

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 07-07-2015

Coram

THE HONOURABLE MR. JUSTICE B. RAJENDRAN

CrI.R.C. No. 353 of 2015
and
M.P.Nos. 1 and 3 of 2015

E.Thyagarajan

.. Petitioner

Versus

1.Ravi

2.Dhanapal Gounder

3.A.Venkatesan

4.The Tahsildar

Taluk Executive Magistrate
Uthiramerur Town & Taluk
Kancheepuram District.

(Impleaded as 4th respondent
vide order of this Court dated 17.06.15
made in M.P.No.2 of 2015)

.. Respondents

Criminal Revision Case filed under Section 397 read with 401 of
Cr.P.C. against the order dated 18.02.2015 made in
Pa.Mu.No.4272/2013/A1 on the file of the Taluk Executive Magistrate-
cum-Tahsildar at Uthiramerur.

For Petitioner : Mr.Y.Jyothish Chander

For Respondents : Mr.D.Murthy for R.1 to R.3
Mr.V.Arul
Government Advocate
(Criminal Side) for R.4

ORDER

This Criminal Revision Case is filed against the order passed by
the Taluk Executive Magistrate-cum-Tahsildar at Uthiramerur, in a
proceedings initiated under Section 145 of Cr.P.C. in
Pa.Mu.No.4272/2013/A1, dated 18.02.2015.

2. The case of the petitioner is that the old gramanatham
S.No.21/2 corresponding to New S.No.194 in No.15, Sethupattu Village
is a Gramanatham house site area. In the said Gramanatham land, the
house site with a cattle shed comprised in present Gramanatham
S.No.194/7 - 0.04 cents corresponding to Old S.No.21/2 part
Gramanatham absolutely belonged to the petitioner's father Ekambara
Gounder by virtue of his purchase of 0.02 cents under a registered
sale deed dated 09.04.1956 vide Doc.No.641/1956 from Velu Naicker and
another 0.02 cents under registered sale deed dated 27.01.1959 vide

Doc.No.122/1959 from Ranganathan, both on the file of the Sub-Registrar, Uthiramerur and ever since, his father was in exclusive possession and after his death, the petitioner, who is the son, is in continuous and exclusive possession and enjoyment of the property by using it as a part of his residence and a cattle shed. While so, on 28.12.2013, while the Special Sub-Inspector of Police was engaged in patrol, he saw that there was a quarrel going on between the petitioner and others, thereby, they were causing hindrance to public peace and hence, he had registered a case in Crime No.106/2013 on the file of G-11, Peru Nagar Police Station, dated 28.12.2013 under Section 107 of Cr.P.C. alleging that there is a likelihood of breach of peace. After receipt of summons from the Tahsildar, Uthiramerur, the petitioner has filed his objections dated 22.01.2015. Alleging that the Tahsildar without report from the police has initiated proceedings under Section 145 of Cr.P.C. and without any authority, he has passed orders thereon, this Criminal Revision Case is filed.

3. Mr.Y.Jyothish Chander, learned counsel appearing for the petitioner would mainly contend that the Tahsildar has not assigned any reasons for passing the order as contemplated under Section 145 of Cr.P.C. He would further contend that the Tahsildar has got no jurisdiction to entertain any proceedings under Section 145 of Cr.P.C. and the proceedings, if any under Section 145 Cr.P.C. is cognizable and maintainable only by the Revenue Divisional Officer. He would further submit that while the Special Sub-Inspector of Police was engaged in patrol on 28.12.2013, there was a quarrel going on between the petitioner and others, thereby, they were causing hindrance to public peace and hence, he had registered a case in Crime No.106/2013 on the file of G-11, Peru Nagar Police Station, dated 28.12.2013 under Section 107 of Cr.P.C. and the report is forwarded to the Revenue Divisional Officer, Kanchipuram, who alone is competent to proceed under Section 145 Cr.P.C and he assumes jurisdiction. He would further contend that the Tahsildar without considering the objections dated 22.01.2015 and without assigning any reason has passed the impugned order, restraining both parties from entering into the subject land and therefore, the impugned order is per se illegal.

4. Mr.V.Arul, learned Government Advocate (Criminal Side) appearing for the fourth respondent would fairly state that the Tahsildar has got no power and it is only the Revenue Divisional Officer, who has got power to pass the impugned order. He would further submit that the report was forwarded only to the Revenue Divisional Officer and therefore, the impugned order is wrong and it has to be set aside and the matter has to be remitted back to the Revenue Divisional Officer.

5. Mr.D.Murthy, learned counsel appearing for the respondents 1 to 3 would contend that the matter pertains to civil dispute and that even as per the judgment of the Hon'ble Apex Court reported in (2002) 3 Supreme Court Cases 700, Ranbir Singh vs. Dalbir Singh and others, only the Civil Court has to deal with the title. He would further submit that the Tahsildar being the Taluk Executive Magistrate, he has jurisdiction to exercise powers conferred under

Section 145 Cr.P.C. and there is no impediment in law strictly in terms of Section 20 of Cr.P.C. and therefore, the order passed by the Tahsildar is correct.

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

7. At the outset, it is seen that the impugned order is passed by the Tahsildar. It is the case of the prosecution that on 28.12.2013, while the Special Sub-Inspector of Police was engaged in patrol, he saw that there was a quarrel going on between the petitioner and others, thereby, they were causing hindrance to public peace and hence, he had registered a case in Crime No.106/2013 on the file of G-11, Peru Nagar Police Station, dated 28.12.2013 under Section 107 of Cr.P.C. alleging that there is a likelihood of breach of peace. After registration of the case, the report was forwarded to the Revenue Divisional Officer. It is not known how the Tahsildar had come into the picture to pass the impugned order.

