



Crl.O.P.(MD) Nos.7059 and 7765 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 04.08.2022

Pronounced on: 12.08.2022

CORAM:

THE HONOURABLE MR. JUSTICE V.SIVAGNANAM

W.P.(MD) Nos.7059 and 7765 of 2021
and WMP(MD) No.5427 of 2021

A.Rajan ...Petitioner in WP(MD) No.7059 of 2021

R.Vijaya ...Petitioner in WP(MD) No.7765 of 2021

VS

1. The Superintendent of Police
Theni District

2. The Deputy Superintendent of Police
Bodinayackanur
Theni District

3. The Inspector of Police
Bodinayackanur Town Police Station
Theni District

... Respondents 1 to 3 in all petitions

4. Dr.R.Vijaya4th Respondent in WP(MD) No.7059 of 2021

4.A.Rajan4th Respondent in WP(MD) No.7765 of 2021



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PRAYER in W.P.(MD) No.7059 of 2021 : Writ Petition filed under Article 226

of the Constitution of India, praying this Court forbearing the respondents 2 and 3 from forcibly evicting the petitioner from his tenancy building bearing door No.18/22, Kaliamman Kovil Street, Vetri Theatre Back Side, Bodinayakanur Post, Theni District without following due process of law.

PRAYER in W.P.(MD) No.7765 of 2021 : Writ Petition filed under Article 226

of the Constitution of India, praying this Court to direct the first respondent to evict the trespasser from the property and hand over the same to the original owner of the property and take action against him for the complaint which given by the petitioner within the time period stipulated by this Court.

(in WP(MD) No.7059 of 2021)

For Petitioner : Mr.S.Saravakumar

For Respondents : Mr.M.Sakthi Kumar
No.1to 3 Government Advocate (Crl.Side)
No.4 :Ms.B.Bhuvaneswari
for Mr.M.Karunanithi

(in WP(MD) No.7765 of 2021)

For Petitioner : Ms.B.Bhuvaneswari
for Mr.M.Karunanithi
For Respondents : Mr.M.Sakthi Kumar
No.1to 3 Government Advocate (Crl.Side)
No.4 :Mr.S.Saravakumar



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COMMON ORDER

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Since the issues involved in these writ petitions are similar, the same are taken up together for disposal by common order.

2. W.P. (MD) No. 7059 of 2021 has been filed to forbear the respondents 2 and 3 from forcibly evicting the petitioner from his tenancy building bearing door No.18/22, Kaliamman Kovil Street, Vetri Theatre Back Side, Bodinayakanur Post, Theni District without following due process of law.

3. W.P. (MD) No.7765 of 2022 has been filed to direct the first respondent to evict the trespasser from the property and hand over the same to the original owner of the property and take action against him for the complaint which was given by the petitioner within the time period stipulated by this Court.

4. The learned counsel for the petitioner in W.P.(MD) No. 7765 of 2021 would submit that Dr.R.Vijaya (fourth respondent in WP(MD) No.7059 of 2021) is the owner of the property situated at Bodinaickanur Town Old ward No.8, New ward No.11, Subramaniya Swamy Kovil North street, Survey Ward

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-2 in Survey No.3535/2A. According to the petitioner she got the property through registered Will dated 18.02.1990 executed by her father Ramasamy Naicker. Ramasamy Naicker died on 18.07.1991. The petitioner's brother occupied one portion of the property illegally. Hence, she filed a civil suit in O.S. No.332 of 1997 on the file of the District Munsif cum Judicial Magistrate, Bodinayakanur and it was decreed in her favour on 03.12.1997, against which, his brother filed an appeal in A.S. No.4 of 2006 before the Principal District Court, Theni, which was dismissed confirming the judgment of the trial Court. Against the said judgment, her brother filed second appeal before this Court in S.A(MD) No.628 of 2007 which was also dismissed on 25.09.2018.

5. The learned counsel would further submit that the petitioner in W.P. (MD) No.7059 of 2021 (hereinafter referred to as A.Rajan (who is the fourth respondent in W.P.(MD) No.7765 of 2021)), claimed himself as lessee from the brother of R.Vijaya and refused to vacate the place and also threatened her. Hence, she gave a complaint against A.Rajan, which was registered in Crime No. 153 of 2021 for the offences under Sections 294(b), 323, 342, 506(i) of IPC., in which, he obtained anticipatory bail. Under these circumstances, R.Vijaya filed W.P.(MD) No.7765 of 2021 seeking a direction to the first



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respondent – Superintendent of Police to evict A.Rajan from the property and to hand over the same to her.

