
(2013) 08 MAD CK 0278

In the Madras High Court

Case No : Criminal O.P. No. 27857 of 2012

K.A. Thirupathi Raja

APPELLANT

Vs

Aswin Kotnis and Others

RESPONDENT

Date of Decision : 30-08-2013

Acts Referred:

Citation : (2013) 4 MLJ(Cri) 280

Hon'ble Judges : R. Subbiah, J

Bench : Single Bench

Advocate : T.R. Rajagopalan, for V.V. Sairam, for the Appellant; C. Emalias, Assistant Public Prosecutor and V. Raghavachari for M. Sathishkumar, for the Respondent

Final Decision : Disposed Off

Judgement

R. Subbiah, J.—Seeking a direction to respondents 1 and 2 to put the petitioner in possession of the property, namely, No. 365, Salem to Cuddalore Main Road, Ranipettai, Athur, Salem District, the petitioner has come up with the present petition. Brief facts of the petitioner, which are germane for disposal of the petition, are as under 5th respondent herein, viz., N. Somasundaram, originally filed CrI. O.P. No. 19557 of 2012 before this Court citing (i) Superintendent of Police, Salem District and (ii) Inspector of Police, District Crime Branch, Anti-Land grabbing Cell, Salem, as respondents for a direction to provide police protection to him and his family members' lives and properties alleging that,

he is residing at No. 347, Vellalar Street, K. Seehampatti Village, Pudupatti Post, Kulithalai Taluk, Karur District; in the family arrangement, his mother got property measuring about 1386 sq. ft. and patta was also granted in her favour in Patta No. 1257, situated in S. No. 510/3 near Athur Bus Stand, Salem District; later, his mother had given a part of the property measuring to an extent of 462 sq. ft. through a gift deed, registered as Document No. 232 of 2004 on the file of S.R.O., Athur; since then, the 5th respondent is in possession and enjoyment of the said property; the nearby properties were owned by other shareholders and

they have sold some of their shares in the property to one K.T. Rajam, wife of the petitioner in this original petition; It is the allegation of the 5th respondent that the said K.T. Rajam, wife of petitioner, illegally occupied and attempted to grab the property belongs to him by using forged document; the said persons had not only tried to grab the 5th respondent's property which he has got through a gift deed from his mother but also attempted to grab the remaining property, which is solely owned by the 5th respondent's mother; hence, the 5th respondent lodged a complaint before the Superintendent of Police, Salem, which was subsequently transferred to Inspector of Police, District Crime Branch, Anti-Land Grabbing Cell, Salem and a case has been registered against Thirupathi Raja, (petitioner herein), his wife and his son in Crime No. 16/12 for the offence punishable under Sections 468, 471, 420 and 506(i) IPC; in the meantime, 5th respondent's mother executed another settlement deed in his favour in respect of the remaining property vide registered Document No. 1669/12 dated 30.03.2012 before the office of the Sub-Registrar of Athur and thus, the 5th respondent became the absolute owner of the property measuring to an extent of 1386 sq.ft.;

while so, the petitioner herein and his wife, who had purchased the adjacent property from the relatives of the 5th respondent, had started construction of building by encroaching the 5th respondent's property; when this was questioned, the 5th respondent was threatened with dire consequences; hence, the 5th respondent had approached this Court by filing Crl. O.P. No. 19577 of 2012.

2. In the said petition, this Court has passed the following order on 28.09.2012:

2. Learned Government Advocate (criminal Side) representing the respondent submitted that there is no such incident took place as alleged by the petitioner.

3. Recording the said submission of the learned Government Advocate (Crl. Side), the Criminal Original Petition is closed with liberty to the petitioner to approach the concerned respondent police along with this order, if any such incident occurs, who, in turn, shall consider and dispose the same in accordance with law.

