

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 12.03.2015

CORAM

THE HONOURABLE MR.JUSTICE S.MANIKUMAR

CRL.R.C.No.176 of 2015
and M.P.No.1 of 2015

1. Pasarai Balu
2. Chinnadurai
3. Mayilvahanan
4. Pandian
5. Sakthivel
6. Nallasivam
7. Karunanidhi

...Revision Petitioners/'B' Party

vs.

1. Karuppan
2. Daivanaygam
3. Aasaithambi
4. Chinnasamy Pillai
5. Raja
6. Gopi
7. Natarajan
8. Panneer
9. Sivalingam
10. Selvaraj
11. Venkatachalam
12. Raman

...Respondents/'A' Party

13. The Sub Divisional Magistrate Cum
Revenue Divisional Officer,
Kallakurichi,
Villupuram District.

...Respondent/Respondent

PRAYER: Criminal Revision Case filed under Sections 397 and 401 of the Code of Criminal Procedure to set aside the order of the Learned Sub Divisional Magistrate -cum- Revenue Divisional Officer, Kallakurichi, Villupuram District, in Na.Ka.No.A3/3666/2013, dated 18.06.2014, the same was served on the petitioners only on 14.01.2015 and allow the Revision Petition.

For Petitioners : Mr.K. Balakrishnan,

For Respondents : Mr.P.Govindarajan,
Addl Public Prosecutor for R13

JUDGMENT

Being aggrieved by the order passed by the Sub Divisional Magistrate -cum- Revenue Divisional Officer, Kallakurichi, Villupuram District in RC.No. A3/3666/2013, dated 18.06.2014, under Section 145 of the Code of Criminal Procedure, petitioners representing 'B' party have filed the revision petition.

2. Material on record discloses that earlier, after considering the report dated 10.08.2013 of the Sub Inspector of Police, Kachirapalayam, and by observing that there was a dispute, which was likely to cause a breach of peace, in respect of a claim for possession of land, in Survey No.445/3, measuring an extent of 0.08 cents, the Sub Divisional Magistrate -cum- Revenue Divisional Officer, Kallakurichi, Villupuram District, has passed a preliminary order, on 19.08.2003 under Section 145 CrPC that no person should enter upon the abovesaid disputed property and no disorder should be made. Subsequently, after considering the revenue records and no documents were produced by the 'B' party to prove the actual possession, vide proceedings in RC.No.A3/3666/2013, dated 18.06.2014, Mr.K.Balakrishnan, learned counsel for the 'B' Party, submitted that the Sub Divisional Magistrate -cum- Revenue Divisional Officer, Kallakurichi, Villupuram District, has passed an order, without providing any opportunity to the petitioners, to produce the documents, to substantiate their case. According to him, when the revision petitioners have applied for necessary documents from the Government, the Sub Divisional Magistrate -cum- Revenue Divisional Officer, Kallakurichi, Villupuram District, ought not to have passed a final order under Section 145 CrPC.

3. Learned counsel for the petitioners further submitted that the land in Survey No.445/3 in Old Survey Nos.22/3A and 22/3B, in Kachirapalayam Village, Kallakurichi, was originally acquired by the Government in the year 1958, for the purpose of providing house sites to the revision petitioners and others in Kachirapalayam Village. It is the further contention of the petitioners that one Raman, son of Karuppan Chetty, has not been arrayed as one of the members of 'A' Party and obtained patta by producing bogus documents in S.No.445/3.

4. Learned counsel for the petitioners further submitted that the petitioners have approached the Tahsildar, to cancel the patta issued in the name of Raman. When the abovesaid proceeding was stated to be pending, the Sub Divisional Magistrate -cum- Revenue Divisional Officer, Kallakurichi, Villupuram District, ought not to have passed an order under Section 145 CrPC, declaring him as the owner of the property in S.No.445/3 in Vadakkananthal (East) Village. At this juncture, he submitted that Section 145 CrPC does not empower the Executive Magistrate to render any finding regarding the ownership of the property. Learned counsel for the petitioners further submitted

that the final order made under Section 145 CrPC, permitting the Poyar community people to put up constructions in the disputed land, with a further direction to give police protection, to the said Raman and his community people, is beyond the jurisdiction of the Sub Divisional Magistrate -cum- Revenue Divisional Officer, Kallakurichi, Villupuram District. Learned counsel for the petitioners further submitted that the Sub Divisional Magistrate -cum- Revenue Divisional Officer, Kallakurichi, Villupuram District, has not conducted any enquiry and examined any witness, before passing a final order under Section 145 CrPC.

5. Heard the learned counsel for the petitioners and Mr.P.Govindarajan, learned Additional Public Prosecutor for the respondent No.13.

