



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Date of Reservation	23.08.2021
Date of Judgment	12.11.2021

WEB COPY

CORAM:

THE HON'BLE MR JUSTICE G.ILANGO VANWP(MD)Nos.2389 and 7487 of 2020andWMP(MD)Nos.2045 and 6954 of 20201.WP(MD)No.2389 of 2020:-

S.Ramesh

: Petitioner

Vs.

1.The Commissioner of Police,
Madurai City,
Madurai.

2.The Assistant Commissioner of Police,
Thilakar Thidal Range,
Madurai City,
Madurai.

3.The Inspector of Police,
Thilkar Thidal Police Station,
Madurai.

4.P.Saravanan

5.S.Vijayalakshmi

: Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, seeking a writ of mandamus directing the respondents 1 to 3 to remove the illegal lock and seal put up by the respondents 4 and 5 on the entry gate of the petitioner's shop namely Sairam Traders located at No.31/1, Workshop Road, Simmakal, Madurai Town, Madurai on the basis of the representation of the petitioner, dated 19.01.2020.

For Petitioner : Mr.N.Satheesh Kumar

For R1 to R3 : Mr.K.Sanjai Gandhi
Government Advocate (Crl. Side)

For 4th Respondent : Mr.J.Jeyakumaran



2.WP(MD)No.7487 of 2020:-

R.Maheshwari

: Petitioner

WEB COPY

Vs.

1.The Sub Divisional Magistrate &
The Revenue Divisional Officer,
O/o.District Correctorate,
Madurai.

2.The Inspector of Police,
C-4, Thilagarthidal Police Station,
Madurai City,
In Crime No.418 of 2019

3.P.MadhupaNdian

4.Rajalakshmi

5.P.Malathi

6.P.Saravanan

: Respondents

Prayer: Writ Petition is filed under Article 226 of the Constitution of India, to issue a writ in the nature of mandamus directing the 1st and 2nd respondent to allow the petitioner to open the petitioner's shop in the 1st and 2nd Floor in Door No.31/1, Work Shop Road, Simmakal, Madurai and to safeguard the life of the petitioner.

For Petitioner : Mr.R.Aravind Raj

For R1 and R2 : Mr.K.Sanjai Gandhi
Government Advocate (Crl. side)

For R3 to R5 : Mr.P.Vijaya Raghavan

For 6th Respondent : Mr.J.Jeyakumaran

COMMON ORDER

WP(MD)No.2389 of 2020 has been filed seeking order of removal of lock that has been put by the respondents 4 and 5 respondent on the entry gate of the petitioners shop namely Sairam Traders, located at No.31/1, Workshop Road, Simmakal, Madurai Town, on the basis of the representation, dated 09.11.2020. Whereas WP(MD) No.7487 of 2020 has been filed seeking for direction to the respondents 1 and 2 to allow the petitioner to open the shop in the first and second floor of Door No.31/1, Workshop Road, Simmakal, Madurai.

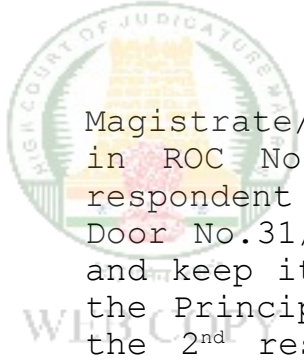


2.The petitioner in WP(MD)No.2389 of 2020 is running a business of selling agricultural spares under the name and style of Sairam Traders. In the above said Door number from 2004 onwards, he continued to be a tenant in the above said premises. Even after transfer of the ownership, his tenancy was periodically renewed. In 2008, the 4th respondent and his mother namely Rajalakshmi and his elder brother Madhupandian. On 19.09.2008 they allowed the petitioner to continue the tenancy by paying monthly rent at the rate of Rs.10,000/-. Later dispute arose between the 4th respondent on the one hand and his mother and his elder brother on the other hand in respect of sharing over the property of the joint family business. So also with regard to the purchase that has been jointly purchased, the petitioner was remitting the rent to the mother of the 4th respondent. After the dispute, the respondents 4 and 5 insisted the petitioner to pay the rent to them. When he was objected, they attempted to evict him illegally. So, he filed a suit in O.S No.597 of 2018 before the Principal District Munsif Court, Madurai, seeking permanent injunction. Similarly the 4th respondent's elder brother filed a suit before the same court in O.S No.489 of 2018 for permanent injunction against the 4th respondent. Now, it is pending. So because of the property dispute, criminal occurrence took place. So a case in Crime No.418 of 2019 under section 145 Cr.P.C was registered by the 3rd respondent police and it was referred to the Executive Magistrate for initiation of proceedings.

