

IN THE COURT OF THE I ADDITIONAL DISTRICT MUNSIF, NAGERCOIL

Present: Thiru. R. Sundara Kamesh Marthandan, M.L.,

I Additional District Munsif, Nagercoil

Tuesday, on the 29th day of April 2025

E.A. No. 82 of 2004

in

E.P. No. 246 of 2004

(CNR No: TNKK04-000042-2003)

1. Vivekananda Kendra Rock

Memorial and Vivekananda

Kendra Chennai, rep. by its

Joint General Secretary

....Petitioner

-vs-

2. Thankalekshmi (Died)

3. K. Sivaramaperumal Nadar (Died)

4. K. Chellathurai,

5. K. Saraswathi,

6. K. Raja,

7. K. Chellaswamy,

8. K. Rathakrishnan,

9. S. Peria Muthuswamy (Died)

(Respondents 2 to 6 are Lrs. of 1st Respondent

Thangalekshmi and are recorded as per Order

in E.A. NO. 1 of 2021 dated 12.03.2025)

10. Gandhimathy

11. P. Sakthivel

12. P. Sabarinathan,

13. P. Uma

14. P. Prabha Lakshmi

15. P. Jothi : Addl. Respondents 9 to 14 /
(Impleaded as per order in LR's of deceased S.Peria
E.A.No.4/24 dt.7.1.2025) Muthuswamy

16. Selvakani

17. Selvavinitha

(Impleaded as per order in : Addl. Respondents 15 & 16
E.A.No.4/24 dt.7.1.2025) / Lrs of deceased K.Raja

This Petition came before this Court on 08.04.2025 for final hearing in the presence of Mr. D.Hari, Advocate for the Petitioner, Mr. K.Subhakaravel, Advocate for Respondents 3, 4 & 7. Upon hearing both sides and upon Perusing the case records, having stoodover till date for consideration this Court hereby delivers the following:

ORDER

1. The Petitioner had filed the above Petition under Section 151 Code of Civil Procedure, seeking an order directing the Superintendent of Police, Kanyakumari District, to Provide required Police Protection and Assistance to the Commissioner appointed, in the Execution Application, for executing the Commissioner's Warrant.

2. The Petitioner has stated that the Petitioner filed Execution Petition for removing the encroachment made in the Decree schedule property and for effecting delivery of those encroached portions. The Petitioner had further stated that in the above Execution Petition, an Advocate commissioner was appointed, who visited the Petition schedule property on 09.10.2003 at 3.30 P.M. for executing the warrant. However in view of resistance, the Delivery Warrant Could not be executed. Hence the above Petition.

3. The 3rd Respondent had filed Counter. The Respondents 4 & 7 have Adopted the same. They contented that they have not encroached and that the family of Abraham is in Possession and Enjoyment of the said Property and that they are necessary Parties. If Police Protection is given there will be chaos. Before deciding whether Fresh Commission has to be issued or not Police Protection could not be ordered. Hence the Respondents 3, 4 & 7 Prayed for dismissal of the above Petition.

4. The Operative Portion of the decree sought to executed in the above Execution Petition is extracted hereunder:- “பிரதிவாதிகள் வழக்கு பி பட்டிகை சொத்திலும் வழக்கு எ பட்டிகை அயிட்டம் நம்பர் 1 சொத்திலும் கட்டியுள்ள கட்டுமானங்களும், செட்டுகளும் பிரதிவாதிகளின் செலவில் அகற்றப்பட வேண்டுமென்றும், மேலும் தீர்ப்பாணை பிறப்பித்த தேதியிலிருந்து 17.05.2002 – க்குள் அகற்றி காலியிடத்தை வாதியிடம் ஒப்படைக்க வேண்டுமென்றும், அவ்வாறு செய்ய தவறும்பட்சத்தில் நீதிமன்றத்தின் மூலமாக ஆணையர் நியமனம் செய்யப்பட்டு, பிரதிவாதிகளின் செலவில் அவைகள் அகற்றப்பட வேண்டுமென்றும், பி பட்டிகை சொத்திலிருந்து 8-ம் பிரதிவாதியை வெளியேற்றி, அதனுடைய உடமையை ஒப்படைக்க வேண்டுமென்றும் மிச்ச வருமானம் ஆண்டொன்றுக்கு ரூ.150/- வீரம் வழக்கு தாக்கல் செய்த தேதியான 29.09.1994 முதல் சொத்திலிருந்து வெளியேறும் வரை செலுத்த வேண்டுமென்றும், பிரதிவாதிகளும் அவருடைய ஆட்களும் வழக்கு எ பட்டிகை சொத்தின் தெற்கு மற்றும் மேற்கு புறத்திலுள்ள காம்ப்பவுண்ட் சுவர்களை வாதி கட்டுவதற்கு தடை செய்யக்கூடாது என்றும், வழக்கு எ பட்டிகை சொத்தில் வாதியின் உடமைக்கும், அனுபவ சுவாதீனத்திற்கும், பிரதிவாதிகளும் அவரது ஆட்களும், இடையூறு செய்யக்கூடாது என்றும் தீர்ப்பாணை பிறப்பிக்கப்படுகிறது.