6. From the perusal of the preliminary order dated 19.08.2013, passed in RC.No.A3/3666/2013, it could be deduced that when members belonging to 'A' party, who belonged to a particular Section of the Society, wanted to demolish a building in S.No.445/3, measuring an extent of 0.08 cents, in Vadakkananthal (East) Village, Chinnasalem, members belonging to 'B' party/petitioners, who belonged to other sections of the society, have objected. On the complaints made against each other, criminal case seemed to have been registered. There were frequent disputes over the subject land. Therefore, the Sub Inspector of Police, Kachirapalayam Police Station, has sent a report dated 10.08.2013 to the Sub Divisional Magistrate -cum- Revenue Divisional Officer, Kallakurichi, Villupuram District, stating that in respect of the subject land, there was a dispute between the parties and the said dispute was likely to cause a breach of peace in the said place. Taking note of the information dated 10.08.2013 of the Sub Inspector of Police, Kachirapalayam, and after considering the existence of a dispute, likely to cause breach of peace, the Sub Divisional Magistrate -cum- Revenue Divisional Officer, Kallakurichi, Villupuram District, has passed a preliminary order dated 19.08.2013, directing that no person should enter upon the disputed land and no disorder should be made.

7. Reading of the impugned order indicates that the Sub Divisional Magistrate -cum- Revenue Divisional Officer, Kallakurichi, Villupuram District, has sought for a report from the Tahsildar, Chinnasalem. Subsequently, the Sub Divisional Magistrate -cum- Revenue Divisional Officer, Kallakurichi, has taken note of the report of the Tahsildar, Chinnasalem, that 00073 sq.mt. in S.No.566/11, and 00188 Sq.mt. in S.No.556/11, as per the UDR and Natham Accounts, has been described as "Street". The Sub Divisional Magistrate -cum- Revenue Divisional Officer, Kallakurichi, Villupuram District, has noted down that the said extent of land, described as "Street" in the accounts of UDR and Natham, has been used as a pathway by a section of people representing B party. Prior to 1985, patta in respect of the said place stood in the name of one

C.Periyasamy. The Sub Divisional Magistrate -cum- Revenue Divisional Officer, Kallakurichi, Villupuram District, in his final order dated 18.06.2014, under Section 145 CrPC, has also observed that though one Mr.Angamuthu, Son of Kaliyan and others, have represented that it is suffice that the said authority record his decision, with reference to the pathway, they have not submitted any documents, whereas, the members representing 'A' party, have submitted that the property in S.No.445/3, measuring an extent of 0.08 cents belongs to their Section of Society, and that Patta No.580 has also been issued. According to them, members belonging to 'B' party, had not used the said property in S.No.445/3, as a pathway. Accordingly, the Tahsildar, has submitted a report in Mu.Mu.No.(A1)/11458/2013, dated 17.10.2013. Thus, from the report dated 17.10.2013, of the Tahsildar, Chinnasalem, it could be seen that after the dispute has arisen between the parties, which necessitated the Sub Divisional Magistrate -cum- Revenue Divisional Officer, Kallakurichi, Villupuram District, to pass a preliminary order on 19.08.2013, the Tahsildar, Chinnasalem, has conducted an enquiry and submitted a report dated 17.10.2013. Upon consideration of the report, the Sub Divisional Magistrate -cum- Revenue Divisional Officer, Kallakurichi, Villupuram District, has found that prior to UDR Accounts, property in S.No.445/3, measuring an extent of 0.08 cents, stood in the name of one Raman Chetty and Patta No.876 has also been issued. Subsequent to UDR accounts, property in S.No.445/3, measuring 0.03.0 acres, stood in the name of Raman, Son of Karuppan Chetty, in Patta No.850. The Sub Divisional Magistrate -cum- Revenue Divisional Officer, Kallakurichi, Villupuram District, has also taken note of the entries in the revenue records that 00073 sq.mt in Kachirapalayam Grama Natham S.No.566/1, and 00158 sq.mt. in Grama Natham No.556/11, has been described as a pathway. The old survey number for the abovesaid extent, is S.No.22/4 in Natham accounts. While surveying land in S.No.22/4, has been described as pathway to S.No.566/1 and 556/11. The Sub Divisional Magistrate -cum- Revenue Divisional Officer, Kallakurichi, has also taken note of the report of the Tahsildar, Chinnasalem, wherein he has recorded that no patta has been granted to any individual in respect of S.No.556/1 and 556/11, as contended by the members belonging to 'B' party/revision petitioners.

