

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.07.2015

CORAM:

THE HONOURABLE MR.JUSTICE B. RAJENDRAN

CRL. R.C. No. 219 of 2015

and

M.P.No.1 of 2015

1.B.Karunakaran

2.B.Leela

... Petitioners

Versus

1. The State
represented by Inspector of Police
St.Thomas Mount Police Station
Alandur Taluk
Kancheepuram District.

2. Sundaravadivelu

3. The Sub-Divisional Magistrate-cum-
Revenue Divisional Officer
Tambaram.

... Respondents

Criminal Revision Case filed under Section 397 read with Section 401 of Cr.P.C. against the order passed by the Sub-Divisional Magistrate-cum-Revenue Divisional Officer, Tambaram, in Na.Ka.No.4510/2013/B, dated 09.02.2015.

For Petitioners : Mr.G.V.Sridharan

For Respondents : Mr.V.Arul
Government Advocate
(Criminal Side) for R.1 & R.3

Mr.T.Dhanasekaran for R.2

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ORDER

Criminal Revision Case is filed against the order passed by the Sub-Divisional Magistrate-cum-Revenue Divisional Officer, Tambaram, in Na.Ka.No. 4510/2013/B, dated 09.02.2015.

2. The case of the petitioners/B-party is that the property measuring an extent of 5165 sq.ft. in Pymash No.867, Survey No.72/21 in No.139, Adambakkam Village in Hoffman Second Street, Adambakkam,

originally belonged to one L.P.Krishnaswamy. The said Krishnaswamy is alleged to have purchased the same vide registered sale deed dated 30.07.1929 registered as Doc.No.1228/1929 in the office of the Sub-Registrar's Office, Saidapet. He had mortgaged the said property in favour of one Ganapathypillai. The said Krishnaswamy died on 30.07.1939 and his wife Amirthammal filed a suit in O.S.No.555 of 1953 on the file of the District Munsif Court, Poonamallee, for redemption of mortgage. The said suit was decreed and she had subsequently taken possession of the property. The said Amirthammal died in the year 1968 leaving behind her daughter Sakunthalammal, as her sole legal heir vide a Partition Deed, dated 16.03.1993, among Sakunthalammal, her sons Karunakaran/ first petitioner and Sridhar and daughter B.Leela/second petitioner. Since then, the petitioners have been in physical possession and enjoyment of the said property. While so, since, one Danakodiammal, W/o.Rajarathinam and her son interfered with their peaceful possession, the petitioners' mother filed a suit in O.S.No.2017 of 1992 on the file of the District Munsif Court, Poonamallee, against the said persons praying for a decree of permanent injunction. The said suit was decreed on 30.03.1993.

3. While so, the second respondent attempted to interfere with the petitioners' possession and hence, the petitioners were constrained to lodge a complaint before the first respondent seeking to prevent the second respondent from committing act of trespass into the property of the petitioners. The first respondent registered a case in Cr.No.1283 of 2013 under Section 145 of Cr.P.C. and submitted a report to the third respondent herein requesting him to conduct proceedings under Section 145 of Cr.P.C. On the basis of the report submitted by the first respondent, the third respondent has issued proceedings bearing Na.Ka.No.9510 of 2013, dated 06.06.2014, referring the proceedings in O.S.No.458 of 2012 and the pendency of the Civil Suit in O.S.No.365 of 2012 and has ultimately held that the property does not belong to the petitioners/B-party and the property has been registered in the name of Danakodi and hence, there was no basis in initiating proceedings under Section 145 Cr.P.C. and hence, till the final order was passed, both parties were directed not to enter into the disputed property and status quo should be maintained. Thereafter, on 10.12.2014, the third respondent referring to the report submitted by the first respondent on 14.12.2013 issued summons to A-party and B-party calling upon the parties to appear before him along with documents in their custody. Thereafter summons was issued on 24.12.2014 by the third respondent calling upon the parties to appear before him on 07.01.2015. Thereafter, the third respondent has passed an order on 09.02.2015 by holding that the A-party was in possession on the basis of the report and opinion of the Inspector of Police and the matters were pending before the Civil Court and under such circumstances, the petitioners should not interfere with the possession of the property by the second respondent till petitioners resort to proceedings before the Civil Court under due process of law. Aggrieved against the same, the petitioners have filed the present Criminal Revision Case.

