

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 19.08.2015

Coram

THE HONOURABLE MR. JUSTICE B. RAJENDRAN

CrI.R.C. No. 270 of 2009

1. N.Kathirvelu
2. K.Kathirarajarathinam
3. Rajaganapathi
4. Vanniyamani

... Petitioners/A Party

Versus

1. The Sub Divisional Magistrate &
Revenue Divisional Officer,
Salem, Salem District.
2. State rep. by
The Inspector of Police,
Pallapatti Police Station,
Salem District.
3. Arumugam
4. Manickkam
5. Senguttavan
(Crime No.1597 of 2008)

...Respondents

Criminal Revision Case filed under Section 397 read with 401 of Cr.P.C. against the order dated 18.02.2009 made in Na.Ka.No.6884 of 2008 on the file of the first respondent.

For Petitioner : Mr.R.Nalliyappan

For Respondents : Mr.B.Vasudevan for R.3 to R.5
Mr.V.Arul, Government Advocate
(Criminal Side) for R.1 & R.2

ORDER

This Criminal Revision Case is filed against the order passed by the Sub Divisional Magistrate & Revenue Divisional Officer, Salem in a proceedings initiated under Section 145 of Cr.P.C. in Na.Ka.No.6884 of 2008, dated 18.02.2009.

2. In and by the said order, the Divisional Magistrate has directed the Inspector of Police, Pallapatti Police Station to execute the interim order passed in O.S.No.833 of 2008 and to maintain law and order. Petitioners challenges the impugned order on the ground that the order dated 18.02.2009 was passed in violation of Section 145 (i) of Cr.P.C. According to the petitioners, the court

below has not considered the fact that a case the Crime No.1597 of 2008 had been registered by the petitioners herein against the 'B' parties and the same is pending for enquiry before it . Without assailing any reason the court below has erroneously stated that there is likelihood of breach of peace. Further, if there is an apprehension as to breach of law and order and a reference is made by the Police personnel, the first respondent ought to have taken an independent view of the situation and arrived at a subjective satisfaction to conclude that there exist a ground for initiation of proceedings under Section 145 of Cr.P.C. and only thereafter, the first respondent ought to have passed the order and to serve such order on the petitioner in accordance with law. Hence, this Criminal Revision Case is filed.

3. Mr.R.Nalliyappan, learned counsel appearing for the petitioner would mainly contend that the first respondent has not assigned any reasons for passing the order as contemplated under Section 145 of Cr.P.C. He would further contend that without issuing notice to both the parties and without esquiring on the complaint has initiated the proceedings under Section 145 of Cr.P.C. which is illegal. He would further submit that originally both the parties have filed a civil suit and he will have to ascertain the present status of the same.

4. Mr.V.Arul, learned Government Advocate (Criminal Side) appearing for the respondents 1 and 2 would state that civil suit is pending between the parties.

5. Heard both sides and perused the materials available on record.

6. 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 lproperty. Further, both the parties in the case have filed suits seeking decree of permanent injunction against each 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."

7. Admittedly, both the petitioner and respondents 3 to 4 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 duty of the Civil Court which is competent to go into the question of title and can decide the same. Hence, I do not find any illegality in the order passed by the courts below.

8. For the foregoing discussions held, this Criminal Revision Case is closed giving liberty to both the parties to agitate the dispute before the appropriate forum. It is needless to mention that the parties are bound by the orders passed in the Civil court proceedings. Consequently, connected miscellaneous petition is closed.

-Sd/-

Assistant Registrar(cs-III)

//True copy//

Sub Assistant Registrar

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To

1.The Sub Divisional Magistrate &
Revenue Divisional Officer,
Salem, Salem District.

2. The Inspector of Police,
Pallapatti Police Station,
Salem District.

3.The Public Prosecutor,High Court,Madras.

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