respondent has not taken any action on the same. Hence, the petitioner left with no other option except to approach this Court, has filed the present petition.

3. The learned Government Advocate (Crl.Side) submitted that already the petitioner has approached the competent Civil Court by filing a Suit in O.S.No.6338 of 2013 and the said Suit has also got decreed in favour of the petitioner. If anyone violated the decreetal order, it is open to the petitioner to file an appropriate petition before the Trial Court and without adjudicate the matter before the competent forum, straight away approaching this Court by filing the present petition, is not sustainable. Hence prays for dismissal of this petition.

4. The facts in the present case is not in dispute that admittedly there was a civil dispute between the petitioner and his brothers, due to which, the petitioner has already filed a Suit in O.S.No.6338 of 2013 and the said Suit has also decreed as exparte order. It appears that even after the said exparte order, the petitioner's brother continued to disturb the peaceful possession of the property, for which, the petitioner has filed a complaint before the law enforcing agency.

5. As rightly pointed out by the learned Government Advocate (Crl.Side), if there is any violation of the exparte order, the only remedy open to the petitioner is to approach the competent Civil Court by filing an appropriate application before it. However, without exhausting the remedy available to the petitioner before the competent forum, seeking relief under Section 482 by filing this present petition, is not sustainable and hence, the prayer sought for by the petitioner cannot be considered.

6. This criminal original petition is dismissed with the above observations.

Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

sk

To

1. The Commissioner of Police,
Office of the Commissioner of Police,
Greater Chennai City,
Vepery, Chennai.
2. The Assistant Commissioner of Police,
R.K.Nagar Rang, R.K.Nagar,
Chennai.
3. The Inspector of Police,
R.K.Nagar Police Station,
R.K.Nagar, Chennai.
4. The Public Prosecutor,
High Court, Madras.

Cr1.O.P.No.29731 of 2018

RLD (CO)
K.RK. (22.11.2021)