8.Material on record discloses that though sufficient opportunities have been given by the Sub Divisional Magistrate -cum- Revenue Divisional Officer, Kallakurichi, by letters dated 22.11.2013 and 27.12.2013, by considering the request of Mr.Angamuthu, who represented 'B' party, no documents were produced. In the abovesaid circumstances, the Sub Divisional Magistrate -cum- Revenue Divisional Officer, Kallakurichi, while passing final order under Section 145 CrPC, has recorded that the land in S.No.445/3, measuring 0.08 cents stands in the name of Raman, son of Karuppan Chetty and belonging to the Section of the people representing 'A' party. While that being so, he has recorded that the abovesaid extent of property is owned by Raman, son of Karuppan Chetty and also permitted the

persons, belonging to a particular Section of the Society representing the 'A' party to put up constructions and in this regard, the Sub Inspector of Police, Kachirapalayam, has been directed to provide police protection to prevent law and order problem. He has also directed the Tahsildar, Chinnasalem to monitor law and order. Thus, while passing the final order under Section 145 CrPC, he has vacated the order, restricting entry into the property.

9. Section 145 of the Code of Criminal Procedure, which deals with the procedure where dispute concerning land or water is likely to cause breach of peace, is extracted hereunder:

"145. Procedure where dispute concerning land or water is likely to cause breach of peace.

(1) Whenever an Executive Magistrate is satisfied from a report of a police officer or upon other information that a dispute likely to cause a breach of the peace exists concerning any land or water or the boundaries thereof, within his local jurisdiction, he shall make an order in writing, stating the grounds of his being so satisfied, and requiring the parties concerned in such dispute to attend his Court in person or by pleader, on a specified date and time, and to put in written statements of their respective claims as respects the fact of actual possession of the subject of dispute.

(2) For the purposes of this section, the expression and or "water" includes buildings, markets, fisheries, crops or other produce of land, and the rents or profits of any such property.

(3) A copy, of the order shall be served in the manner provided by the Code for the service of a summons upon such person or persons as the Magistrate may direct, and at least one copy shall be published by being affixed to some conspicuous place at or near the Subject of dispute:

(4) The Magistrate shall then, without reference to the merits or the claims of any of the parties, to a right to possess the subject of dispute, peruse the statements so put in, hear the parties, receive all such evidence as may be produced by them, take such further evidence, if any as he thinks necessary, and, if possible, decide whether and which of the parties was, at the date of the order made by him under subsection (1), in possession of the subject of dispute:

Provided that if it appears to the Magistrate that any party has been forcibly and wrongfully dispossessed within two months next before the date on which the report of a police officer or other information was received by the Magistrate, or after that date and before the date of his order under sub-section (1), he may treat the party so dispossessed as if that party had been in possession on the date of his order under sub-section (1).

(5) Nothing in this section shall preclude any party so required to attend, or any other person interested, from showing that no such dispute as aforesaid exists or has existed; and in such case the Magistrate shall cancel his said order, and all further proceedings thereon shall be stayed, but, subject to such cancellation, the order of the Magistrate under sub-section (1) shall be final.

(6)(a) If the Magistrate decides that one of the parties was, or should under the proviso to sub-section (4) be treated as being, in such possession of the said subject he shall issue an order declaring such party to be entitled to possession thereof until evicted there from in due course of law, and forbidding all disturbance of such possession until such eviction; and when he proceeds under the proviso to sub-section (4), may restore to possession the party forcibly and wrongfully dispossessed.

(b) The order made under this sub-section shall be served and published in the manner laid down in sub-section (3).

(7) When any party to any such proceeding dies, the Magistrate may cause the legal representative of the deceased party to be made a party to the proceeding and shall thereupon continue the inquiry, and if any question arises as to who the legal representative of a deceased party for the purposes of such proceeding is, all persons claiming to be representatives of the deceased party shall be made parties thereto.

(8) If the Magistrate is of opinion that any crop or other produce of the property the subject of dispute in a proceeding under this section pending before him, is

subject to speedy and natural decay, he may make an order for the proper custody or sale of such property, and, upon the completion of the inquiry, shall make such order for the disposal of such property, or the sale-proceeds thereof, as he thinks fit.

(9) The Magistrate may, if he thinks fit, at any stage of the proceedings under this section, on the application of either party, issue a summons to any witness directing him to attend or to produce any document or thing.

(10) Nothing in this section shall be deemed to be in derogation of the Magistrate to proceed under section 107."

10. Though inviting the attention of this Court to Sub-section (4) of Section 145 of the Code, Mr. K. Balakrishnan, learned counsel for the petitioners contended that the Sub Divisional Magistrate -cum- Revenue Divisional Officer, Kallakurichi, has not conducted any enquiry and heard the parties, and therefore, there was a denial of an opportunity to the petitioners, and that the procedure contemplated under Section 145(4) CrPC, has not been followed and resultantly, the final order under Section 145 CrPC, should be interfered with, this Court is not inclined to subscribe to the said contentions, for the reason that as there was a dispute over the property and that such dispute was also likely to cause breach of peace, the Sub Divisional Magistrate -cum- Revenue Divisional Officer, Kallakurichi, Villupuram District, has passed a preliminary order under Section 145(1) CrPC, to preserve peace and that thus, ordered no persons should enter upon the said land. Thereafter, the Sub Divisional Magistrate -cum- Revenue Divisional Officer, Kallakurichi, has sought for a report from the Tahsildar, Chinnaasalem.

