



W.M.P.No.2396 of 2023 in W.P.No.1002 of 2023

W.M.P.No.2396 of 2023

in

W.P.No.1002 of 2023

**Reserved on
15.02.2023**

**Pronounced on
09.03.2023**

G.CHANDRASEKHARAN, J.

W.M.P.No.2396 of 2023 is filed to recall the order passed in W.P.No.1002 of 2023, dated 12.01.2023 and to dismiss the above writ petition which is devoid of merits with exemplary costs.

2.W.P.No.1002 of 2023 is filed to issue a Writ of Mandamus directing respondents 1 and 2 to give police protection to the matured paddy crops standing in lands situated at Patta Ka.Illamangalam No.270, Virudhachalam taluk, on 15.01.2023 from 3rd respondent and his hooligans.

3.Petitioner in W.M.P.No.2396 of 2023 submitted that this Court, on 12.01.2023, passed an order in W.P.No.1002 of 2023 directing the first respondent therein to consider the representation of petitioner in



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W.P.No.1002 of 2023, dated 08.01.2023 and pass appropriate orders including the request to provide police protection during the harvesting of crops and to avoid the law and order problem. Taking advantage of this order, first respondent with the help of the police force had harvested the crops cultivated by petitioner in the disputed property. First respondent suppressed the pendency of the civil suit in O.S.No.270 of 2019 pending between petitioner, first respondent and others and also section 110 Cr.P.C. proceedings. In the said circumstances, this petition is filed.

4.In response, the learned counsel for first respondent submitted that petitioner claims right in the disputed property through a Will alleged to have been executed by first respondent's husband. The first respondent's husband's name is Ramasamy. After the death of his first wife, he married first respondent as his second wife. First respondent and Ramasamy's first wife have children. When the direct legal heirs of deceased Ramasamy are alive, the claim of petitioner that Ramasamy had executed a Will in respect of his property in favour of his brother's



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grandson, namely, petitioner, is beyond one's imagination and it is not at all true. The Will was created by petitioner and on the basis of the forged Will, petitioner is giving whole lots of troubles to first respondent and others in enjoying the property. Even in the documents filed by the petitioner, it was shown that he was in possession only as a lessee and not as an owner. On the other hand, first respondent and her family members are alone in possession and enjoyment of the land in dispute, cultivated the lands and harvested the crops. Thus, it is prayed that the above W.M.P.No.2396 of 2023 is to be dismissed.

5.Considered the rival submissions and perused the records.

6.In W.P.No.1002 of 2023, this Court passed the following order on 08.01.2023:

3. Considering the submissions and perused the records. It is seen that the petitioner established prima facie title, possession in respect of properties in Survey No.61/5, 79/1, 79/6, 79/7, 80/19, 91/6. He also produced the FIR in Crime No.517 of 2022 to establish his case that 3rd respondent and his



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henchmen are obstructing his possession and enjoyment of the properties and indulged in violence.

4. Considering the above facts, this Court directs the first respondent to consider the petitioner representation dated 08.01.2023 and pass appropriate orders including the request to provide police protection during the harvesting of crops to avoid law and order problem.

5. With the above directions, this Writ Petition is disposed of.

7. Thereafter, W.M.P.No.2396 of 2023 is filed and it is brought to the notice of this Court that the pendency of O.S.No.270 of 2019 and the proceedings under Section 110 Cr.P.C., were not mentioned in W.P.No.1002 of 2023 and brought to the notice of this Court before passing order in W.P.No.1002 of 2023. This Court directed that the harvested paddy from S.Nos.79/1, 79/6 & 79/7 to be seized and kept in the custody of Tamil Nadu Civil Supplies Godowns until further orders. It was also directed that there shall be no harvest in respect of S.Nos.



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61/5, 80/19 & 91/6 till the final disposal of this case. Accordingly, it is informed by the learned Government Advocate (Crl.Side) that the paddy harvested from S.Nos.79/1, 79/6 & 79/7 is seized and kept in the custody of the Direct Purchase Centre, Vridachalam. This Court also directed first respondent to pay the charges for keeping the 84 sacks of paddy at the aforesaid place.

8.Petitioner and first respondent filed typed set of papers containing documents claiming their right in the disputed property. There is no dispute with regard to the fact that first respondent is the second wife of deceased Ramasamy, who is the owner of the disputed land. It is also not in dispute that Ramasamy has grandchildren through his first and second wife. Petitioner K.Kathiravan is not a direct grand son of deceased Ramasamy. He is the grandson of Ramasamy's brother. Therefore, petitioner's claim that Ramasamy had executed a Will in respect of his properties, in favour of him, while the direct grand children are alive, has to be looked into with suspicion for the reason that *prima facie* the Will appears to be an unnatural Will. It is seen from the records



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produced that already petitioner filed O.S.No.270 of 2019, on the file of the Additional Sub Court Vridachalam with a prayer seeking declaration of title on the basis of the Will dated 18.11.2017 alleged to have been executed by deceased Ramasamy and for other reliefs. First respondent is one of the defendants in that case and she is contesting the case. There was also a proceedings of the Sub Divisional Magistrate cum Sub Collector, Vridachalam, wherein, petitioner & others and first respondent & others were directed to execute a bond for Rs.50,000/- for keeping the peace and maintaining good behaviour. However, as indicated above, there was no mention about these proceedings in W.P.No.1002 of 2023.

9.Since claim of title and possession are involved in this case, this Court is of the view that only a competent Civil Court can adjudicate the dispute between the parties. Sitting in 482 Cr.P.C., this Court cannot embark on this enquiry. It is not advisable also. Thus, this Court directs the petitioner in W.P.No.1002 of 2023, namely, Gnanajothi to file an appropriate application before the learned Additional Sub Court, Vridachalam, in O.S.No.270 of 2019 with regard to the right to possess



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and use 84 sacks of paddy kept in the Direct Purchase Centre, Vridachalam, against the petitioner in W.M.P.No.2396 of 2023. On filing of such application, the concerned learned Judge is directed to dispose of the application on the basis of the evidence produced within a period of four weeks from the date of filing the application. If it is found necessary, the learned Judge may also consider ordering the sale of 84 sacks of paddy kept in Direct Purchase Centre, Vridachalam and for the deposit of the sale proceeds to the credit of O.S.No.270 of 2019, for the Court to adjudicate on the entitlement of this amount to the rightful claimant.

10. With the above directions, this Writ Miscellaneous Petition is disposed of.

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G.CHANDRASEKHARAN , J.

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Pre-Delivery Order in
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in
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09.03.2023