
(2014) 02 MAD CK 0161

In the Madras High Court

Case No : W.A. No. 764 of 2009 and M.P. No's. 1 and 2 of 2009 and 1 of 2010

E. Sundaresan (deceased) S.Sankar

APPELLANT

Vs

Tamil Nadu Wakf Board and Others

RESPONDENT

Date of Decision : 26-02-2014

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 7 Rule 11, Order 9 Rule 9

Constitution of India, 1950 — Article 21 226

Criminal Procedure Code, 1973 (CrPC) — Section 145 482

Citation : (2014) 2 CTC 622 : (2014) 2 MLJ 414

Hon'ble Judges : P. Devadass, J;N. Paul Vasanthakumar, J

Bench : Division Bench

Advocate : R. Thiyagarajan, for Aiyar and Dolia, for the Appellant; V. Lakshminarayanan for R1 and R2, Mr. N. Srinivasan, AGP for R3 and R6, Mr. R. Ravichandran for R-5, Mrs. Hema Sampath, for Mr. Nazir Ahamed for R-4, Mr. V. Prakash, for Mr. P. Chandrasekaran for Intervenor, for the Respondent

Final Decision : Dismissed

Judgement

P. Devadass, J.—This Writ Appeal has been directed as against the order of the Writ Court in W.P. No. 4886 of 2004, whereunder the Court had declined to issue mandamus to 3rd respondent to give police protection to fence the petitioner's property and take necessary action to prevent trespass. Though the writ petition appears to be a simple writ petition under Article 226 of the Constitution of India to direct the police to give police protection, but, actually it has a checkered career from Munsif Court to Supreme Court.

2. 3.22 acres of property comprised in Survey Nos. 187/1, 187/2 and 187/3 situated in Vanaharam Village, in Poonamallee Taluk, in Kancheepuram District. One Elumalai Chettiar staked claim to this property that he had purchased it at a Court auction sale in 1935. In 1960, as between Elumalai Chettiar and his sons Balakrishnan Chettiar and Sundaresan Chettiar there was partition. The subject land measuring 2.44 acres comprised in Survey No. 187/3D-2 was allotted to Sundaresan Chettiar. Sundaresan Chettiar's son is appellant Sankar.

3. While alive, Sundaresan Chettiar witnessed a long drawn legal battle from Munsif Court to Supreme Court. After his demise, his son Sankar is continuing the battle. The present W.A. No. 764 of 2009 which arose from W.P. No. 4886 of 2004 is a part of it.

4. In 1971, some Muslims have filed O.S. No. 674 of 1971 in the Court of District Munsif, Poonamallee seeking injunction as against Sundaresan Chettiar that he shall not restrain them in their worshipping at the mosque situated in the said property. On 17.12.1981, the worshipers have lost in the Munsif's Court and also in the next Appellate Court(Principal Sub Court, Chengalpattu) in A.S. No. 51 of 1982. However, on 10.1.1992, they have won in the next appellate Court/High Court in S.A. No. 224 of 1984. Thus, Sundaresan Chettiar was injected from preventing the Muslim Worshipers in their worshipping at the mosque in the suit property. The Chettiar went to the Hon"ble Supreme Court filing Civil Appeal No. 5334 of 1993. The President, Porur Shaik Maniyam Masjid-E-Ehairunnissa Muslim Jamath unsuccessfully tried to implead in the said Civil Appeal on the ground that there is a public mosque in the property. On 3.10.2002, the Hon"ble Apex Court holding that no public mosque existed in the property set aside the judgment of this Court and restored the judgments of the Munsif Court and the Sub-Court.

5. Thereafter, Abdhul Kareem (the present 4th respondent) for and on behalf of the Jamath filed the representative suit in O.S. No. 100 of 2005 seeking injunction. Sankar and other legal heirs have filed I.A. No. 695 of 2005 under Order VII Rule 11 C.P.C. to reject the plaint. It was dismissed. However, in C.R.P. No. 1237 of 2006, this Court allowed it and rejected the plaint. On 8.7.2008, the SLP filed by the Jamath was dismissed by the Hon"ble Supreme Court. In the meanwhile, the Sub Collector, Ponneri initiated proceedings u/s 145 Cr. P.C. treating the Jamath people as "B" party and Sankar and others as "A" party. On 2.8.2007, in CrI. O.P. No. 5578 of 2005 and in CrI. R.C. 676 of 2005, a learned Single Judge of this Court allowed the CrI. O.P. and Cr. R.C. and set aside the order of the Sub Collector, Ponneri.