6. The learned counsel for Mr.A.Rajan would submit that Mr.A.Rajan is in occupation of the building situated in D.No.18/22 Kalamman Kovil Street, Vetri Theatre Back side, Bodinayakanur Post, Theni District as lessee to Dr.R.Vijaya's brother from the year 2004, in which, he is running a as lessee of the fourth respondent (Vijaya) from the year 2004, in which he is running a Trust in the name of Albert Rajammal Charitable Trust registered vide document No.116/BK4/2004, which is formed to develop the education of the downtrodden community Girls. He also filed a suit against Dr.R.Vijaya in O.S.No.200 of 2012 on the file of the District Munsif Court, Bodinayakanur for permanent injunction against Dr.R.Vijaya that she should not interfere with his possession and enjoyment of the property till he is evicted under due process of law. That suit was dismissed, against which, he filed Appeal Suit in A.S.No.6 of 2021, which is pending on the file of the Sub Court, Theni. On the ground of dismissal of the suit, the fourth respondent with the help of others gave complaint to the third respondent and registered a case in Crime No.153 of 2021 for the offences under Sections 294(b), 323, 342 and 506(i) of IPC and



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thereafter filed W.P.(MD) No.7765 of 2021, seeking direction to the first respondent to evict him from the property and to hand over the same to her and take action against him based on the complaint given by her.

7. The learned Government Advocate (Crl. Side) would submit that Dr.R.Vijaya is the owner of the property and she filed a suit in O.S. No.332 of 1997 against his brother and it was decreed in her favour and it went up to High Court, where the decree was confirmed and ownership of Dr.R.Vijaya was also confirmed. Now, Mr.A.Rajan, petitioner in WP(MD) No.7059 of 2021 and accused in Crime No.153 of 2021 is in possession of the property and the suit filed by him in O.S.200 of 2012, seeking his tenancy was negatived. As on date, he is in possession of the property and the respondent police is ready to execute any order passed by this Court.

8. I have considered the submission of the learned counsel appearing for the petitioners, respondents and the learned Government Advocate (criminal side) appearing for the respondent police.



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9. Perusal of the material reveals that the disputed property was owned by one Ramasamy Naicker. Ramasamy Naicker had one son and one daughter. Ramasamy Naicker had executed a Will dated 18.02.1900 in favour of Dr.R.Vijaya and he died on 18.07.1991 and the said Will is the registered one. Since Dr.R.Vijaya's brother disputed the Will, she filed a suit in O.S.No.332 of 1997 on the file of the District Munsif cum Judicial Magistrate, Bodinaickanur and the suit was decreed and the title of the property was declared in favour of Dr.R.Vijaya and also directed her brother to vacate the building and give peaceful possession to her and also granted permanent injunction against him not to disturb her possession of the property, in which she was already in possession. Thus, it is made clear that the disputed property's title was declared in favour of Dr.R.Vijaya and the writ petitioner's brother was also directed to hand over the building to Dr.R.Vijaya by decree of the civil court. Aggrieved by this, he filed an appeal in A.S No.4 of 2006 before Principal District Court, Theni, which was dismissed confirming the decree of the trial Court. Against the judgment of the first appellate Court, he filed Second appeal before this Court in SA(MD) No.628 of 2007 which was also dismissed, confirming the decree in favour of the petitioner. Thus, the title over the property is confirmed by this Court by judgment dated 25.09.2008 in SA(MD) No.628 of 2007.



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10. The learned counsel for Dr.R.Vijaya placed reliance of the judgment of this Court in W.P.No.1720 of 1968 dated 16.09.1968 in the case of ***A.S.V.Varadachariar vs. The Commissioner of Police and others*** and submitted that Mr.A.Rajan is a trespasser to the property and he does not have any right to continue in the possession and therefore the police has to evict the trespasser from the property.

