



WP(MD) No.4366 of 2024

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATED: **01.03.2024**

CORAM:

THE HONOURABLE **MR.JUSTICE SATHI KUMAR SUKUMARA KURUP**

W.P.(MD) No.4366 of 2024

R.Periya swamy

... Petitioner

/vs./

1.The Superintendent of Police,
Office of the Superintendent of Police,
Karur District.

2.The Inspector of Police,
Thogaimalai Police Station,
Karur District.

3.Balamani

4.Kalaiyarasan

... Respondents

(R-3 and R-4 are impleaded vide Court Order dated 01.03.2024 in W.M.P.(MD).No.4582 of 2024 in W.P.(MD).No.4366 of 2024)

PRAYER: Writ Petition filed under Article 226 of the Constitution of India for issuance of Writ of Mandamus, directing the second Respondent to adhere the order passed by the learned Judicial Magistrate, Kulithalai in CRMP.No.2675 of 2023 dated 29.09.2023 within time frame as fixed by this Court and to give adequate Police protection so as to cut off the eucalyptus tree in the Petitioner's land by considering the Petitioner's representation dated 11.10.2023.



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WP(MD) No.4366 of 2024

For Petitioner : Mr.D.S.Haroon Rasheed
For R-1 and R-2 : Mr.B.Thanga Aravindh
Government Advocate
(Criminal Side)
For R-3 and R-4 : Mr.A.Joseph Jerry

ORDER

When the matter came up for hearing on 27.02.2024, this Court passed the following order:

The learned Counsel for the Petitioner submitted that the Petitioner had filed this petition seeking Writ of Mandamus, to direct the second Respondent to adhere the order passed by the learned Judicial Magistrate I, Kulithalai, dated 29.09.2023.

2. The learned Counsel for the Petitioner invited attention of this Court to the orders passed by the learned Judicial Magistrate I, Kulithalai, which is stated as under:

"the SHO is directed to act in accordance with the guidelines issued by the Hon'ble Supreme Court of India" in the case of "Lalithakumari Vs State of Uttar Pradesh and report the act of the petitioner before this Court forthwith



If any deviation made by the Concern SHO, He/SHe is liable for the legal action as contemplated by the Hon'ble Madras High Court in its dictum. "Sugesan Transport Private limited case held on 27.09.2016.

In the result, the SHO Thogaimalai is directed to conduct the enquiry and further directed to file investigation progress report to this Court within 2 weeks."

3. Even though, the order was passed by the learned Judicial Magistrate I, Kulithalai, on 29.09.2023, till date, the Respondents 1 and 2 had not acted in the light of the order. Therefore, the Petitioner was forced to file this petition seeking to enforce the order of the learned Judicial Magistrate I, Kulithalai, in CRMP. No.2675 of 2023, dated 29.09.2023.

4. The intervener party submitted that he has objection to the learned Counsel for the Petitioner seeking Writ of Mandamus against the Respondents 1 and 2 to cut and remove the trees in the property. It is the submission of the intervener that he seeks to file an intervene application by the stake holders who want to intervene themselves as a party in the writ petition.

5. The intervener is directed to file an intervene petition today itself.

6. Registry is directed to post the case along with the impleading petition on 28.02.2024 at 2.15 pm.



WP(MD) No.4366 of 2024

WEB COPY

2. Today when the matter was taken up for hearing, this Court allowed the impleading petition filed by the interveners in W.M.P.(MD).No.4582 of 2024 in W.P.(MD).No.4366 of 2024.

3. The learned counsel for the impleaded Respondents submitted that the properties are ancestral properties of the Respondents and the properties purchased by the Petitioner is an undivided share of the joint family properties. The impleaded Respondents 3 and 4 are parties to the partition suit instituted by the co-sharers in O.S.No.26 of 2018 and the same is pending before the learned Principal District and Sessions Judge, Karur. Also it is the contention of the learned Counsel for the impleaded Respondents that other suits are also pending before various other Courts and the suit in O.S.No.1 of 2015 pending on the file of the District Munsif Court, Kulithalai was subsequently transferred to the file of the learned Principal District Judge, Karur in O.S.No.33 of 2022 and the same is also pending. Therefore, when partition suits are pending, the Petitioner in this Writ Petition cannot be granted any favourable orders, until the partition suits are disposed of. Therefore, he seeks to dismiss this Writ Petition.



WP(MD) No.4366 of 2024

4. It is the further contention of the learned Counsel for the impleaded Respondents that the property mentioned by the writ petitioner that he had purchased is also subject matter of the partition suit, for which he furnished the copy of the plaint in O.S.No.26 of 2018 on the file of the learned Principal District Judge, Karur, wherein among the various items of the 'A' Schedule property, Item 5 refers to Survey No.434 to an extent of 23.98 cents and among the various items of the 'B' Schedule property, Item 6 refers to Survey No.421 to an extent of 22.56 cents. Therefore, it is the submission of the learned Counsel for the impleaded Respondents that this Court cannot pass any orders ,when the learned Principal District Judge is ceased of the matter and suit for partition is pending between the impleaded Respondents and co-sharers, until the suit for partition is disposed of, the Petitioner herein, who alleged to have purchased the property from one of the co-sharers, cannot seek intervention of the Police by exercising the discretion of the High Court under Section 482 of Cr.P.C or under Section 156 of Cr.P.C, as per the proceedings of the learned Judicial Magistrate No.I, Kulithurai.

5. Considering the submissions of the learned Counsel for the Petitioner and the learned Counsel for the impleaded Respondents, in the light of the



WP(MD) No.4366 of 2024

pendency of the suit for partition, this Court cannot pass orders regarding Police protection to the Petitioner for cutting and removing the trees from undivided properties, which is pending before the learned Principal District Court, Karur. The Petitioner has to wait until the suit is disposed of by the learned Principal District and Sessions Judge, Karur.

6. With the above direction, this Writ Petition is disposed of. No costs.

01.03.2024

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
Nsr

TO:

- 1.The Superintendent of Police,
Office of the Superintendent of Police,
Karur District.
- 2.The Inspector of Police,
Thogaimalai Police Station,
Karur District.



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WP(MD) No.4366 of 2024

SATHI KUMAR SUKUMARA KURUP, J.

Nsr

Order made in
W.P.(MD)No.4366 of 2024

Dated:
01.03.2024