

Somakumar Vs. State of Kerala

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Court : Kerala

Decided On : Dec-19-2012

Judge : Honourable Mr.Justice K.M.Joseph

Appellant : Somakumar

Respondent : State of Kerala

Judgement :

IN THE HIGH COURT OF KERALA AT ERNAKULAM PRESENT: THE HONOURABLE MR.JUSTICE K.M.JOSEPH & THE HONOURABLE MR.JUSTICE K.HARILAL WEDNESDAY, THE 19TH DAY OF DECEMBER 2012 28TH AGRAHAYANA 193 WP(C).No. 29123 of 2012 (M) ----- PETITIONER(S): ----- SOMAKUMAR, AGED 6 YEARS S/O. THANKAPPAN, VIJAYALAYAM, PEROORKADA P.O. THIRUVANANTHAPURAM. BY ADV. SRI.M.SREEKUMAR RESPONDENT(S): ----- 1. STATE OF KERALA REPRESENTED BY THE HOME SECRETARY, SECRETARIAT THIRUVANANTHAPURAM-695 001.

2. COMMISSIONER OF POLICE THIRUVANANTHAPURAM CITY, VAZHUTHACAUD THIRUVANANTHAPURAM-695 014.

3. CIRCLE INSPECTOR OF POLICE PEROORKADA POLICE STATION, PEROORKADA P.O. THIRUVANANTHAPURAM-695 006.

4. SUB INSPECTOR OF POLICE PEROORKADA POLICE STATION, PEROORKADA P.O. THIRUVANANTHAPURAM-695 006.

5. J.KRISHNAKUMAR S/O. JAYAKUMAR, FLAT NO.11E, HEERA CRESCENT YMR JUNCTION, NANTHENCODE THIRUVANANTHAPURAM-695 003. R5 BY ADV. SRI.D.PEETHAMBARAN R5 BY ADV. SRI.PRASAD GANDHI R5 BY ADV. SRI.C.K.JAYAKUMAR R4 BY ADV. STATE ATTORNEY R BY Sr.GOVERNMENT PLEADER SRI.C.R.SYAM KUMAR THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 19-12-2012, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING: WPC NO. 29123/2012 APPENDIX PETITIONER(S) EXHIBITS P1 : COPY OF THE SALE DEED NO.3255/2011 OF SRO, SASTHAMANGALAM, DTD.19.11.2011. P2 : COPY OF THE COMPLAINT FILED BY THE 5TH RESPONDENT BEFORE THE CHIEF MINISTER DTD.1.7.2012. P3 : COPY OF THE FIR NO.849/2012 OF PEROORKADA POLICE STATION, DTD.18.7.2012. P4 : COPY OF THE DYING DECLARATION OF SMT.JAGADAMMA (NO.D2497/12 DTD.9.8.2012). P5 : COPY OF THE JUDGMENT OF THIS HON'BLE COURT DTD.24.9.2012 IN WPC NO.21694/2012. P6 : COPY OF THE COMPLAINT FILED BY THE PETITIONER BEFORE THE 4TH RESPONDENT DTD.8.10.2012. RESPONDENTS' EXHIBITS NIL // TRUE COPY // P.A. TO JUDGE SD K.M.JOSEPH & K.HARILAL, JJ

----- W.P(C) No.29123 of 2012

----- Dated this the 19th day of December, 2012

JUDGMENT

K.M.Joseph, J Petitioner has approached this Court seeking the following relief: (i) Issue a writ of mandamus or any other appropriate writ, order or direction commanding respondents 3 & 4 to grant adequate and effective police protection to the lives of petitioner and his family members to peacefully reside in the residential house bearing TC No.5/531 & 5/532 obtained as per Ext.P1 sale deed from the threat and illegal activities of 5th respondent and his henchmen in the interest of justice.

