

(2011) 04 KL CK 0040

In the High Court Of Kerala

Case No : Writ Petition (C) No. 11208 of 2011 (A)

Sreedharan Namboothiri, Valsala Devi Antherjanam and
Venukuttan Namboothiri

APPELLANT

Vs

Circle Inspector of Police and Others

RESPONDENT

Date of Decision : 07-04-2011

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2011) 04 KL CK 0040

Hon'ble Judges : R. Basant, J;K. Surendra Mohan, J

Bench : Division Bench

Advocate : D. Somasundaram, for the Appellant; No Appearance, for the Respondent

Final Decision : Dismissed

Judgement

R. Basant, J.—Petitioners have come to this Court with this petition for issue of directions under Article 226 of the Constitution of India to Respondents 1 and 2 police officials to afford protection to the Petitioners for their peaceful residence in a house.

2. According to the Petitioners, the residential property belonged originally to the 1st Petitioner. The 2nd Petitioner is his wife and the 3rd Petitioner is his younger son. The elder son of Petitioners 1 and 2 was earlier married. He had two children in that marriage. That marriage had ended in a divorce. Respondent No. 3, a woman, allegedly belonging to a different cast, was brought by the elder son of Petitioners 1 and 2 to the house of the Petitioners. The said 3rd Respondent and two children born to the 3rd Respondent in the elder son of Petitioners 1 and 2 were also residing along with the Petitioners in the said residential building. The 1st Petitioner had executed a settlement deed in favour of the said elder son of Petitioners 1 and 2. The said elder son subsequently died in a motor accident. The Petitioners went before the civil court with two suits. In one, they claimed eviction of the 3rd Respondent from the premises. In the other, they claimed that

they may not be forcibly evicted from the premises. Both suits were decreed vide Ext. P1 judgment. It was virtually not a contested suit. Later an application was filed for setting aside that judgment. By Ext. P3 order, for non payment of cost, that petition was dismissed.

3. Be that as it may, we are now concerned with the request of the Petitioners for police protection. According to the Petitioners, the 2nd Petitioner is admittedly the mother of the deceased and hence a legal heir of her deceased son. The 1st Petitioner has a life estate reserved for him as per the settlement deed which he executed in favour of his deceased son. They hence have some rights over the residential property in question. Their residence in the property appears to have been recognized and accepted by the civil court in Ext. P1 judgment. Inasmuch as forcible eviction of the Petitioners is prevented by an order of perpetual injunction under Ext. P1, their residence in the property is seen recognised by the civil court, it is submitted. The grievance of the Petitioners now is that they are not being permitted to peacefully reside in the residential building. The Petitioners are Brahmins. They have to conduct poojas etc. The 3rd Respondent is not permitting the Petitioners to peacefully reside and carry on their life. It is, in these circumstances, that the Petitioners claim an order of police protection.

4. Admittedly the Petitioners and the 3rd Respondent are residing in the house. Respondents 4 to 6 are said to be relatives of the 3rd Respondent residing nearby. The fact that the 3rd Respondent is residing in the property, it is significant, is not disputed. It is not disputed that the 3rd Respondent is residing in the property along with 2 sons of the deceased elder son of Petitioners 1 and 2.

5. The decree for eviction against the 3rd Respondent has not been executed. A reading of Ext. P1 clearly shows that the court had recognised the factual situation that Petitioners 1 and 2 and the 3rd Respondent are residing in that house.

6. Having rendered our very anxious consideration, we are not persuaded to agree that the police must be given access into the house to afford police protection. If the Petitioners are sought to be forcibly evicted, the decree in Ext. P1 suit covers the question squarely.

7. The dispute now is obviously between 2 persons in occupation of the property regarding enjoyment of the property. We are of the opinion that it is unnecessary for this Court to issue any specific directions to the police to afford protection to either. If there be a dispute regarding the manner of enjoyment of the property until the 3rd Respondent is evicted in execution of the decree in Ext. P1, it is certainly for the parties to approach the civil court and seek directions. We are certainly not persuaded to agree that the police must be armed with an order, so that they can be arbiters who decide about the manner in which the property is to be enjoyed by persons admittedly in occupation. Crimes if any committed by either, will of course have to be dealt with in accordance with law by the police.

8. With the observation that the Petitioners must go to the civil court if they want

any directions regarding enjoyment of the property prior to eviction of the 3rd Respondent in execution of Ext. P1, we dismiss this Writ Petition.