



WA(MD)No.856 of 2013

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: 13.03.2023

CORAM

The Honourable Mr. Justice **R.SURESH KUMAR**
and
The Honourable Mr. Justice **K.K.RAMAKRISHNAN**

WA.(MD)No.856 of 2013

T.Marikani

.. Appellant/ 3rd respondent

Vs.

1.A.Moorthy

2.The Commissioner of Police,
Madurai.

3.The Inspector of Police,
Anna Nagar Police Station,
Anna Nagar,
Madurai District.

4.M.Desi

5.M.Sivasubramanian

6.M.Ilakkiya

.. Respondents

(R4 to R6 were impleaded as per the order of this Court dated 18.09.2018
as the LR's of the deceased 1st respondent in WMP No.12455/2016)

Writ Appeal is filed under Clause 15 of the Letters Patent against the
order dated 23.02.2010 passed in WP(MD) no.9016 of 2009.



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For Petitioner : Mr.V.R.Venkatesan
For Respondents : Mr.E.Antony Sahaya
Prabahar
Additional Public Prosecutor

ORDER

[Order of the Court was made by **R.SURESH KUMAR, J.**]

This writ appeal was directed against the order passed by the Writ Court dated 23.02.2010 made in WP(MD) No.9016 of 2009.

2.The appellant herein claimed through the learned counsel for the appellant that the property in question ie., Plot No.4 old S.No.38/5, R.S.No. 76/4 Sathamangalam Village, Madurai North Taluk, Madurai District belongs to one Ramar, who has been allotted the said property from and out of a family settlement, from whom the appellant claimed to have purchased the property through a valid sale deed, based on which, it is the further claim of the appellant that he has been in possession and enjoyment of the said property. When that being so, the first respondent herein filed the said writ petition before this Court seeking for a writ of mandamus forbearing the respondents 2 and 3, who are the Commissioner of Police and Inspector



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of Police respectively, from indulging in Kattapanchayat and interfering in civil dispute against the writ petitioner, who is the first respondent regarding the subject property.

3. It is the complaint of the learned counsel for the appellant that in the writ petition, though it is accepted by the learned Judge that the appellant is one of the party respondent in the writ petition, no notice had been given to the appellant. Without any notice, the writ petition was decided by the said order dated 23.02.2010, which is impugned herein.

4. It is the further case of the appellant that since he become the owner of the property, as stated supra and in possession and enjoyment of the property, in order to disturb his peaceful possession and enjoyment, the petitioner had made complaint to the Inspector of Police, based on the complaint, when the Inspector of Police acted upon that only triggered the first respondent to file writ petition by stating that story that there has been a civil suit pending against one Pandiyarajan in respect of the very same subject matter and citing the said pendency of the civil suit, the first respondent/writ petitioner sought for prohibitory order by way of mandamus



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restraining the police authorities from interfering with the civil dispute as if it was existing between the parties and that was accepted by the learned Judge, where a direction was given to the police authorities not to interfere with the civil dispute in this matter between the parties in respect of the subject land.

5. In this context, it is the contention of the learned counsel for the appellant that if notice was given to the appellant, he would have been in a position to tell the factual matrix. Therefore, since no notice had been given, on that ground, the impugned order has to be interfered with.

6. Moreover, since the appellant claims that he is the owner of the property and has been in possession and enjoyment of the property, he has got every right to protect his possession and enjoyment as well as title over the property, for which, he can seek the help of the police. Therefore, only to that limited extent, the police help was sought for that cannot be found fault with.

7. We have heard the learned Additional Public Prosecutor, who would submit that first of all, this writ appeal is not maintainable as against



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the order passed by the learned Judge, who has given direction to the police authorities not to interfere with the civil dispute, which is a settled proposition of law and in this regard, if at all any civil dispute to be resolved between the parties, they have to approach only the civil Court that has been indicated by the learned Judge in the impugned order. Hence, on that ground also, the impugned order is to be sustained, the learned Additional Public Prosecutor submitted.

8. We have considered the said rival submissions made by the learned counsel for the parties and have perused the materials placed before this Court.

9. In fact, the first respondent, who was the writ petitioner, died during the pendency of the writ appeal. Therefore, the respondents 4,5, and 6, who are the legal heirs of the first respondent, have been impleaded to whom there has been no representation. We have gone through the order impugned passed by the learned Judge. The learned Judge has recorded that there has been a civil suit in O.S.No.496/1999 pending before the first Additional Sub Court, Madurai, against the writ petitioner and other



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defendants with regard to the specific performance of the agreement of sale dated 08.04.1997.

10. This fact recorded by the learned Judge, even though was disputed by the learned counsel for the appellant, the suit was dismissed subsequently for default. We are not influenced by the other factors because insofar as the import of the direction given by the learned Judge in the impugned order is concerned, he had only stated that if at all any civil dispute to be resolved between the parties, they have to approach the civil Court, on this aspect, the appellant does not have any role to play and based on the settled proposition of law, the said order was passed by the learned Judge, which is impugned. Hence, for the said purpose, the order impugned need not be interfered with. Assuming that there had been notice issued to the appellant herein, who was subsequently impleaded in the writ petition and he appeared before the learned Judge, he would not have improved his case by demolishing the said proposition as stated supra and therefore, that would be only an empty formality. Hence, that would no way affect the view taken by the learned Judge, as has been held in the impugned order.



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11. If at all the appellant wants to establish his civil right by citing the possession and enjoyment and partition deed, it is for him to go before the competent civil court by following appropriate procedure for declaration or injunction, even, for the said purpose, the aid of the police cannot be asked for.

12. If at all the arguments of the learned counsel for the appellant is accepted and the judgment impugned by the learned Judge is interfered with by this Court that would give premium to the proposition that even the police can interfere with the civil dispute, which would destroy the settled proposition of law in this regard. Hence, we are of the considered view that the impugned judgment of the learned Judge does not warrant any interference for the aforesaid reasons. Accordingly, the writ appeal fails and the same is dismissed. At the same time, it is open to the parties including the appellant to approach the competent civil Court, especially for civil right, if they are advised to do so. No costs.

(R.S.K.,J.) (K.K.R.K.,J.)
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Index : Yes/No

Internet : Yes

RR

To

1.The Commissioner of Police,
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2.The Inspector of Police,
Anna Nagar Police Station,
Anna Nagar,
Madurai District.

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



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