3.The 5th respondent cut the CCT service and that has been put up to safeguard the agricultural machineries spares worth about 1 Crore. On 02.01.2020, the 5th respondent illegally put up the lock in the entry gate of the shop. So, he made a complaint before the respondent police and CSR No.4 of 2007 was also registered. But there was no action. As the respondents 4 and 5 have also put a flex board in front of the gate, the petitioner made a representation to the official respondents, on 19.01.2020 to remove the lock, that has been put up by the respondents 4 and 5. Since there is no action, this petition came to be filed.

4.R.Maheswari, the petitioner in WP(MD)No.7487 of 2020 has stated like Mr.Ramesh, who is her husband also running a business called as Sakthi Traders. She also along with her husband entered into a rental agreement as stated above. The 6th respondent is running a Tyre shop on the ground floor, whereas these two petitioners are occupying the first and second floor. Because of the trouble made out by the 6th respondent and others, a suit in O.S No.597 of 2018 has been filed as stated above writ petition. The other particulars are similar to the fact of the above said writ petition, so they need not be reproduced.

5.As stated in the above said writ petitions, in pursuance of FIR in Crime No.418 of 2019, the first respondent the Sub Divisional

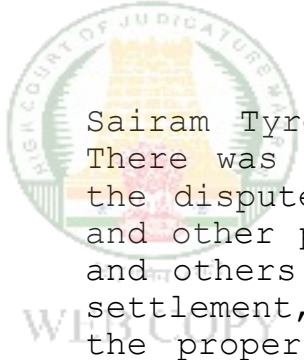


Magistrate/Revenue Divisional Officer, Madurai, has passed an order in ROC No.4627 of 2019M, dated 10.02.2020 stating that the 3rd respondent namely Madhupandian is entitled to be in possession at Door No.31/1, and directed the 2nd respondent to close the premises and keep it under lock and seal till the matter has been decided by the Principal District Munsif, Madurai, in O.S No.489 of 2019. So the 2nd respondent in order to enforce the above said order has locked the entire premises. The above said order was also challenged by the 6th respondent in Crl.RC(MD)No.287 of 2020 and interim order was also granted. In pursuance of the above said interim order, the 6th respondent opened the first floor of the shop, but not allowing the petitioners and other tenants to open the lock. So, the petitioner lodged a complaint in CSR No.143/2020 So because of the lock that has been put up, they are not in a position to continue their business. So this petition has been filed seeking direction to the respondents 1 and 2 to allow the petitioner to open the shop in the first and second floor.

6.A detailed counter has been filed by the private respondents and on the other hand, the State has also filed a statutory report. During the pendency of both the writ petitions, final order has been passed in Crl.RC(MD) No.287 of 2020, on 09.09.2020. in the above said order, the order passed by the Sub Divisional Magistrate/RDO in ROC No.4627/2019/M, dated 10.02.2020 has been set aside. Thus, these two writ petitions came to be filed on 05.02.2020 and on 08.07.2020 respectively. But subsequent to the above said filing of the writ petitions, an order has been passed by the 1st respondent, on 10.02.2020. The said order passed by the 1st respondent is not in force. Who is in possession of the property is the contentious issue, that has been raised by the petitioners and as well as by the P.Saravanan. Now the case of the P.Saravanan is that these petitioners were never be in possession of the properties as tenants at any point of time and these petitioners have been put up by his elder brother Madhupandian and a suit in O.S No.597 of 2018 has been filed only at the instance of his brother, which was jointly filed by these petitioners by arraying P.Rajalakshi, P.Madhupandian and P.Saravanan as defendants. The copies of the plaint, written statement filed in the above suit has also been produced.

7.Further, in the notice 26.10.2018, it has been stated that these two petitioners are in possession of the property in lieu of usufructuary mortgage, which is a created one. So also demanding they most received the the mortgage amount from the owner and vacated their premises. But the case of P.Madhupandian is that these petitioners are tenants in respect of the disputed properties and they also failed to pay the rent amount.