3. Now, it is the case of the petitioner that the official respondents in the present petition, namely,

Mr. Aswin Kotnis I.P.S., Superintendent of Police,

Mr. Muniappan, Deputy Superintendent of Police, District Crime Branch,

Mr. Padmanabhen, Inspector of Police, District Crime Branch, and

Mr. Appadurai, Sub-Inspector of Police

entered into the property, which was in possession of the petitioner herein, situated at No. 365, Salem-Cuddalore Main Road, Ranipettai, Athur, salem District, and forcibly ejected the petitioner from the property. They showed the

order of this Court dated 28.09.2012 passed in Crl. O.P. No. 19577 of 2012 and threatened him saying that, if he does not vacate and hand over possession to the 5th respondent, he would be forcibly ejected and a criminal case also would be lodged against him. Hence, the present original petition has been filed by the petitioner contending that by misusing and misrepresenting the order of this Court dated 28.09.2012 in Crl. O.P. 19577 of 2012, the official respondents had illegally dispossessed the petitioner and handed over the possession to the 5th respondent. Therefore, a direction could be given to the official, respondents to restore possession to the petitioner since the petitioner is doing business in the said property for more than 11 years.

4. Learned Senior Counsel appearing for the petitioner has submitted that the petitioner was running a hotel in Door Nos. 363, 364 and 365 situated in S. No. 510/3. S. No. 364 belonged to the co-sharers of the 5th respondent. So far as door No. 363 is concerned, the owner is one Karunanidhi; from whom, the petitioner had taken the said shop on lease. So far as door No. 364 is concerned, petitioner had purchased the said shop from one Boopathi. The said Karunanidhi and Boopathi are the sons of one late Kailasam Pillai and they are close relatives of 5th respondent. So far as Door No. 365 is concerned, the 5th respondent is claiming right over the same based upon an alleged division stating that based upon the said division the petitioner's vendor Mr. Rajasekaran S/o. Late Kailam Pillai, uncle of 5th respondent, had given his mother an extent of 1386 sq.ft. According to the 5th respondent, subsequently the said property was settled in his favour by his mother. Whereas it is the case of the petitioner that actually Mr. Rajasekaran, uncle of the 5th respondent, got the subject property as his share from his father's estate, which was conveyed to the petitioner in the year 1993 by a registered sale deed. After purchasing the said property, the petitioner is in possession of the property for more than 11 years. In fact, in the year 2006 itself, the 5th respondent lodged a complaint as against this petitioner for the same set of allegations as if the petitioner had trespassed into his property and put up construction. Subsequently, the said complaint was closed on account of the pendency of a suit for partition in O.S. No. 67 of 2006 between the wife and children of late Kailasam Pillai. In Fact, in the said suit, the petitioner herein impleaded himself as one of the parties since he has purchased door No. 365 from Rajasekaran, who got the said property from his father Kailasam Pillai and conveyed to the petitioner in the year 1993 by a registered sale deed. Subsequently, the petitioner had given another complaint with the same set of allegations. All along, no action has been taken since the matter relates to civil in nature. Now, after obtaining the order from this Court, by misusing and misrepresenting the said order, with the help of official respondents, the 5th respondent took possession illegally by ejecting the petitioner from the said premises. In support of his contentions, the learned senior counsel has also produced photographs and press reports before this Court to show that possession was taken from the petitioner with the assistance of police officials.

5. In this regard, the learned senior counsel appearing for the petitioner has

relied upon a judgment rendered by a Full Bench of this Court reported in Century Flour Mills Ltd. Vs. S. Suppiah and Others, , wherein it has been held that where in violation of a stay order or injunction against a party, something has been done in disobedience, it is the duty of the court as a policy to set the wrong right and not allow the perpetuation of the wrong doing and thus submitted that even in the instant case the dispute between the parties is purely civil in nature and this Court, while passing order in Crl. O.P. No. 19577 of 2012 only directed the 5th respondent to approach the respondents police along with the order if any incident occurs and further directed the respondents police to consider the same in accordance with law. This Court never directed the police to take possession from the petitioner and hand over the same to the 5th respondent. Despite this, possession was taken illegally by misrepresenting the order of this Court and hence, a direction has to be given to the respondents police to restore possession to the petitioner.