5. As such, there are three reliefs granted in the above suit. In so far as the first relief is concerned, the Trial Court had ordered execution of the decree, by way of issuance of commission. With regard to other two relives, there is no such direction, issued by the Trial Court. This Court by order dated 19.09.2003 had appointed an Advocate Commissioner. It is not out of Place to mention that the Petitioner had now come up with another application seeking to appoint another Commissioner, by stating that Commissioner already appointed had shifted his practice from Nagercoil to Madurai. In such circumstance the Petitioner's above Petition seeking Police Assistance for Execution of the Decree through the Advocate commissioner has to necessarily be modified. Since the Judgement Debtors themselves were directed to remove the encroachments by themselves within a stipulated time, as they have not did so, a Commission was issued. As such, it cannot be said that this Court through it's Amin Could not execute the Decree. Hence this Court is of the considered view that instead of appointing a Fresh Commissioner, the Delivery could be effected through the Amin and adequate Police Protection Could be ordered to the Amin for Effecting Delivery.

6. Further more, for the other two relieves, as there is no specific provision in the decree, for issuance of commission, directing this Court Amin, to effect Delivery in respect of Suit Relief 'A' will be Comprehensive One. It is also not out of Place to mention that in Civil Appeal Nos. 3640-3642 of 2025 by Order dated 06.03.2025 in Periyammal (Dead) Through Lrs & Ors. -vs- V.Rajamani & Anr. Etc., Reported in 2025 INSC 329, the Hon'ble Supreme Court had held that the Execution Petitions Could be executed within Six Months Period. Hence executing the Decree through the Amin will ensure, expeditious Delivery.

7. At this juncture it would be appropriate to refer the judgment of the Hon'ble Madras High Court in Radhika Sri Hari and another -vs- Commissioner of Police, Coimbatore and others reported in 2014(2) CTC 696, wherein the Hon'ble High Court has also referred the Government Order and guidelines issued by the Committee constituted by the Government, in G.O.(3D) No.42, Home, dated

30.06.2008 and the relevant passages are extracted hereunder:

“7. In the aforesaid circumstances, this court considers it appropriate to refer to report of the committee constituted by the Government in G.O.(3D) No.42, Home dated 30.06.2008 towards review of the system of treating complaints relating to money and land matters and to suggest a legally acceptable methodology. The report of such committee touching upon several issues, was accepted by Government. Having done so, under G.O.Ms.No.1580 Home (POL.VII) Department dated 24.11.2008, the Director General of Police was required to circulate the report along with the 14 point guidelines annexed to such Government order to police officers/stations for appropriate adherence. Under C.No. 43/CRB/CSP/2008 dated 08.12.2008, the Commissioner of Police, Chennai Sub-Urban, has caused communications to all Deputy Commissioners, Assistant Commissioners and Inspector of police for necessary action. Guideline 11 issued by the committee reads as follows:

"11. When police protection is sought for the implementation of a civil court order it should be given readily. Police should not insist on a specific court direction to give police protection."

8. Though there is a categorical direction to the Police authorities for implementation of Civil Court order, it could be seen often, unless the Decree Holder obtains specific order from the Court for Police Aid, the Police are not giving protection for the implementation of Civil Court order. Hence it had necessitated the Petitioner to file the above petition. Since the right of the Petitioner/Decree Holder

has been determined in the Decree. The Police Authorities ought to have readily granted adequate police protection for executing the Civil Court decree. It seems the same has not been done in letter and spirit. Hence this Court is of the considered view that the Petitioner is entitled for the petition relief.

In the result, this Court moulds the relief sought for in the above Petition and grants the same to the Petitioner and thereby directs the Superintendent of Police, Kanyakumari District, to Provide Adequate Police Protection (both Men Police and Women Police, as the situation Warrants) to the Court Amin for executing the decree dated 17.04.2002 made in O.S. No. 280 of 1994. No Cost.

Dictated to the Typist, and typed by him, corrected and pronounced by me, in open court this, the 29th day of April, 2025.

I Additional District Munsif,
Nagercoil.

Petitioner side witnesses and documents : Nil.

Respondent side witnesses and documents : Nil.

I Additional District Munsif,
Nagercoil.

Draft/Fair Order
E.A.No.82/2004 in
E.P.No.246/2004
Date: 29.04.2025
I ADM, Nagercoil