8.Now, the 6th respondent claims that the alleged tenancy agreement between the petitioners and the above said P.Madhupandian is not true. He is running a Tyre shop under the name and style of



Sairam Tyres, in Door No.31/1, that is in the disputed premises. There was a partition in the joint family on 14.09.2020, in which the disputed buildings consisting of 4 floors were allotted to him and other properties were allotted to the above said P.Madhupandian and others and it has been stated by him that after the above said settlement, P.Madhupandian trespassed into the property and stolen the properties and in this regard, criminal cases have also been registered. Similarly, in the suit filed by his brother in O.S No.489 of 2018 the relief of temporary injunction was refused by the trial court in I.A No.635 of 2018.

9.It is further alleged that the 2nd respondent locked the shop without permitting him to remove his belongs. After the interim order passed by this court, the 3rd respondent handed over the key to him and therefore, he is in possession and enjoyment.

10.So in the background of the above said disputed facts, it is to be seen that whether these petitioners are in possession of the disputed properties as tenants or not is a matter of factual issue. In respect of which also, a suit in O.S No.489 of 2018 has been filed by the petitioners before the civil courts, which is competent to try the issue. In the background of the above said issue, let us go to the observation that has been made by the Revenue Divisional Officer in the order. Even though the order has been set aside, some factual aspects can be taken note of, so that more clarify can be thrown upon the controversy. It is observed that because of the dispute between two groups, he entered into an partition deed, dated on 22.07.2018, by which P.Madhaupandian was permitted to use the Door No.31/1, Workshop Road, Simmakal, Madurai as S.P.Saravanan Tyres- Unit-2 and the P.Saravanan was permitted to run his business at Door No.29, Simmakal, North Lane, Madurai. The rental agreement was entered into and P.Madhupandian agreed to pay the rent of Rs.5,000/- per month. On 16.12.2018 also, there was an unregistered agreement between P.Madhupandian and P.Saravanan. He has also made a local inspection and conducted enquiry. So in respect of the above said issue, the above said P.Madhupandian lodged a complaint on 17.10.2018 alleging that he is running a Tyre unit called S.P. Saravana Tyres and it belongs common to him and his mother Rajalakshmi and Sarvanan. So in respect of which, case in Crime No.20 of 2019 registered and counter complaint has also been registered, on 14.01.2019. A commotion took place in the disputed property bearing No.31/1, the neighbours also intimated the same to the police and the police came to the spot and removed the rival groups Other particulars are not necessary for our discussion. When the enquiry process was going on, on 03.01.2020, Saravanan locked a part of the property and prevented others from moving out and also created problem to the above said P.Madhupandian. So on the basis of the local inspection and enquiry, the 1st respondent came to the conclusion that P.Madhupandian is entitled to be in possession of the property that is in Door bearing No.31/1 and P.Saravanan is



holding the property and requested to hand over the same. So, the Inspector of Police, attached to Thilagarthidal Police Station closed the premise and kept it under lock and key.

11. Reading of the above order shows that dispute exists between two brothers and even though the dispute between two brothers is the relevant fact to these petitioners and in view of the specific stand that has been taken by P.Saravanan, these petitioners are not tenants, which as stated is in dispute, no order can be passed in these petitions. Since in the above order, it has been stated that lock and seal has been removed subsequent to the order passed in CrI.RC (MD) No.287 of 2020, dated 09.09.2020, if at all the petitioners feel that their portion has been locked by P.Saravanan, they can very well work their remedy in the pending suit, even though these petitioners claim to be the statutory tenants in respect of the disputed property.

12. In the above circumstance of the case, as stated above, it is a factual dispute, that can be decided only during the trial process. So, I find no merit in these petitions.

13. In fine, these writ petitions are **dismissed** giving liberty to the petitioners to work out their remedy in the pending suit in O.S No.597 of 2018 on the file of the Principal District Munsif, Madurai. No costs. Consequently connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar(CS-III)

// True Copy //

/ /2021

Sub Assistant Registrar(CS)

er

To

1.The Principal District Munsif, Madurai.

2.The Commissioner of Police,
Madurai City,
Madurai.

3.The Assistant Commissioner of Police,
Thilakar Thidal Range,
Madurai City,
Madurai.



4.The Inspector of Police,
Thilkar Thidal Police Station,
Madurai.

5.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

WP(MD)Nos.2389 and 7487 of 2020
12.11.2021

SJ(CO)
TR(14.12.2021) 7P 6C