2. Briefly put the case of the petitioner is as follows: Petitioner is the owner in possession of property having an extent of 2.87 Ares comprised in Re-Sy.Nos.26

& 28 of Peroorkada village and a two storied residential building situated therein bearing TC Nos. 5/531 and 5/532. Petitioner purchased the said property from his paternal aunt Smt. Jagadamma by Ext.P1. Even after the sale deed, W.P(C) No.29123 o

2. Smt. Jagadamma and her husband had been residing in the residential building situated in the property as permitted by the petitioner. There was an understanding between the petitioner and his aunt that his aunt and her husband can reside in the building till their death.

3. The husband of Smt. Jagadamma by name Dr.Jayakumar who is aged 89 years approached this Court by filing WP(C) No.21694/2012 seeking police protection against the petitioner, his daughter and her husband. According to him, the contesting respondents are taking steps to forcibly oust him from the residential house. 5th respondent is the person behind the filing of the writ petition and it is understood that signature in the vakalath and the said writ petition were forged. Petitioner and other contesting respondents appeared before this Court through counsel and submitted that they have no intention whatsoever to evict Dr.Jayakumar from the residential building and they have no objection in his residing therein as long as he desires. Petitioner and other contesting respondents also submitted that the 5th respondent caused filing of the said writ petition with ulterior motives and he has no right to reside in the residential building except to visit his father. The writ petition W.P(C) No.29123 o

3. was disposed of by Ext.P5 judgment dated 24.09.2012 by recording the submission of the petitioner and other contesting respondents and this Court made it clear that the order is only in favour of Dr.Jayakumar and not in favour of anybody else.

4. It is submitted that on 29.09.2012, petitioner's brother died and his body was brought to the family house at Mavelikkara. Petitioner and his wife went to Mavelikkara in connection with cremation and they returned only on 08.10.2012 morning. At that time 5th respondent and his wife were present in the house. Petitioner was shocked to see that the lock put in the door situated on the end of staircase leading to first floor was dismantled and the door was locked with

another lock. Money and gold ornaments belonging to the wife of the petitioner were kept in the table in one of the bed room of the 1st floor. Since they could not enter the 1st floor due to the threat and obstruction of the 5th respondent, petitioner filed Ext.P6 complaint before the 4th respondent requesting to take action against 5th respondent and to give protection to his life and property. Since the daughter of petitioner was admitted at 'Elite' Hospital, Thrissur for delivery, petitioner had to leave Thiruvananthapuram immediately and petitioner was under the W.P(C) No.29123 o

4. impression that appropriate action will be taken by the police against the 5th respondent. A male child was born to the daughter of petitioner on 05.11.2012. After discharge from the hospital petitioner and his wife came back to Thiruvananthapuram on 26.11.2012. The 1st floor of the building is seen still under the lock and key of 5th respondent. Petitioner and his wife are now forced to live in the drawing room of the ground floor since in one of the bed room in the ground floor Dr.Jayakumar is residing and in the another room his books are kept. Throughout day and night either Krishnakumar or his wife and children are present in the residential house and they are harassing the petitioner and his wife. Now the 5th respondent also brought a dog and a servant and the nuisance and trouble caused to the petitioner is intolerable. As a matter of fact, Krishnakumar is residing along with his family in the address, 'Flat No.11E, Heera Crescent, YMR Junction, Thiruvananthapuram', and only to harass the petitioner and forcibly keep the first floor of the building in his possession one of his family members is present in the first floor of the building throughout day and night. Petitioner is not in a position to bring his daughter and child to his house and to give W.P(C) No.29123 o

5. post-pregnancy care. The daughter is still in the house of her husband. Though Ext.P6 complaint was filed before the 4th respondent as early as on 08.10.2012, no action has been taken so far. Hence this writ petition.

5. A counter affidavit is filed by the 5th respondent. We heard learned counsel for the parties and the learned Government Pleader.

6. The learned counsel for the 5th respondent would submit that a suit is pending. He would further submit more importantly that the 5th respondent is residing in a

rented house nearby. He goes to visit his father because he is 89 years old. We record the submissions and dispose of the writ petition. Sd/- K.M.JOSEPH, JUDGE K.HARILAL, JUDGE sd

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