



Crl.O.P.No.28437 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Orders reserved on 15.12.2022	Orders pronounced on 05.01.2023
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THE HONOURABLE MR.JUSTICE G.CHANDRASEKHARAN

Crl.O.P.No.28437 of 2022

C.Poornimadevi

... Petitioner

Vs.

1. The Superintendent of Police
Erode, Erode District.
2. The Additional Superintendent of Police
Perundurai, Erode District.
3. The Sub Inspector of Police
Perundurai Police Station
Erode District.
4. P.C.Ramasamy
(4th respondent is impleaded as per order
in Crl.M.P.No.18082 of 2022 dated
09.12.2022) ... Respondents

This Criminal Original Petition is filed under Section 482 Cr.P.C. to direct the respondents 2 and 3 to give police protection to the petitioner to fence her land namely 1.00 acre within specified boundaries in



Crl.O.P.No.28437 of 2022

S.F.No.864/1 at Perundurai Village, Erode District in view of the petitioner's complaint dated 07.11.2022 and 02.11.2022.

For Petitioner : Mr.A.Thiyagarajan
for
M/s.T.Balaji

For Respondents 1 to 3 : Mr.S.Santhosh
Additional Public Prosecutor

For Respondent-4 : Mr.N.Manoharan

ORDER

Learned counsel for the petitioner submitted that the petitioner owns and is in possession of the lands in old S.F.No.132A/1 new R.S.No.864, now subdivided as R.S.No.864/1 with an extent of p.a. 0.371/2 situated at Perundurai village. This property was purchased by her family through a registered sale deed dated 05.07.2004 from one S.Palanisamy. It's adjacent land owners Selvan and Devimalar sold an extent of p.a.0.25 vide a registered sale deed dated 20.12.2012. Initially this property was allotted to 4th respondent P.C.Ramasamy in a partition deed. He executed a power of attorney deed dated 16.10.2002 in favour of one Nagarajan. Nagarajan sold the property through a registered sale deed dated 05.07.2004 an extent of p.a.1.00 to S.Palanisamy, the vendor



Crl.O.P.No.28437 of 2022

of the petitioner. The vendor sold the property to Selvan, Devimalar and K.P.Krishnasamy and his daughter and in favour of the petitioner through registered sale deeds. Petitioner along with others are jointly enjoying one acre of land with specific boundaries. 4th respondent filed a suit in O.S.No.192 of 2007 before the Sub Court, Erode challenging the sale deed dated 05.07.2004 in favour of S.Palanisamy. This suit was transferred to the Sub Court, Perundurai and renumbered as O.S.No.134 of 2009. This suit was dismissed. Appeal filed by 4th respondent in A.S.No. 23 of 2013 was allowed. Selvan and Devimalar filed Second Appeal in S.A.No.647 of 2014 and other purchasers filed S.A.No.912 of 2014. Both the appeals were tried jointly and this Court set aside the judgment in A.S.No.23 of 2013 and affirmed the judgment and decree of the trial court. 4th respondent filed SLP Nos.18148 - 18149 of 2022 before the Hon'ble Supreme Court. That was also dismissed on 20.10.2022. The judgment and decree in O.S.No.134 of 2009 has become final and it binds on all the parties to the lis. However, 4th respondent is causing hindrance in the occupation of the petitioner in respect of the property purchased by her. On the complaint dated 02.11.2022, CSR



CrI.O.P.No.28437 of 2022

No.518 of 2022 was assigned, but no action was taken. Petitioner gave a representation dated 07.11.2022. Even thereafter, there was no action taken. Therefore this petition.

