

(2010) 05 KL CK 0014

In the High Court Of Kerala

Case No : Writ Petition (C) No. 9420 of 2010

Thomas and Another

APPELLANT

Vs

Karunakara Nair and Others

RESPONDENT

Date of Decision : 19-05-2010

Acts Referred:

Constitution of India, 1950 — Article 226

Citation : (2010) 05 KL CK 0014

Hon'ble Judges : M.L. Joseph Francis, J;K.M. Joseph, J

Bench : Division Bench

Advocate : Sunny Mathew, for the Appellant; G. Rajagopal and N. Renjinee Devi for Respondents 1 to 3 and Vipindas, T.K., Government Pleader for Respondents 6 and 7, for the Respondent

Judgement

M.L. Joseph Francis, J.—This Writ Petition under Article 226 of Constitution of India is filed with the following prayers:

(i) To issue a writ of mandamus or any other appropriate writ order or direction commanding the 6th Respondent or render adequate police protection for the Petitioners and their children to enter their residential house in re-survey No. 251/13 of Koovappady Village (Old Sy. No. 83/2/1) and also live there peacefully.

(ii) To declare that the action of the Respondents 1 to 5 and men under them in obstructing the Petitioners from entering the residential house wherein the Petitioners were residing which is situate in re-survey No. 251/13 of (Old Sy. No. 83/2/1) Koovappady Village, threatening them with dire consequences as to their lives, by showing weapons etc. as illegal.

2. The case of the Petitioners is briefly as follows. The 1st Respondent along with his wife by name Ambika, as per Ext. P-1 agreed to sell an extent of 2.02 Ares of property in re-survey No. 251/13 of Koovappady Village to the 2nd Petitioner. Towards the sale consideration an amount of Rs. 25,000 was paid by the 2nd Petitioner and the 1st Respondent along with his wife received the same. As per

Ext. P-1 the sale transaction has to be completed and the property has to be registered in the name of the 2nd Petitioner within 11 months from the date of Ext. P-1.

3. Since the Petitioners did not have any other place to reside the Petitioners sought the permission of the 1st Respondent and his wife to construct a small residential house in the said property even before the transfer of the property into the name of the 2nd Petitioner and the 1st Respondent along with his wife had permitted the same. Accordingly the Petitioners by spending an amount of Rs. 1,50,000 has constructed a small house in the same property and took up the residence in the same property. When the residential house was constructed in a property having 5 cents, the value of the property enhanced considerably and the 1st Respondent and his wife started to employ ways and means to wriggle out Ext. P-1.

4. Though the Petitioners had, on several occasions, expressed their willingness to pay the balance sale consideration and to execute the necessary documents the 1st Respondent and his wife did not perform their part of the agreement. Ultimately the Petitioners filed O.S. No. 179 of 2009 before the Sub Court, Perumbavoor praying for the specific performance of Ext. P-1 agreement. In the suit the Petitioners had also filed I.A. No. 1371 of 2009 praying for the issuance of an order of temporary injunction restraining the 1st Respondent and his wife from alienating the said property, from committing waste therein and from forcibly evicting the Plaintiff from the plaint schedule property, the property covered Ext. P-1 wherein the Petitioners had constructed a residential house.

5. The learned subordinate Judge, as per Ext. P-3 order of injunction allowed I.A. No. 1371 of 2009. Ext. P-3 was served on the 1st Respondent and his wife. Since Ext. P-3 contains a prohibition from forcibly evicting the Petitioners, the Respondents 1 to 5 have on 8-3-2010 during night trespassed into the residential house of the Petitioners, and assaulted the Petitioners causing them severe injuries. They have also caused extensive damage to the household articles and furniture. Since the Petitioners sustained injury they had to be admitted at the Vathiyath Hospital, Perumbavoor as inpatients. They were undergoing treatment in the hospital and were discharged from the hospital on 12-3-2010. On the same day after getting discharged from the hospital the Petitioners along with their son went to their residential house. However, the Respondents 1 to 4 and above 150 persons obstructed the Petitioners from entering the residential house.

6. The Respondents 1 to 5 and men under them were heavily armed with weapons such as sword sticks, sticks and stones. They have also threatened the Petitioners and their son with dire consequences as to their lives. Since the Petitioners apprehended danger to their life and also to the life of their son, on 15-3-2010, they came back and had spent the night on the veranda of a shop. On 16-3-2010 also the Petitioners went to their residential house. However, on 16-3-2010 also the Respondents 1 to 5 and men under them obstructed the Petitioners and their son, threatened them with dire consequences to their lives

and property and also driven them away. Hence on 17-10-2010, the Petitioners filed Ext. P-4 petition before the 6th Respondent, the Sub Inspector of Police, Kodanad praying for adequate police protection. However, the 6th Respondent is adopting an attitude which is helpful to the Respondents 1 to 5, obviously on account of the influence exerted by the Respondents 1 to 5. Now the Petitioners along with their children are compelled to live either on the side of the road on the veranda of some shops.

7. The fourth Respondent filed counter-affidavit for himself and Respondents 1 to 3 and 5 denying the allegations in the Writ Petition.

8. We heard the learned Counsel for the Petitioners and learned Counsel for the party Respondents and also the learned Government Pleader.

9. The learned Counsel for the Petitioners submitted that the court of competent jurisdiction has already passed Ext. P-3 interim order and the 6th Respondent being the law enforcing agency under the 7th Respondent State has got a statutory duty to extend adequate police protection to the lives of the Petitioners. The party Respondents contended that Ext. P-1 agreement for sale is vitiated by fraud and misrepresentation and is null and void. The learned Counsel for the party Respondents submitted that the only witness to Ext. P-1, is the 1st Petitioner who is none other than the husband of the 2nd Petitioner. The learned Counsel for the party Respondent submitted that after Ext. P-1, by misrepresenting facts very wisely, a sum of Rs. 25,000 together with Anr. sum of Rs. 25,000 was received by the Petitioners from the first Respondent and apart from that three bangles weighing $\frac{3}{4}$ sovereigns were also procured by the Petitioners fraudulently from the 1st Respondent and his wife. The party Respondents contended that the building in the property was not constructed by the Petitioners.

10. Admittedly a civil suit is filed by the 2nd Petitioner/wife which is pending before the Sub Court, Perumbavoor as O.S. No. 179 of 2009. This is a suit for specific performance of Ext. P-1 agreement for sale and for permanent prohibitory injunction. In that suit an ex parte temporary injunction was passed as per order in I.A. No. 137 of 2009 and that order has not become final. The 1st Respondent and his wife who are the Defendants in that suit have serious contentions in that suit.

11. The remedy available to aggrieved party under Article 226 of the Constitution of India is an extraordinary remedy and it is not intended to be used for the purpose of declaring private right of the parties. In the case of enforcement of contractual rights and liabilities the normal remedy is filing a civil suit and the High Court will not exercise its prerogative writ jurisdiction to enforce such contractual obligations.

12. Since proceeding under Article 226 are of summary nature disputed questions of facts should not normally be allowed to be agitated and the High Court should not proceed to determine such questions. Since the object of Article

226 is enforcement and not the establishment of rights, no right can be determined or adjudicated in the exercise of extraordinary jurisdiction. Therefore we are of the view that the Petitioners are not entitled to get any relief on the basis of Ext. P-1 agreement. Accordingly this Writ Petition is dismissed as it is without any merits.