



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 04/02/2022

CORAM:

THE HON'BLE MR JUSTICE G.ILANGOVAN

Crl.O.P. (MD)No.9142 of 2020

WEB COPY

Thiruselvam @ Sivasankaran : Petitioner

Vs.

1.The Superintendent of Police,
Pudukottai District.

2.The Inspector of Police,
Namanasamuthiram Police Station,
Thirumayam Taluk,
Pudukkottai District.

3.Ravikumar

4.Arokkiya Sundaram

5.Sebasthiyan Kennadi

: Respondents

Prayer: Criminal Original Petition is filed under Section 482 Cr.P.C., to issue a direction directing the 1st respondent to direct the 2nd respondent to give police protection for fencing the petitioner's patta land in R.S No.91/3B and R.S No.91/4 by considering the petitioner's representation dated 19.08.202.

For Petitioner

: Mr.K.Baalasundharam

For R1 and R2

: Mr.S.Manikandan

Government Advocate (Crl. Side)

For R3 to R5

: Mr.S.A.Ajmalkhan

O R D E R

This petition has been filed by the petitioner seeking for a direction to the 1st respondent to direct the 2nd respondent to give police protection for fencing the petitioner's patta land in R.S Nos.91/3B and 91/4, by considering the petitioner's representation dated 19.08.2020.

2.The case of the petitioner in brief:-

The mother of the petitioner namely Manickammal purchased 77 cents in Lembalakudi Village in Survey No.91/3B through a registered

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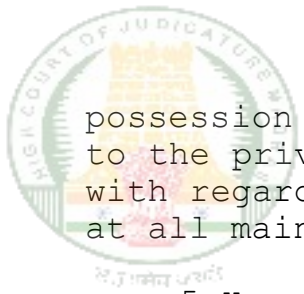


sale deed, dated 03/02/1995 and ever-since she was in possession. The father of the respondents 3 to 5 by name Samikannu @ Anthonimuthu tried to interfere in the possession of the mother of the petitioner. So, she filed a suit in O.S No.100 of 1998 against the above said Samikannu @ Anthonimuthu. The respondents 3 to 5 herein were brought on record. The suit was decreed. Against the above said decree, A.S No.44 of 2002 was filed by the above said Samikannu @ Anthonimuthu. That was also dismissed. So against which, second appeal has been preferred in SA(MD)No.938 of 2004 and that was also dismissed on 20/09/2012, since no steps have been taken to bring on record the legal heirs of the above said Samikannu @ Anthonimuthu.

3.After the dismissal of the above said second appeal, the petitioner received enquiry notice from the Revenue Divisional Officer, Pudukkottai in Na.Ka.No.A8/7624/2010, dated 08/05/2013 for transfer of patta in Survey No.91/3B. So the petitioner filed WP (MD)No.9961 of 2014 against the proceedings and now it is pending before this court. After that, the mother of the petitioner Manickammal died on 17/02/2021. After that, the petitioner and his brother namely L.Jebamalai entered into partition deed, dated 10/10/2015. In that partition, the property in Survey Nos.91/3B and 91/4 was allotted to the petitioner and he is in possession. In October 2019, the petitioner purchased stone pillars for the purpose of fencing the property. But the respondents 3 to 5 damaged the stone pillars. So, a complaint was preferred by the petitioner. But the police refused to take the same and give police protection. So the petitioner made arrangements for the purpose of fencing the property with the police aid. For that purpose, he also made a representation, dated 23/07/2020. But that was not considered. Hence, this petition.

4.A detailed counter affidavit has been filed by the private respondents 3 to 5, wherein they have stated that the second appeal that was preferred by their father was dismissed for non-appearance. But on the date of the above said hearing, the mother of the petitioner by name Manickammal, died on 17/02/2011. But that was not immediately brought to the notice of this court in WP(MD)No.9961 of 2014. After she partitioned and in spite of knowledge of the death of the father, these respondents have not been added as parties. Now the petitioner filed CMP(MD)No.6977 of 2021 to set aside the dismissal order.

4.Regarding the title, it has been stated in the counter that their father purchased the property from one Arunachalam measuring 1.2 Acres through a sale deed, dated 13/01/1994. From the date of purchase, they are in possession. So the property, which is claimed by the petitioner is covered in the sale deed and the plaintiff in the above said suit, created forged documents as if Viswanathan Chettiar sold the property and the above said Viswanathan Chettiar



possession of the respondents 3 to 5 have been stated. So according to the private respondents 3 to 5, when the second appeal is pending with regard to the ownership of the petitioner, this petition is not at all maintainable.

5. Heard both sides and perused the entire records.

6. As stated in the petition, the suit in O.S No.100 of 1998 ended in favour of the father of the petitioner. So also the second appeal in AS No.47 of 2002. Now against which, the father of the respondents 3 to 5 namely Samikannu @ Anthonimuthu preferred second appeal in SA No.938 of 2004 and that was dismissed for non-prosecution on 20/09/2012. Now according to the private respondents 3 to 5, even on the date when the matter was heard, the Manickammal was no more and that was not properly informed to this court. After a long delay, it appears that the private respondents filed a petition in October 2021 to condone the delay in bringing the legal heirs on record, to set aside the abatement order, etc., This petitioner was filed on 25th August, the correct date of presentation of the above petition before Police by the private respondent is not clear on record. The verification date is left blank. It has been presented in the Registry in the month of October 2021. So in the same month when the presentation of the petition, the above said proceedings have been initiated by the private respondents. On the petition presented by the petitioner, enquiry was undertaken by the respondent police and during the course of enquiry, it was found that the dispute between the parties are purely civil in nature. So opinion from the Public Prosecutor was also sought. So on the above said opinion, the enquiry was closed in the petition filed for police protection, which was enquired in CSR No.141 of 2020.

7. Now the learned counsel appearing for the petitioner would submit that since the trial court, appellate court as well as the second appellate court decreed in favour of the petitioner, it is the duty of the police to give police protection for the purpose of police protection fencing the property

8. So, in the light of the above filing of the petition to condone the delay for the purpose of restoring the second appeal, it may not be proper on the part of this court to go in detail with regard to the claims made by the parties. So it is for the concerned Bench of this court to decide the issue with regard to the ownership of the property. Even though on either side, judgments have been cited to support their case, this petition can be disposed of on a short point that since proceedings are pending before this court in the second appeal, granting of police protection to the petitioner for the purpose of fencing the property may not be proper. The remedy is always available to the petitioner to approach the concerned Bench of this court, in which the second appeal is pending in CMP(MD)No.6977 of 2021 in SA No.938 of 2004 for

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9. So without going into the rival claims and without going into the judgments that have been cited by either side, this court is of the considered view that the petition is liable to be dismissed and accordingly it is **dismissed** granting liberty to the petitioner to work his remedy by filing proper petition in the pending proceedings in CMP(MD)No.6977 of 2021 in SA(MD)No.938 of 2004.

Sd/-

Assistant Registrar (P&A)

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/ /2022

Sub Assistant Registrar(CS)

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Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

1. The Superintendent of Police,
Pudukottai District.
2. The Inspector of Police,
Namanasamuthiram Police Station,
Thirumayam Taluk,
Pudukkottai District.
3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.S.A.AJMAL KHAN, Advocate (SR-4500[F] dated 07/02/2022)

Crl.O.P. (MD)No.9142 of 2020
04.02.2022

MGJ(25.02.2022) 4P 5C