6. Countering the submissions made by the learned senior counsel for the petitioner, learned counsel for the 5th respondent has submitted that it is incorrect to state that the 5th respondent by misusing and misrepresenting the order dated 28.09.2012 had illegally taken possession by dispossessing the petitioner with the help of police officers. In this regard, the learned counsel further submitted that the 5th respondent was in possession of Door Nos. 363 and 364 alone. Door No. 363 belongs to one Karunanidhi, Uncle of the 5th respondent. The said Karunanidhi filed R.C.O.P. No. 2 of 1997 as against the petitioner herein for eviction and the same was ordered in favour of Karunanidhi on 10.12.2007; against which, the petitioner filed R.C.A. No. 1 of 2008. So far as door No. 364 is concerned, petitioner had purchased the same from one Boopathi. The dispute is only with regard to Door No. 365. At no point of time, Door No. 365 had been in possession of the petitioner, which is the subject property. So far as Door No. 365 is concerned, now the petitioner, who is in possession of Door No. 364, had made an attempt to enter into the Door No. 365 by fabricating a lease deed. According to the petitioner, he took Door No. 365 on sub-lease from one Kumaran in the name of his son K.T. Srinivasan. In this regard, the learned counsel for the 5th respondent submitted that the petitioner created a forged document in respect of door No. 365 as if he had taken the said door number on sub-lease from one Kumaran.

7. By inviting the attention of this Court to the rental agreement executed between Kumaran and the petitioner herein dated 25.08.2001, the learned counsel for the 5th respondent submitted that the said document is a forged document and with the help of which, the petitioner is trying to trespass into door No. 365 and threatening the 5th respondent. But, he had never been in possession of door No. 365. Under such circumstances, the question of taking possession illegally from the 5th respondent does not arise in this case. Thus, the present petition has been filed only with false allegations.

8. Learned Additional Public Prosecutor appearing for respondents 1 to 4 filed a

counter and submitted that on 29.03.2012, the 5th respondent appeared before the 1st respondent police and lodged a complaint stating that the property situated at Athur, Cuddalore Main Road in Patta No. 1257 in S. No. 510/3 measuring about 1386 sq. ft. in door No. 365 belongs to him, was grabbed by the petitioner, his wife and his son. Based on the above complaint, Crime No. 16 of 2012 for offences under Sections 468, 471, 420 and 506(ii) was registered. After lodging the complaint, the then investigating officer had examined the 5th respondent and his neighbors and recorded their statements. Thereafter, the 5th respondent filed Crl. O.P. No. 19577 of 2012 and the same was disposed of on 28.09.2012. Thereafter, on 05.11.2012 at 9.00 Am., the 5th respondent entered into the premises at door No. 365, Attur, Salem to Cuddalore Main Road and took possession of the same. At that time, the petitioner, his wife and son were not present; but one Chellakannu, his son Rajendran and his son-in-law Govindan were objected for the same. Subsequently, based on the complaint given by the 5th respondent before the Attur Police Station, a case was registered in Athur Police station is crime No. 1284 of 2012 under sections 294(b), 341 and 506(i) IPC. During the course of investigation, the respondent police came to know that a civil suit filed by Kumaran is pending against one Karunanidhi in O.S. No. 551 of 1996 before the District Munsif Court, Athur, wherein an order of interim injunction was passed, directing the defendant not to disturb the possession of Kumaran and not to evict him without due process of law in respect of door No. 365. Thereafter, on 25.08.2001, there was an agreement in respect of door No. 365 between Kumaran and K.T. Srinivasan, son of petitioner herein. Further, in the said agreement it was clearly stated that the property was owned by one Kailasam Pillai only. Subsequent to oral agreement, the property was allotted to Karunanidhi who leased the property to one Kumaran, who subsequently sub-leased to the petitioner. The police never entered into the premises to support any party. Since shop No. 365 situated in the Highways Road, near Attur Bus stand, huge public have gathered, the media persons came to the spot and taken photographs of the spot as well as the petitioner along with police. But, the respondents police never took possession of the property illegally. Thus, the present original petition has been filed with false allegations.