6. Thereafter, Sankar wanted to fence the property. He gave representation to the police to give police protection. Since it was not accorded, he filed W.P. No. 4886 of 2004. On 28.4.2009, the Writ Court taking note of the existence of a dilapidated building in the disputed property and the prior litigations observed as under:-

However, the undisputed facts remains that admittedly a dilapidated building is in existence as on date in the disputed property. the 4th respondent claimed that he has put up the said construction and there was a mosque in existence for the last 200 years. But, it is pertinent to note that as per the ultimate decision rendered by the Hon"ble Apex Court in C.A. No. 5334 of 1993 dated 3.10.2002 restoring the view taken by the trial Court and the appellate Court and reversing the view taken by this Court, the 4th respondent is not having any document to establish his title to the disputed property and such being the position, the

alleged possessions of the 4th respondent has to be construed as an unauthorised and illegal possession.

7. In the circumstances, the Writ Court ordered as under:-

It is well settled by a catena of decisions of the Hon''ble Apex Court that even assuming a person is in illegal and unauthorised possession and such person is to be evicted only in a manner known to law. Therefore, it is needless to state that it is always open to the petitioner to take appropriate action in accordance with law to take the possession of the disputed property. However, considering the prevailing dispute which may ultimately result in breach of peace, this Court is constrained to direct the 3rd respondent to constitute a peace committee consisting important persons of the locality as well as both the parties to work out an amicable solution in respect of the possession of the disputed property. The 3rd respondent shall constitute the peace committee within a period of three weeks from the date of receipt of a copy of this order.

8. Aggrieved, the writ petitioner Sankar has directed this Writ Appeal.

9. Mr. R. Thiagarajan, the learned Senior Counsel appearing for the appellant contended that in O.S. No. 674 of 1971, there was finding that the defendant Sundaresan Chettiar perfected title to the suit property by adverse possession. It was not disturbed by the next Appellate Court in A.S. No. 51 of 1982. In Crl. O.P. No. 5578 of 2005 and in Crl. R.C. 676 of 2005, the learned Single Judge of this Court directed that the Jamath people shall not go near the disputed property. C.R.P. No. 1237 of 2006 filed by the Jamath was also dismissed by this Court. In the Civil Appeal No. 5334 of 1993, the Hon''ble Apex Court held that there was no public mosque in the suit property. Thereafter, the Wakf Board thought it fit not to poke its nose into this matter. Thus, the Wakf Board has not accepted the representation of the Jamath to intervene in this matter. Thus, the learned Senior Counsel would submit that the right, title, interest and possession of the appellant has been confirmed. In such circumstances, the police is bound to provide protection to the appellant to fence the property. In this regard, the learned Senior Counsel cited P.R. Murlidharan and Others Vs. Swami Dharmananda Theertha Padar and Others, and particularly referred to para 19 of the judgment. The learned Senior Counsel would further submit that in the facts and circumstances of this case, the Wakf Board has no locus standi to interfere.

10. Mr. V. Prakash, the learned Senior Counsel for the Intervener submitted that it is the duty of the State to give protection to the citizens to enjoy the possession of their property peacefully. In such circumstances, to uphold the Rule of Law, the appellant's possession has to be safeguarded. Thus, the mandamus is required to be issued to the police.