11. I have considered the contention of learned counsel for Mr.A.Rajan, the petitioner in WP(MD) No.7059 of 2021 and he in his affidavit has stated as follows:

“ I respectfully submit that the subject property is absolutely belongs to father of the fourth respondent namely Ramasamy Naicker, the father had one son namely Pounraj and the fourth respondent's daughter. The subject property is having some portion out the said portions and one portion was used by the brother of the fourth respondent as his residence. The fourth respondent herein got right over the said total subject property by way of last Will of her father. But the said Will was not accepted by the said Paunraj and hence the fourth respondent has filed a civil suit in O.S.No.332 of 1997 on the



file of the District Munsif cum Judicial Magistrate, Bodinayackanur, Theni District, in which she separated the subject property as two items of property and prayed to declare that she is absolute owner of the A and B Schedule property and evict the Pounraj from the B Schedule property. At the time of filing the said suit some of the persons occupied as tenant in the A schedule property. But the fourth respondent had prayed eviction in the B schedule property alone. The above said suit was decreed on 03.12.1997 and thereafter it was confirmed in the second appeal in the year 2018 itself. During the said suit, I occupied the above said property as stated above”

12. Therefore, in view of the above contention of Mr.A.Rajan, it is made clear that he is in occupation of the disputed property. Admittedly the suit filed in O.S. No.332 of 1957 was decreed in her favour and in the second appeal filed before the High Court also the said decree was confirmed in the year 2018 itself, which is also admitted by Mr.A.Rajan. Under these circumstances, he has no right to continue in possession of the property, which was decreed in favour of Dr.R.Vijaya.



13.From the above affidavit, it is very clear that Mr.A.Rajan entered upon the property during the pendency of the suit and his possession would be subject to the result of the civil suit which was admittedly decreed in favour of the petitioner Dr.R.Vijaya. Therefore, he has to hand over the possession to Dr.R.Vijaya, as directed to his lessor i.e.,Dr.R.Vijaya's brother since his lessor had no right over the property and his possession become illegal and he became a criminal trespasser, thus Mr.A.Rajan is in possession unlawfully as a criminal trespasser. Criminal trespassing being a cognizable offence, it is the duty of the police to take action.

14. The principle stated in the said decision relied on by the learned counsel for Dr.R.Vijaya is applicable to the fact of this case. In that case, some people remain in occupation unlawfully and refused to vacate, hence, the petitioner filed the complaint before the Commissioner of Police for evicting them. In that case, this Court after considering the submission of the parties directed the Commissioner of Police to enforce order of the Court to evict the criminal trespassers. The order of the Court reads as follows:

“ In the present case it is the duty of the Commissioner of Police to determine whether the continued presence of the hut dweller amounts to criminal trespass. If he comes to that conclusion, it is clearly his duty to evict the trespassers and give protection to the petitioner”.



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15. In the present case the Dr.R.Vijaya (petitioner WP(MD)No.7765 of 2021) is 62 years old lady fighting to recover her property from the year 1997 and still she is unable to get the property in pursuant to the civil Court decree in O.S.No.332 of 1997. E.P.No.19 of 2019 in O.S.No.332 of 1997 is pending. Further, Mr.A.Rajan, the petitioner in WP(MD) No.7059 of 2021, on his own admission in para No.4 had admitted that he occupied the disputed property during the pendency of the suit through the brother of the writ petitioner in WP(MD) No.7765 of 2021 and her title was declared and hence, his brother had no right over the property. Under these circumstances, the occupation of Mr.A.Rajan during the pendency of the suit through the brother of Dr.R.Vijaya, who is having no right over the property, is unlawful and he is only a criminal trespasser. In pursuance of the decree of the Civil Court, Mr.A.Rajan has to hand over the possession to the writ petitioner in WP(MD)7765 of 2021, but he is giving obstructions for taking possession by her.

16. In view of the reasons stated above and the decision of this Court in W.P.No.1720 of 1968, the respondents 1 and 2 are duty bound to evict the criminal trespasser from the trespassed property. The power of this Court under



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Section 482 of Cr.P.C has to be invoked to secure the ends of justice in order to give effect to the decree of the Civil Court in O.S. No.332 of 1197, which was confirmed by this Court in S.A(MD) No.628 of 2007. The petitioner in WP(MD) No.7765 of 2021 is entitled to get possession of the property. Since it is in the occupation of the petitioner in WP(MD) No.7059 of 2021, respondents 1 and 2 are hereby directed to evict the trespasser and give protection to the petitioner.

17. In the result:

i)WP(MD) No.7765 of 2021 is allowed. No costs

ii) In view of the order passed in WP(MD)7765 of 2021, I find no merit in WP(MD) No.7059 of 2021. Hence, WP(MD) No.7059 of 2021 stands dismissed. No costs. Consequently connected miscellaneous petition is closed.

12.08.2022

Internet: Yes
Index: Yes/No
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To

1. The Superintendent of Police
Theni District
2. The Deputy Superintendent of Police
Bodinayackanur
Theni District
3. The Inspector of Police
Bodinayackanur Town Police Station
Theni District
4. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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V.SIVAGNANAM, J.

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