

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 11.04.2017

CORAM

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

**Crl.O.P No.1291 of 2011
and
M.P.No.1 of 2011**

S.Sivaramalingam

... Petitioner

vs.

1.The Sub Divisional Magistrate cum
The Revenue Divisional Officer,
Perambalur.

2.Varadharajan

... Respondents

सत्यमेव जयते

Prayer: Criminal Original Petitions filed under Section 482 of Cr.P.C., to call for the records pertaining to the order dated 15.04.2010 made in Na.Ka.A3/1891/2010 on the file of the 1st respondent herein, quash the same by allowing this quash petition.

For Petitioner : Mr.R.Gokulakrishnan

For Respondents : Mr.B.Ramesh Babu (for R1)
Government Advocate (Crl. Side)

JUDGMENT

The petitioner has come up with the present quash petition to quash the proceeding initiated under section 145 of Cr.P.C., by arraying the petitioner as 'A' party and the 2nd respondent as 'B' party by the 1st respondent in Na.Ka A3/1891/2010 dated 15.04.2010.

2.It is the case of the petitioner that his father namely Sundaram purchased a property an extent of 3638 Sq. ft. as vacant site bearing Survey No.47/1 in Perambalur village from one Ramsamy and others vide sale deed dated 19.11.1990. He was in possession and enjoyment till his death that is on 07.12.2008. During his life time, he executed a registered Will dated 03.10.2008 in favour of the petitioner and his younger brother namely Ramkumar and accordingly, they are in the continuous possession and enjoyment. In the meanwhile, the 2nd respondent herein created a forged document to set up a rival claim over the aforesaid property in Survey No. 474/1 and he has filed a suit in O.S No.29 of 2009 on the file of the District Munsif Court, Perambalur against the petitioner. Further, the petitioner along with his brother namely Ramkumar have also filed a suit in O.S.No.20 of 2010 before District Munsif Court, Perambalur seeking for the relief of declaration and permanent injunction. It is the further case of the petitioner that the revenue records like Patta, "A" register as

exclusive possession and enjoyment of the entire property bearing Survey No. 474/1.

3.It is an admitted case that during the pendency of the aforesaid civil proceedings, the 1st respondent has issued the impugned notice dated 15.04.2010 under Section 145 of Cr.P.C., as alleging that there is a dispute between two factions with regard to the land in Survey No. 474/1 on the basis of the report of the Inspector of Police, Perambalur Police station dated 10.03.2010.

4.I heard Mr.R.Gokulakrishnan, learned counsel appearing for the petitioner and Mr.B.Ramesh Babu, learned Government Advocate (Criminal Side) appearing for the 1st respondent and the entire materials available on records are perused.

5.The learned counsel for the petitioner would submit that Section 145 of Cr.P.C contemplates that the apprehension of breach of peace and maintenance of public order and tranquility is very much necessary to exercise the power of the 1st respondent. Further, contention of the petitioner is that the impugned notice issued by the 1st respondent without recording grounds of being so satisfied and the same is issued in

a cryptic manner. So, the aforesaid impugned notice is liable to be quashed.

6. Further, during the course of argument of the petitioner, he has relied on the judgment reported in **AIR 1985 SC 472 (Ram Sumer Puri Mahant Vs State of U.P)**. The relevant and considerable portion of the aforesaid judgment would run thus:

“When a civil litigation is pending for the property wherein the question of possession is involved and has been adjudicating we see hardly any jurisdiction for initiating a Parallel Criminal Under Section 145 of Cr.P.C.”

7. Further the contention of the learned counsel of the 2nd Respondent is that in pursuance to the issuing of the impugned notice dated 15.04.2010, the 2nd Respondent herein filed his explanation along with documents to prove his possession. At the same time the Petitioner did not file any document to prove his possession. Further, after participating in the enquiry and after a lapse of one year, the Petitioner filed the instant petition by raising frivolous grounds to quash the impugned notice dated 15.04.2010. Hence, the instant Criminal Original Petition is liable to be dismissed in limine.

8.Hence this Court considering the arguments of the both sides and perusal of the impugned order as well as the documents furnished before this Court, this Court has come to the conclusion that the impugned notice dated 15.04.2010 issued by the 1st Respondent without stating grounds of being so satisfied and without considering the legal position in respect of pendency of the civil litigation in O.S.No.29 of 2009 and O.S.No.20 of 2010 questioning the possession is illegal and the same is liable to be quashed.

9.Hence in view of the aforesaid findings, the impugned notice of the 1st Respondent in Na.Ka.A3/1891/2010 dated 15.04.2010 is an improper exercise and the same is deserved to be set-aside. Accordingly, the notice issued by the 1st respondent in Na.Ka.A3/1891/2010 is quashed and the Criminal Original Petition is allowed. Consequently, connected miscellaneous petition is closed.

Note:Issue order copy on 29.08.2017

Internet : Yes/No

Index : Yes/No

vs

To
The Sub Divisional Magistrate cum
The Revenue Divisional Officer,
Perambalur.

M.V.MURALIDARAN,J.

VS



**Crl.O.P No.1291 of 2011
and
M.P.No.1 of 2011**

WEB COPY

11.04.2017