11. Mr. V. Lakshminarayanan, the learned counsel appearing for the Wakf Board submitted that there is finding as to existence of a building in the property where the Muslims are worshipping. At one point of time there was some inertia on the part of the Wakf Board, namely, not to interfere in the dispute between the

Jamath and the appellant, it was due to some unholistic alliance between two sides. The Wakf Board cannot be a mute spectator to any murky deal. Now steps have been taken to remedy the situation. The learned counsel further contended that so far, in a properly constituted suit, such as a suit for declaration the title of the appellant has been declared. Still there is dispute as to the property. There is a building structure in the suit property. Thus, actually the appellant is not in settled possession. In such circumstances, the appellant has to get a decree from a competent civil court declaring his right in the suit property. He cannot achieve that in an indirect way by filing a writ petition for mandamus to give police protection. In this respect, the learned counsel also cited P.R. Muralidharan and Others (supra).

12. Mrs. Hema Sampath, the learned Senior Counsel appearing for the 4th respondent, who is exposing the cause of the Muslim Jamath referred to certain physical features in the property and submitted that there cannot be obtaining of possession through police, especially, so far any Civil Court has decided on the title of the appellant to the property. The learned Senior Counsel submitted that it is not a fit case for grant of police protection to a disputed property in favour of the appellant. The learned Senior Counsel also relied on P.R. Muralidharan and Others(supra).

13. We have anxiously considered the submissions of the learned Senior Counsels, learned counsel appearing for the Wakf Board, perused the materials on record, the impugned order of the Writ Court and the decision cited.

14. The constitutional protection guaranteed to the people in Article 21, Constitution of India is not only to their life and liberty, but also extend to their peaceful enjoyment of property, otherwise the outcome will be disorderliness in the society. It is the duty of the State to maintain law and order. It is the duty of the Police-arm of the State to preserve law and order and maintain tranquility otherwise there will be disorder and anarchy.

15. Thus, u/s 482 Cr. P.C. in exercise of its inherent powers to do justice and also to prevent injustice, High Court directs the police to protect the life, liberty and property of the citizens. In exercise of its writ jurisdiction also this Court under Article 226 of the Constitution of India issues mandamus to the police, when they are bound to accord police protection, but failed to do so.

16. In this regard, the principles governing exercise of jurisdiction u/s 482 Cr. P.C. and under Article 226 of the Constitution of India is similar. Though, the mode of exercise of the power may differ, but the consequent result and effect of it and the machinery used to exercise the power is one and the same, namely, police.

17. In P.R. Muralidharan (supra), in para 19, the Hon"ble Apex Court observed as under:-

19. A writ for police protection so-called, has only a limited scope, as, when the

court is approached for protection of rights declared by a decree or by an order passed by a civil court. It cannot be extended to cases where rights have not been determined either finally by the civil court or, at least at an interlocutory stage in an unambiguous manner, and then too in furtherance of the decree or order.

18. It is also pertinent here to note the following observations of the Hon''ble Apex Court in P.R. Muralidharan (*supra*):-

12. It is one thing to say that in a given case a person may be held to be entitled to police protection, having regard to the threat perception, but it is another thing to say that he is entitled thereto for holding an office and discharging certain functions when his right to do so is open to question. A person could not approach the High Court for the purpose of determining such disputed questions of fact which were beyond the scope and purport of the jurisdiction of the High Court while exercising writ jurisdiction as it also involved determination of disputed questions of fact. Respondent 1 who sought to claim a status was required to establish the same in a court of law in an appropriate proceeding. He for one reason or the other, failed to do so. The provisions of Order 9 Rule 9 of the CPC stare on his face. He, therefore, could not have filed a writ petition for getting the selfsame issues determined in his favour which he could not do even by filing a suit. Indeed the jurisdiction of the writ court is wide while granting relief to a citizen of India so as to protect his life and liberty as adumbrated under Article 21 of the Constitution, but while doing so it could not collaterally go into that question, determination whereof would undoubtedly be beyond its domain. What was necessary for determination of the question arising in the writ petition was not the interpretation of the documents alone, but it required adduction of oral evidence as well. Such evidence was necessary for the purpose of explaining the true nature of the deed of trust, as also the practice followed by this trust. In any event, the impleading applicant herein, as noticed hereinbefore, has raised a contention that he alone was ordained to hold the said office as per the bye-laws of the trust. The qualification of the first respondent to hold the office was also in question. In this view of the matter, we are of the opinion that such disputed questions could not have been gone into by the High Court in a writ proceeding.