4. Mr.G.V.Sridharan, learned counsel appearing for the petitioners/B-party would submit that since, the second respondent attempted to interfere with the petitioners' possession, the petitioners were constrained to lodge a complaint before the first respondent seeking to prevent the second respondent from committing act of trespass into the property of the petitioners. The first respondent registered a case in Cr.No.1283 of 2013 under Section 145 of Cr.P.C. and submitted a report to the third respondent herein requesting the third respondent to conduct proceedings under Section 145 of Cr.P.C. On the basis of the report submitted by the first respondent, the third respondent by proceedings dated 06.06.2014, by referring to the proceedings in the earlier suit and the pendency of O.S.No.365 of 2012, has straightaway held that the property does not belong to the petitioners herein and the property has been registered in the name of Dhanakodi and hence, there were basis in initiating proceedings under Section 145 Cr.P.C. and hence, till the final order was passed, both parties were directed not to enter into the disputed property and status quo should be maintained. Thereafter, on 10.12.2014, the third respondent referring to the report submitted by the first respondent on 14.12.2013 issued summons to A-party and B-party calling upon the parties to appear before him along with documents in their custody. Thereafter summons was issued on 24.12.2014 by the third respondent calling upon the parties to appear before him on 07.01.2015. Thereafter, the third respondent has passed the impugned order on 09.02.2015 by holding that the A-party was in possession on the basis of the report and opinion of the Inspector of Police and the matters were pending before the Civil Court and under such circumstances, the petitioners should not interfere with the possession of the property by the second respondent till petitioners resort to proceedings before the Civil Court under due process of law. The learned counsel would submit that the grievance of the petitioners is that there cannot be a finding with regard to possession, therefore, the impugned order is per se illegal. He would further contend that as against the ownership of property, earlier, the petitioners filed a Civil Suit in O.S.No.438 of 2012; that was dismissed and the C.R.P.No.4497 of 2013 was also dismissed on 02.01.2014 on the ground that the plaint in O.S.No.438 of 2012 was rejected under Order 7 Rule 11 C.P.C., and that the remedy is only by way of an appeal and not a revision, therefore, the present impugned order is against violation of civil court proceedings.

5. Mr.T.Dhanasekaran, learned counsel appearing for the second respondent/A-party would contend that the second respondent has been in possession of the property in question right from 1994. In fact, the patta was granted under the Tamil Nadu Minor Inams Abolition Act in respect of the lands in question in favour of one Rajarathinam and the said Rajarathinam died on 23.10.1973 leaving behind his five legal heirs and among that except one legal heir viz., Desigan, four others had conveyed the property by a registered sale deed dated 23.06.1994 in favour of Mrs.Vijayalakshmi, the mother of the second

respondent and that the said Vijayalakshmi has executed a Settlement Deed under registered Document No.117 of 2011, dated 19.01.2011, in favour of the second respondent and the second respondent has been in possession and enjoyment of the property for more than 20 years. He would further submit that the suit filed by the petitioners' mother Sakunthala in O.S.No. 2017 of 1992 was transferred to the District Munsif Court, Alandur and renumbered as O.S.No. 1690 of 1997 and the same was dismissed by virtue of judgment dated 27.10.2000. The suit filed by the petitioners in O.S.No.438 of 2012 with regard to ownership was dismissed and the revision in C.R.P.No.4497 of 2013 was also dismissed. He would further contend that the third respondent has passed a detailed order and it needs no interference at the hands of this Court.

6. Mr.V.Arul, learned Government Advocate appearing for respondents 1 and 3 would contend that the third respondent has passed a detailed order and in any way, in the impugned order, it is only stated that the petitioners should not interfere with the possession of the property by the second respondent, till petitioners resort to proceedings before the Civil Court under due process of law. The impugned order is only an interim protection and it is passed only to avoid law and order problem.

7. Heard both sides. By consent, the main Criminal Revision Case itself is taken up for final disposal.

8. No doubt, on a perusal of the impugned order, it is seen that the third respondent has passed a detailed order. The third respondent has considered the earlier suit filed by the petitioners with regard to ownership in O.S.No.438 of 2012, which was dismissed and the revision in C.R.P.No.4497 of 2013, which was also dismissed on the ground that the plaint in O.S.No.438 of 2012 was rejected under Order 7 Rule 11 C.P.C. and the remedy as against the same was only by way of an appeal and not a revision. Even thereafter, according to the learned counsel appearing for the second respondent, till date, no appeal has been filed by the petitioners. Further more, according to the second respondent, he has been in possession of the property right from 1994. In fact, according to the second respondent, the patta was granted under the Tamil Nadu Minor Inams Abolition Act in respect of the lands in question in favour of one Rajarathinam and the said Rajarathinam died on 23.10.1973 leaving behind his five legal heirs and among that except one legal heir viz., Desigan, four others had conveyed the property by a registered sale deed dated 23.06.1994 in favour of Mrs.Vijayalakshmi, the mother of the second respondent and that the said Vijayalakshmi has executed a Settlement Deed under registered Document No.117 of 2011, dated 19.01.2011, in favour of the second respondent and thus, according to the second respondent, he has been in possession and enjoyment of the property for more than 20 years and to substantiate the same, the second respondent has produced certain documents before the third respondent. Considering all the above aspects, the third respondent has passed a detailed order on 09.02.2015 by directing

the petitioners not to interfere with the possession of the property by the second respondent till petitioners resort to proceedings before the Civil Court under due process of law, which is an interim protection which has been granted till the time the petitioners resort to proceedings before the Civil Court to evict by following due process of law. At this stage, I do not find any reason to interfere with the reasoned order passed by the third respondent. Hence, this Criminal Revision Case is dismissed. It is made clear that it is always open to the petitioners to take necessary action, if they are so advised, in accordance with law. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CO)

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Sub Assistant Registrar

paa

To

1. The Inspector of Police
St.Thomas Mount Police Station
Alandur Taluk
Kancheepuram District.
2. The Sub-Divisional Magistrate-cum-
Revenue Divisional Officer
Tambaram.
3. The Public Prosecutor,
High Court, Madras.

+1cc to Mr.T.Dhanasekaran, Advocate, S.R.No.32489

Cr1.R.C.No.219 of 2015
and
M.P.No.1 of 2015

ALA(CO)
CA(29/07/2015)

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