8. The question of jurisdiction of Tahsildar to pass the impugned order in a proceedings initiated under Section 145 Cr.P.C. was mainly raised in this revision. It is relevant to refer to Section 20(4) Cr.P.C., which states " (4) The State Government may place an Executive Magistrate in charge of a sub-division and may relieve him of the charge as occasion requires; and the Magistrate so placed in charge of a sub-division shall be called the Sub-divisional Magistrate". It is relevant to analyse the impugned order in consonance with the judgment of this Court reported in 2008 (2) MWN (Cr.) 296, K.Rajamanickam vs. The Revenue Divisional Officer-cum-Execute Magistrate, Salem. This Court in the said decision has stated that the Revenue Divisional Officer has to pass a preliminary order on being satisfied from report of police officer that a dispute is likely to cause breach of peace, that too, assigning valid reasons. Further, this Court in the judgment reported in 2008-1-L.W. (Cr1.) 460, Jayaprakash Samantaray vs. State & another, has dealt with the three fundamental requisites to maintain an order under Section 145 Cr.P.C. and they are (1) there must be a report of a police officer or other information that a dispute was likely to cause breach of peace concerning the property mentioned in the section; (2) the Magistrate must be satisfied that the dispute was likely to cause breach of peace; and (3) on the satisfaction of the Magistrate, he must make an order in writing state the grounds for satisfaction in the order, under Section 145(1) Cr.P.C.

9. From the conjoint reading of the above, it is clear that the Revenue Divisional Officer is the competent authority to pass a preliminary order. In the First Information Report registered by the police, it was stated as follows:-

“திரேக பரிசோதனை செய்து நிலைய பாரா வசம் ஒப்படைத்தும் இதன் உண்மை நகலை கனம் கனூடி காஞ்சிபுரம் அவர்களுக்கு அனுப்பியும் மற்ற நகல்களை சம்பந்தப்பட்ட அதிகாரிகளுக்கு அனுப்பியும் இவ்வழக்கை விசாரணைக்கு எடுத்துக் கொண்டேன்”

Thus, from the reading of the above, it is clear that after the registration of the case, the report was forwarded only to the Revenue Divisional Officer, Kanchipuram and it was not forwarded to the Sub-Divisional Magistrate or to the Tahsildar. It is also not mentioned anywhere that the Revenue Divisional Officer inturn has transferred the same to the Sub-Divisional Magistrate or to the Tahsildar. The argument of the learned counsel appearing for the respondents 1 to 3 that equal powers are given to Tahsildar cannot be accepted at this point of time, unless, it is specifically proved that the report forwarded to the Revenue Divisional Officer was inturn transferred to the Tahsildar by the Revenue Divisional Officer. The report was only forwarded to the Revenue Divisional Officer, but, it is not known as to how the matter had gone to Tahsildar and the Tahsildar has now passed the impugned order.

10. Leaving alone on the point of jurisdiction, this Court has gone into the merits of the case also. In revision, this Court cannot go into the title as title can be only decided by the Civil Court. It is relevant to refer to the judgment of the Hon'ble Supreme Court reported in (2002) 3 Supreme Court Cases 700, Ranbir Singh vs. Dalbir Singh and others, wherein, in paragraph No.8, it was held as under:-

"8. However, the High Court was in error in dealing with the revision petition as if it was exercising appellate jurisdiction. The High Court has dealt with the developments in the case relating to the acquisition of title, the allegations of fraudulent transfers made by Karnail Singh and M/s. Homestead and the circumstances in which the suit was dismissed as withdrawn. Keeping in view the limited scope of the proceeding under Section 145 CrPC these questions were not material for determination of the main issues in the case. The Court, while dealing with a proceeding under Section 145 CrPC, is mainly concerned with possession of the property in dispute on the date of the preliminary order and dispossession, if any, within two months prior to that date; the court is not required to decide either title to the property or right of possession of the same. The question for determination before the High Court in the present case was one relating to the validity or otherwise of the preliminary order passed by the learned Sub-Divisional Magistrate under Section 145 (1) CrPC and sustainability of the order of attachment passed under Section 146(1) CrPC. For deciding the questions it was neither necessary nor relevant for the High Court to have considered the matters relating to title to and right of possession of the property. Further, both the parties in the case have filed suits seeking decree of permanent injunction against other and in the suit filed by the appellant an order of interim injunction has been passed and an objection petition has been filed by respondent 1.

The suits and the interim order are pending further consideration before the civil court."

11. Admittedly, neither the petitioner nor respondents 1 to 3 have approached the Civil Court. From the decision cited supra, it is clear that in the revision, the title cannot be decided and it is only the Civil Court which is competent to go into the question of title and can decide the same.

12. For the foregoing discussions held, this Criminal Revision Case is allowed and the impugned order passed by the Tahsildar, dated 18.02.2015, is set aside. Consequently, connected Miscellaneous Petitions are closed. It is hereby observed that if at all the parties want to agitate regarding the title, it is open for them to go before the Civil Court. If at all the parties want to take any action under Section 145 Cr.P.C, it is made clear that it can be done only by Revenue Divisional Officer, because, he is the competent person to initiate the proceedings under Section 145 Cr.P.C.

Sd/-

Assistant Registrar

True Copy

Sub Assistant Registrar

paa

To

1.The Tahsildar
Taluk Executive Magistrate
Uthiramerur Town & Taluk
Kancheepuram District.

2.The Executive Magistrate
-cum-Tahsildar, Uthiramerur Taluk.

1 cc to M/s..Y.Jyothish Chander , Advocate Sr.No.33827

ppa (co)
pmk.27.76.2015

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