2. Learned counsel for the 4th respondent submitted that this petition is not maintainable both on facts and law. Neither the petitioner nor the vendors had never been put in possession of the subject property at any point of time. 4th respondent never intended to sell the property to anyone. The power of attorney deed and the sale agreement executed in connection with the loan transaction were misused by his power agent and the sale deed came to be executed. 4th respondent produced many documents to show that the possession remains only with the 4th respondent and no possession was handed over to the alleged purchasers, but the trial court had not considered the evidence properly. When the 4th respondent took up a specific plea that the possession was not handed over, the opposite party had not raised a counter claim for possession. The petitioner is a pendent lite purchaser during the pendency of the proceedings. Though the litigation is pending from 2007, documents had



Crl.O.P.No.28437 of 2022

been created even during the pendency of the proceedings. Even now, petitioner is trying to take forcible possession of the property by damaging the property with the help of machineries and rowdy elements. Some photographs are also filed in support of this claim. Therefore, the petitioner or for that matter the alleged purchasers from the alleged power of attorney of the 4th respondent cannot claim any right. Review Application is filed against the judgment in the Second Appeal. He further relied on the following judgments for the preposition that police power cannot be misused in a civil dispute between the parties, especially with regard to the fixing of boundary or fencing the boundary.

(i) MANU/TN/6217/2021 (S.Srinivasan and others ..vs..

Gurusamy and others), wherein it is observed as follows:-

“4. In our view, when the matter is pending before the civil Court and if the first respondent herein had obtained an ex-parte decree, it would be well open to the first respondent to move the executing Court for executing the decree and the route chosen by the first respondent is incorrect and the Writ Court cannot issue any direction for grant of



Crl.O.P.No.28437 of 2022

police protection. It is brought to our notice that the appellant had filed I.A.No.300 of 2018 under Order IX Rule 9 read with Section 151 C.P.C., to set aside the ex-parte decree and restore the suit and give him opportunity. The said petition was dismissed by the trial Court by order dated 08.07.2020. Aggrieved by the same, the appellant has filed C.M.A.No.2 of 2020, on the file of the Principal Subordinate Court, Sankarankoil and the appeal is pending.

5. In the light of the above factual position, any direction issued by the Writ Court will definitely cause prejudice not only to the plaintiff, but also to the defendant and there is likelihood of misuse of police power. Therefore, the order and direction issued in the Writ Court deserves to be set aside.”

and

(ii) MANU/KE/2236/2012 (Kallai Abu ..vs.. Sub Inspector of Police, Malapuram and others), wherein it is observed as follows:-



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Crl.O.P.No.28437 of 2022

5. *We have given our anxious considerations to the rival submissions made at the Bar. The question to be considered is whether the petitioner is entitled to get an order, directing respondents 1 and 3 to afford police protection to carry out construction works including boundary wall in item No.3 property scheduled to Ext.P2 decree in view of Ext.P5 Judgment of this Court, which attained finality according to him.*

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9. *What this Court can order, direct or compel in a writ petition under [Article 226](#) of the Constitution of India seeking police protection is what the police ought to do or ought to have been done under any of the statute governing the duties of police. Neither [the Criminal Procedure Code](#) nor the [Police Act](#) or any of the statute governing the act or duties of police, for the time being in force enjoins the police to render police assistance*



Crl.O.P.No.28437 of 2022

or police protection for exercising a disputed civil right over the property. No doubt, if it is entrusted to police, the consequence will be disastrous. It will be dangerous, if this Court under writ jurisdiction allows the police to fix boundary line so as to put up compound wall on a disputed boundary.

3. Learned counsel for the petitioner, in reply, submitted that police protection can always be given to enforce the orders of the civil court and even for protection for fencing the property. In support of his submission, he relied on the following judgments:-

(i) ***Radhika Sri Hari vs The Commissioner of Police on 12.03.2014 in Crl.O.P.No.8924 of 2013***, wherein it is observed as follows:

7. In the aforesaid circumstances, this court considers it appropriate to refer to report of the committee constituted by the Government in G.O.(3D) No.42, Home dated 30.06.2008 towards review of the system of treating complaints relating to money and land matters and to suggest a legally acceptable



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Crl.O.P.No.28437 of 2022

methodology. The report of such committee touching upon several issues, was accepted by Government. Having done so, under G.O.Ms.No.1580 Home (POL.VII) Department dated 24.11.2008, the Director General of Police was required to circulate the report along with the 14 point guidelines annexed to such Government order to police officers/stations for appropriate adherence. Under C.No.43/CRB/CSP/2008 dated 08.12.2008, the Commissioner of Police, Chennai Sub-Urban, has caused communications to all Deputy Commissioners, Assistant Commissioners and Inspector of police for necessary action. Guideline 11 issued by the committee reads as follows:

"11. When police protection is sought for the implementation of a civil court order, it should be given readily. Police should not insist on a specific court direction to give police protection."

