



W.P.(MD)No.23770 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 14.02.2024

CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

W.P.(MD)No.23770 of 2022

and

WMP(MD)No.17832 of 2022

Florence

... Petitioner

Vs.

- 1.The Superintendent of Police,
Kanyakumari District at Nagercoil.
- 2.The Deputy Superintendent of Police,
Kanyakumari Range,
Kanyakumari.
- 3.The Inspector of Police,
Suchindram Police Station,
Kanyakumari District.
- 4.The Sub-Inspector of Police,
Anjugramam Police Station,
Kanyakumari District.
- 5.Jessi Menaka,
The Sub-Inspector of Police,
Anjugramam Police Station,
Kanyakumari District.
- 6.Binitha Sharma
- 7.Sahaya Manjula
- 8.Chinna Rani @ Rajathi



W.P.(MD)No.23770 of 2022

9.Thavaseeli

10.Sahaya Thenmozhi Rupa

11.Ginsy

12.Monisha

... Respondents

PRAYER:- Petition filed under Article 226 of the Constitution of India seeking a Writ of Mandamus, to direct the respondents 1 to 4 to restore the possession of the property having an extent of 7.410 cents along with house bearing Old Door No.6/11F1, New Door No.6/79, comprised in Re-Survey No.504/4C of Azhgappapuram Village, Agastheeswaram Taluk Kanyakumari District from the respondents 6 to 12, who were dispossessed illegally with the help of the fifth respondent police and consequently, directing the first respondent to take appropriate action against the fifth respondent.

For Petitioner : Mr.T.Arul
for Mr.M.R.Sreenivasan

For R1 to R4 : Mr.B.Nambiselvan
The Additional Public Prosecutor

For R6 to R12 : Mr.Ka.Ramakrishnan

ORDER

This Writ Petition has been filed to direct the respondents 1 to 4 to restore the possession of the property having an extent of 7.410 cents along with house bearing Old Door No.6/11F1, New Door No.6/79, comprised in Re-Survey No. 504/4C of Azhgappapuram Village, Agastheeswaram Taluk Kanyakumari District from the respondents 6 to 12, who were dispossessed illegally with the



W.P.(MD)No.23770 of 2022

help of the fifth respondent police and consequently, directing the first respondent to take appropriate action against the fifth respondent.

2. The case of the prosecution is that the petitioner studied Staff Nursing Professional Course at St.Lukes College of Nursing, Ahamed Nagar, Maharashtra during the year 1993-1997. After completion of profession, she underwent 6 months training in the college. Subsequently, she got employment at Saudi Arabia in the year 1997 and earned more than Rs.5,00,000/- per annum till 1997 – 2008. While she was working in Saudi Arabia, her husband namely, Suresh minnel Moni came to Saudi Arabia as a driver and both met at the work place and loved each other and thereafter, with the consent of both family members, the marriage was solemnized on 16.02.2001 at St.Xavier's Church, Kottar, Nagercoil, Kanyakumari District as per Christian Rites. During her employment, she used to send money to her husband for purchasing property. Accordingly, the property comprised in R.S.No.504/4C at Azhagappapuram Village, Agastheeswaram Taluk, Kanyakumari, was purchased by the petitioner's husband in his name for the value of Rs.14 lakhs. Thereafter, in the said property, he constructed a house by spending a sum of Rs.6 lakhs. After construction of the house, the petitioner and her husband residing there, till the demise of the petitioner's husband. While so, the petitioner decided to adopt the



W.P.(MD)No.23770 of 2022

sixth respondent's child namely, Aniruth and the same was not fulfilled.

Subsequently, on 28.04.2018, during the adoption process, in order to grab the the property, the sixth respondent claimed that she is the second wife of the petitioner's husband and she got a sale deed in her favour from the petitioner's husband. The same was objected by the petitioner. Thereby, the sixth respondent and the other hooligans decided to evict the petitioner with the help of the fifth respondent/Law Enforcing Agency. Aggrieved by the same, the petitioner made a complaint before the Law Enforcing Agency. But, the same was not considered by them. Hence, the present writ petition is filed by the petitioner with the above said prayer.

3.The learned counsel appearing for the petitioner would submit that though the sixth respondent claim is that there was a customary divorce in between the petitioner and her husband, as per the Christian Law, customary divorce is not permissible. In the Christian Marriage Act, once the marriage is performed, that cannot be revoked in between the parties. Hence, the statement made by the sixth respondent is not true. Hence, the sale deed in favour of the sixth respondent itself is non-erst in law. While the petitioner was in employment in Saudi Arabia, sent a huge money for purchasing the property and she was also residing there with her husband. However, the sixth



W.P.(MD)No.23770 of 2022

respondent with the help of the Law Enforcing Agency, evicted the petitioner from that house owned by the petitioner and her husband is not sustainable one.

Hence, this Court may issue a direction to the the Law Enforcing Agency, to restore the possession of the property from the private respondents and allow the petitioner to reside there with her articles, which was already available in that house. Accordingly, he prayed for appropriate orders.

4. Per contra, the learned counsel appearing for the respondents 6 to 12 would submit that admittedly, there was customary divorce in between the petitioner and the sixth respondent's husband. After customary divorce, the sixth respondent married the petitioner's husband secondly. Out of wedlock, they blessed with a male child, namely, Aniruth. However, in the present case, the petitioner and her husband decided to adopt the sixth respondent's child. The Biological father of the child is also the deceased husband. In the present case, towards the medical expenditure of the deceased, the sixth respondent spent a huge money. For that and out of love and affection the deceased executed a sale deed in her favour vide D.No.2763/2020 dated 23.09.2020 and all the Revenue Records also mutated in her favour. Hence, the sixth respondent is in possession and enjoyment of the house property located at Azhagappapuram Village, Agastheeswaram Taluk, Kanyakumari in R.S.No.504/4C. Further, the sixth



W.P.(MD)No.23770 of 2022

respondent's husband died on 02.02.2022. Even for that event, the petitioner did not come. The sixth respondent being a wife of the deceased person, she only performed the deceased's last rituals. Accordingly, he prayed for dismissal of this petition.

5. However, all those issues arises in this present petition is disputed question of fact and it cannot be decided by this Court. Hence, the petitioner has to work out her remedy before the competent civil Court. Instead of approaching the competent civil Court, filing this petition under Section 482 of Cr.P.C., is not acceptable one.

6. Accordingly, the Writ Petition is dismissed. Consequently, the connected miscellaneous petition is closed. No costs.

7. At this juncture, the learned counsel appearing for the petitioner would submit that this Court may grant liberty to the petitioner to file a civil suit as against the sixth respondent & other police officials and the period pending before this Court may be excluded for the purpose of limitation



W.P.(MD)No.23770 of 2022

8. Considered the limited request made by the learned counsel for the petitioner, liberty is granted to the petitioner to approach the competent civil Court for appropriate remedy and the period pending before this Court is excluded for the purpose of limitation.

14.02.2024

Index : Yes/No
Internet : Yes/No
NCC : Yes/No
dss

To

- 1.The Superintendent of Police,
Kanyakumari District at Nagercoil.
- 2.The Deputy Superintendent of Police,
Kanyakumari Range,
Kanyakumari.
- 3.The Inspector of Police,
Suchindram Police Station,
Kanyakumari District.
- 4.The Sub-Inspector of Police,
Anjugramam Police Station,
Kanyakumari District.
- 5.The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madras.



WEB COPY



W.P.(MD)No.23770 of 2022

M.DHANDAPANI, J.

dss

W.P.(MD)No.23770 of 2022
and
WMP(MD)No.17832 of 2022

14.02.2024