11. As per Sub-section 4 of Section 145 CrPC, the Magistrate shall then, without reference to the merits or the claims of any parties, to a right to possess the subject of dispute, peruse the statements so put in, hear the parties to receive all such evidence as may be produced by them, take such further evidence, if any as he thinks necessary, and, if possible, decide whether and which of the parties was, at the date of the order made by him under Sub-section (1) in possession of the subject of dispute.

12. As stated supra, when the Sub Divisional Magistrate -cum- Revenue Divisional Officer, Kallakurichi, was called upon to decide the actual possession of the disputed land, he has sought for a

report from the Tahsildar, Chinnasalem. The latter, has conducted an enquiry. While Mr.Angamuthu, son of Kaliyan, and others representing the members of 'B' party, have appeared before the Tahsildar, Chinnasalem and made their submissions, claiming possession over the disputed property, and despite the letters dated 22.11.2013 and 27.12.2013 sent to the said Angamuthu, to produce documents, to support of the claim of the members of the B party, as regards possession, no documents have been filed. The Tahsildar, Chinnasalem, has also taken note of the entries in the UDR and Natham Accounts, and submitted a detailed report stating that no patta has been issued, to any individual in respect of lands in Grama Natham S.Nos.556/1 and 556/11 in Kachirapalayam, Village. In his report dated 17.10.2013, the Tahsildar, Chinnapsalem, has also set out the details insofar the land in dispute, as well as in whose name patta has been issued in respect of S.No.445/3, measuring 0.08 cents, in Patta No.580. Details of extent of land in possession of Raman Chetty, a member belonging to a Section of the Society, has also been taken note of. Sub Section (1) of Section 145 of the Code, enables the parties to put in written statements of their respective claims as respects the fact of actual possession of the subject of dispute. On the submission of their written statements or documents, in support of the claim or possession, as per sub Section (4) of Section 145 CrPC, Executive Magistrate shall then, without reference to the merits or the claims of any of the parties, to a right to possess the subject of dispute, peruse the statements so put in, hear the parties, receive all such evidence as may be produced by them, take such further evidence, if any as he thinks necessary, and, if possible, decide whether and which of the parties was, at the date of the order made by him under subsection (1), in possession of the subject of dispute.

13.In the case on hand, pursuant to the request made by the Sub Divisional Magistrate -cum- Revenue Divisional Officer, Kallakurichi, the report submitted by the Tahsildar, Chinnasalem, dated 17.10.2013, has been taken note of. The authorities have categorically observed that no documentary evidence was produced by the revision petitioners. Such being the case, this Court is of the view that it is not incumbent on the part of the Sub Divisional Magistrate -cum- Revenue Divisional Officer, Kallakurichi, Villupuram District, to conduct an enquiry once again and hear the parties, before passing the final order under Section 145 of CrPC.

14.Section 145 enables the Executive Magistrate to pass an order, for maintaining of peace and decide the possession of a disputed land. As rightly pointed out by Mr.K.Balakrishnan, learned counsel for the petitioners representing 'B' party, the Executive Magistrate is not empowered to decide the ownership of the disputed property and to grant any permission to the parties to put up any construction. As per Section 6(a), he can only restore possession to the party forcibly and wrongfully dispossessed. The Sub Divisional

Magistrate -cum- Revenue Divisional Officer, Kallakurichi, by order dated 18.06.2014 has only recorded that the land in S.No.445/3, measuring 0.08 cents, owned by one Raman, Son of Karuppan Chetty. But the permission granted to the members of a particular section of the Society to put up construction in the said property, is beyond the jurisdiction of the Executive Magistrate.

15.On the aspect of possession, the order modifying the restriction imposed in the order dated 19.08.2013 passed under Section 145 (1) of the Code, no interference is made.

With the above observations, this Criminal Revision Petition is dismissed. Consequently, connected Miscellaneous Petition is closed.

mps

-s/d-

Assistant Registrar(J)

True Copy

Sub-Assistant Registrar

To

1.The Sub Divisional Magistrate -cum-
Revenue Divisional Officer,
Kallakurichi, Villupuram District,

2.The Public Prosecutor,
High Court of Madras,
Chennai.

+ 1 cc to M/s.K.Balakrishnan, Advocate sR 14310

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