13. Furthermore, the jurisdiction of the civil court is wide and plenary. In a case of this nature, a writ proceeding cannot be a substitute for a civil suit.

17. A writ petition under the guise of seeking a writ of mandamus directing the police authorities to give protection to a writ petitioner, cannot be made a forum for adjudicating on civil rights. It is one thing to approach the High Court, for issuance of such a writ on a plea that a particular party has not obeyed a decree or an order of injunction passed in favour of the writ petitioner, was deliberately flouting that decree or order and in spite of the petitioner applying for it, or that the police authorities are not giving him the needed protection in terms of the decree or order passed by a court with jurisdiction. But, it is quite another thing

to seek a writ of mandamus directing protection in respect of property, status or right which remains to be adjudicated upon and when such an adjudication can only be got done in a properly instituted civil suit. It would be an abuse of process for a writ petitioner to approach the High Court under Article 226 of the Constitution seeking a writ of mandamus directing the police authorities to protect his claimed possession of a property without first establishing his possession in an appropriate civil court. The temptation to grant relief in cases of this nature should be resisted by the High Court. The wide jurisdiction under Article 226 of the Constitution would remain effective and meaningful only when it is exercised prudently and in appropriate situations.

19. The Court must be very careful in involving police in property disputes/matters, if not, police would involve themselves in settling property issues, right to property and behave like a Civil Court. This is not good for a country based on Rule of Law.

20. The power of this Court under Article 226 of the Constitution of India can be exercised to issue mandamus to police to give police protection to persons, when they are in settled possession. It must be undisputed and unambiguous possession. When there are decrees and judgments of the Civil Courts declaring person's right to property and peaceful possession it may include injunction decree also, then there is occasion for the Court to ensure peaceful enjoyment of the property by issuing directions to the police to protect such possession. But, police can never be used/engaged to do a job, which a Civil Court should do. Police cannot be used indirectly to regain possession of the property. These are certain fundamental postulates governing exercise of jurisdiction both u/s 482 Cr. P.C. and under Article 226, Constitution of India.

21. Now, keeping the said principles in our view, we shall revert to our case.

22. O.S. No. 674 of 1971 is a suit for injunction. It was not filed by the appellant. It was filed by certain Muslim worshipers. It was dismissed. The suit in O.S. No. 100 of 2005 was filed by the Jamath also seeking injunction. It was rejected under Order VII Rule 11 CPC. In CrI. O.P. No. 5578 of 2005 and in CrI. R.C. 676 of 2005, the order of the Revenue Authorities u/s 145 Cr. P.C. has been set at naught by this Court. In none of the proceedings the title of the appellant to the property has been conclusively decided by a Civil Court. In fact, it cannot, because those suits were not filed by the appellant. Till date the appellant has not filed any suit before a competent civil court for declaration of his right, title and interest in the property and possession. He did not obtain a decree for permanent injunction from a competent Civil Court to protect his possession. That is how, the Writ Court taking note of all the prior litigations and also the existing dilapidated building in the disputed property had to hold that even if a person is in illegal and unauthorised possession, he shall be evicted only in a manner known to law and the Writ Court also observed that "therefore, it is needless to state that it is always open to the petitioner to take appropriate action in accordance with law to take possession of disputed property." That

cannot be done by engaging police under the guise of providing police protection when the appellant fence the property. It would be usurpation of the power of the Civil Court by police.

23. In this view of the matter and in the facts and circumstances of this case, the Writ Court has rightly refused mandamus directing the police to provide protection in favour of the appellant. Taking note of the long drawn dispute between the parties in order to have an amicable solution the Writ Court had also directed constitution of a Peace Committee consisting of important persons of the locality and also both sides.

24. Thus, we are of the view that this is not a fit case for issuing mandamus to police to provide police protection. In view of the foregoing, this Writ Appeal fails and it is dismissed. The order of the Writ Court is confirmed. With respect to the disputed property, it is always open to the appellant to take appropriate action in accordance with law. Consequently, connected M.Ps. are closed.