8. What is informed above makes clear that the petitioner would be entitled to police protection



Crl.O.P.No.28437 of 2022

as prayed for. Criminal original petition is allowed. There will be a direction to respondents to provide police protection to the petitioners for a period of three weeks from the date of receipt of a copy of this order towards enabling them raising fresh barbed wire fences on their property. The same will be at the cost of the petitioner."

(ii) *M/s.Lie Line Educational and Charitable Trust ..Vs..*

Inspector of Police in Crl.O.P.No.31861 of 2019 dated 04.03.2020,

wherein it is observed as follows:

"4. Considering the above facts and circumstances, the 1st respondent is directed to conduct an enquiry after issuing notice to the 2nd respondent, in view of the judgment and decree passed by the Civil Court in O.S.No.599 of 2007 dated 16.10.2015 and pass orders on merits and in accordance with law, within a period of four weeks from the date of receipt of a copy of this order. Accordingly, this Criminal Original Petition is disposed of."



Crl.O.P.No.28437 of 2022

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4. Considered the rival submissions.

5. From the materials produced before this court, it is clear that there is a dispute with regard to the property involved in this case right from the year 2004. 4th respondent claims that he never intended to sell the property and the power of attorney and the sale agreement executed in connection with the land transaction were misused by his power agent Nagarajan and the sale deed in favour of S.Palanisamy was created. Challenging the sale deed dated 05.07.2004, he filed O.S.No.134 of 2009. As rightly pointed out by the learned counsel for the petitioner O.S.No.134 of 2009 was dismissed. Though the 4th respondent succeeded before the first appellate court, he again failed before this court and before the Honorable Supreme Court. The second appeals filed against the first appellate judgment were allowed and the SLP filed by the 4th respondent was dismissed. Now the sale deed dated 05.07.2004 remains a valid sale deed and through the sale deed, the purchase of the property by S.Palanisamy and the subsequent sale made by S.Palanisamy in favour of



CrI.O.P.No.28437 of 2022

the petitioner and others, though during the pendency of the proceedings can only be held as legal transactions. Thus, as of now the title of the property in favour of the petitioner and others is confirmed.

6. Though it is claimed by the 4th respondent that the aspect of possession was not considered by the trial court and the first appellate court, this Court, on going through the judgment of the trial court found that the issue of possession was addressed by the trial court and found that documents produced by the 4th respondent to show his possession in respect of the disputed property do not relate to the property. The property dispute is a vacant land. So far as the vacant lands are concerned, possession follows the title. 4th respondent failed in his attempt before the trial court, this court, and before the Honorable Supreme Court. Therefore, the claim of the 4th respondent that he filed Review Application for reviewing the Second Appeal judgment, this Court wonders whether it would be legally maintainable. Having lost the battle before the Civil Courts, the 4th respondent is not entitled to prevent the petitioner and others from enjoying the property. In the case before hand,



Crl.O.P.No.28437 of 2022

4th respondent was not able to prove his case, on the other hand, the sale in favour of S.Palanisamy was upheld, consequently, the sale in favour of the petitioner is also valid in law. Therefore, the judgments relied by the learned counsel for the 4th respondent are not applicable to this case. Therefore, this Court directs the third respondent to consider the representation of the petitioner dated 07.11.2022 and pass appropriate orders in the manner known to law, including giving police protection to the petitioner to fence her land on the basis of her title deed.

7. Accordingly, this Criminal Original Petition is disposed of.

mra

05 .01.2023

Index :Yes/No

Internet:Yes

Speaking Order : yes

Neutral citation : yes/no

To

1. The Superintendent of Police
Erode, Erode District.
2. The Additional Superintendent of Police
Perundurai, Erode District.

13/15



Crl.O.P.No.28437 of 2022

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3. The Sub Inspector of Police
Perundurai Police Station
Erode District.

G.CHANDRASEKHARAN,J.

Mra

4. The Public Prosecutor,
Madras High Court,
Chennai.

Pre-delivery order
in
Crl.O.P.No.28437 of 2022



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CrI.O.P.No.28437 of 2022

05.01.2023