9. This Court has considered the submissions of both sides and perused the materials available on record.

10. Keeping in mind the submissions made by the parties, I have carefully gone through the materials available on record. The present original petition has been filed only for a direction to the respondents to put the petitioner in possession of the property since he was illegally evicted from the property by misusing and misrepresenting the order of this Court passed in Crl. O.P. No. 19577 of 2012.

11. But, according to the learned counsel for the 5th respondent, the petitioner had never been in possession of the disputed property and therefore, absolutely there is no need to dispossess him from the subject property, that too with the help of the Police Officials. The present allegation of the petitioner that he was

dispossessed with the help of the Police Officials by misusing and misrepresenting the order passed by this Court dated 28.09.2012 in Crl. O.P. No. 19577 of 2012, is utter falsehood.

12. In view of the submissions made on either side, now the only question that has arisen for consideration is whether the Police Official by misusing and misrepresenting the order of this Court, dated 28.09.2012, made in Crl. O.P. No. 19577 of 2012, dispossessed the petitioner from the subject property viz., Door No. 365.

13. Though the learned counsel for the 5th respondent submitted that the petitioner was never in possession of the property in Door No. 365, on going through the entire averments made in the complaint given by the 5th respondent (Mr. Somasundaram) dated 31.03.2012 registered in crime No. 16 of 2012 as against the petitioner, his wife and his son, I find that it is the specific allegation of the 5th respondent in the said complaint that the petitioner herein and his son had trespassed into the property of the 5th respondent viz., Door No. 365 and put up a construction therein. In Column No. 3 of the First Information Report, date of occurrence was mentioned as 03.02.2004. Further. I find that as early as in the year 2006 itself, the 5th respondent had lodged a complaint as against the petitioner on the same set of allegations. Considering the allegations made in the First Information Report, now it prima facie appears that the petitioner is in possession of the disputed property. Whether the said possession of the property by the petitioner is legal or not has to be decided only in the Civil Court. According to the petitioner, he is in possession of the subject property for more than 11 years having purchased the same from one Rajasekaran in the year 1993. Therefore, the entire dispute between the parties is purely civil in nature. The respondent-Police has no right to dispossess the petitioner from the subject property, especially when there is no positive direction from this Court or from any other Court to the respondent-Police to evict the petitioner from the subject property.

14. According to the Additional Public Prosecutor, the Police Official never misused or misrepresented the order of this Court passed in Crl. O.P. No. 19577 of 2012 on 28.09.2012 and dispossessed the petitioner. Whereas, according to the petitioner, by misusing and misrepresenting the order of this Court, the Police have dispossessed him from the subject property. In support of his contention, the learned counsel for the petitioner has also produced the News Items published in Dina Thanthi dated 6.11.2012 and also in other News Papers circulated in Attur and also photographs. On perusal of the same, it prima facie appears that the possession of the subject property was taken forcibly by the 5th respondent only with the help of the police officials. But, this Court never gave a direction in Crl. O.P. No. 19577 of 2012 to the Police Officials to evict the petitioner from the subject property. Further, the entire allegations made in the complaint given by the 5th respondent appear to be purely civil in nature. Though prima facie it appears from the records that the possession of the subject

property was forcibly taken from the petitioner without any Court order, I am of the opinion that this Court can not give any positive direction to the respondent Police to put the petitioner into possession of the subject property, since the delivery of possession can be ordered only by a civil Court after conducting a trial, since the respondent Police are denying the allegations of the petitioner. So far as the conduct of the Police Officials is concerned, in my considered opinion, for the wrong doing of the Police, the petitioner can seek only the civil remedy by claiming damages before the appropriate forum.

With the said observation, the criminal original petition is disposed of, giving liberty to the petitioner to seek possession of the subject property in the manner known to law.