

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 09.08.2017

Coram

The Hon'ble Mr.Justice R.SURESH KUMAR

Crl.RC.No.962 of 2017

and

CRL.MP.Nos.8984 and 9924 of 2017

1.R.Natarajan

2.Jayanthi

...Petitioners

Vs.

1.The Sub Divisional Magistrate -cum- Sub Collector,
Tiruppur.

2.The Inspector of Police,
Avinashipalayam Circle,
Avinashipalayam,
Tiruppur South Taluk,
Tiruppur.

3.Murugaiyan

...Respondents

PRAYER: Criminal Revision Petition filed under Sections 397 and 401 of Criminal Procedure Code, to call for the records relating to the impugned notice made in Na.Ka.No.2407/2016/A1, dated 22.08.2016 and the consequential order made in Na.Ka.No.2407/2016/C, dated 11.07.2017 passed by the 1st respondent and to set aside the same.

For Petitioners : Mr.G.Ethirajulu

For Respondents : Mr.C.Iyyapparaj,
Additional Public Prosecutor
for R1 and R2

Mr.M.R.Thangavelu
for R3

ORDER

This Revision Case has been filed as against the order passed by the 1st respondent/Sub Divisional Magistrate -cum- Sub Collector, Tiruppur, vide his order dated 11.07.2017 in Na.Ka.No.2407/2016/C, by invoking Section 145 of the Code of Criminal Procedure (in short "the Code").

2.Mr.G.Ethirajulu, learned Counsel appearing for the petitioners would submit that the learned Magistrate has not considered the merits and demerits of the case and he has merely stated that he was satisfied and accordingly, he declared that the "B" party, i.e., the 3rd respondent herein, is the rightful owner of the property in question. Therefore, on the face of it, there cannot be any justification in the eye of Law.

3.In fact, on satisfying with the *prima facie* reasons projected by the petitioner, this Court, on 19.07.2017, has granted an order of Interim Stay on the impugned order.

4.As against the said interim order passed by this Court, the 3rd respondent has moved vacate stay petition in CrI.M.P.No.9924 of 2017 along with counter affidavit.

5.I have heard Mr.G.Ethirajulu, learned Counsel appearing for the petitioners and Mr.M.R.Thangavelu, learned Counsel appearing for the 3rd respondent as well as Mr.C.Iyyapparaj, learned Additional Public Prosecutor appearing for the respondents 1 and 2.

6.As has been rightly pointed out by the learned Counsel appearing for the petitioners, the order impugned passed by the 1st respondent, if it is perused, would disclose the fact that no consideration has been shown by the 1st respondent before taking a decision in passing the impugned order.

7.For better appreciation of the said aspect, the entire order is extracted hereunder:

"Whereas it has been brought to my notice that the ownership of land in Tiruppur South Taluk, Peruntholuvu Village located in S.F.No.450/1B with extent of 4 Acres 42 Cent is disputed between "A" Party Thiru.R.Natarajan S/o.G.Ramasamy (1), Tmt.Jayanthi W/o.Natarajan (2) and "B" Party Thiru.Murugaiyan, S/o.Bagavathi and is likely to cause a breach of peace among them. A case has been registered in Avinashipalayam police Station in FIR No.472 of CrPC on 12.08.2016 in this regard.

As the said dispute is situated within my local jurisdiction all the concerned parties are called upon to give statement of their respective claims as to the fact of actual possession of the said property and being satisfied by the enquiry

conducted on 02 June 2017 and after perusal of revenue records and documents (Thottipalayam, Sub Registrar Office Sale Deed No.2133/2012 dated:28.06.2012) submitted thereupon, I so declare that the "B" party Thiru.Murugaiyan is the rightful owner of the property including the house situated in S.F.No.450/1B with extent of 4 Acres 42 Cent and is entitled to retain possession until ousted by due course of law, and do strictly forbid any further disturbance towards enjoyment of the property."

8.If the said contents of the impugned order is perused, one can easily find that the learned Magistrate has merely stated that being satisfied by the enquiry conducted on 2nd June 2017 and after perusal of the Revenue Records, he has clearly declared that the "B" party (3rd respondent herein) is the rightful owner of the property at S.F.No.450/1B with an extent of 4 acres and 42 cents and he is entitled to retain possession.

9.This kind of cryptic order passed by the Revenue Authorities, who act as an Executive Magistrate within the meaning of the Code and by exercising the power under Section 145 of the Code, is not only unappreciable, but also unacceptable.

10.Since there is a detailed procedure, as has been contemplated under Section 145 of the Code, if at all, any report is received from the concerned Police, that there is any likelihood of deterioration of the public peace and tranquility between two groups of people and the same has to be amicably settled by hearing both parties, normally, the Executive Magistrate would invoke under Section 145 of the Code.

11.Here, in the case on hand, the dispute allegedly arose out of a property situated in SF.No.450/1B to the extent of 4 acres and 42 cents at a village in Tirupur South Taluk namely, Peruntholuvu, Tiruppur District. If at all, because of that

dispute, there is a likelihood of deterioration of the public peace and tranquillity, as alleged by the 2nd respondent police the same has to be enquired into by the 1st respondent and based on such enquiry, he could have arrived at a decision.

12. In the case on hand, though the 1st respondent has stated that he is satisfied by the enquiry conducted by him in the month of June 2017, nothing has been stated in the impugned order that what enquiry has been conducted and who are the persons appeared before him and what are all the evidence produced before him to satisfy himself that the 3rd respondent is entitled to the possession of the subject land.

13. Moreover, it is also brought to the notice of this Court by the learned Counsel appearing for the petitioners that the petitioners have already approached the Civil Court for appropriate relief with regard to the disputes in the subject land. If at all, any dispute arise over the enjoyment and possession of the property, certainly, it would be categorized as a Civil right and unless and until, he approached the Civil Court to resolve the dispute therein and any decree passed by

the Civil Court, such right cannot be declared by an Executive Magistrate within the meaning of Section 145 of the Code.

14. The Executive Magistrates are expected to pass orders by invoking Section 145 of the Code only to prevent the deterioration of Law and Order problem in that locality, to secure and maintain public peace and tranquillity, where such dispute arose between two warring groups of people. If, within these parameters, the impugned order passed by the 1st respondent is scanned, this Court cannot come to a conclusion that the impugned order can be sustained. The impugned order is not only bereft of facts, but also not followed the procedure established under law, especially, under Section 145 of the Code and therefore, for that reason alone, this Court feels that the impugned order is liable to be interfered with.

15. Considering the said facts and circumstances of the case, the impugned order is set aside. It is made clear that this order setting aside the impugned order shall not preclude the parties from pursuing their right before the Competent Civil Court in the manner known to law. It is also made clear that setting aside of the present impugned order would also

not preclude the parties to re-agitate the issue before the 1st respondent through the 2nd respondent, if such a situation still persists i.e to show that there is a likelihood of deterioration of Law and Order, Public Peace and tranquility in that locality.

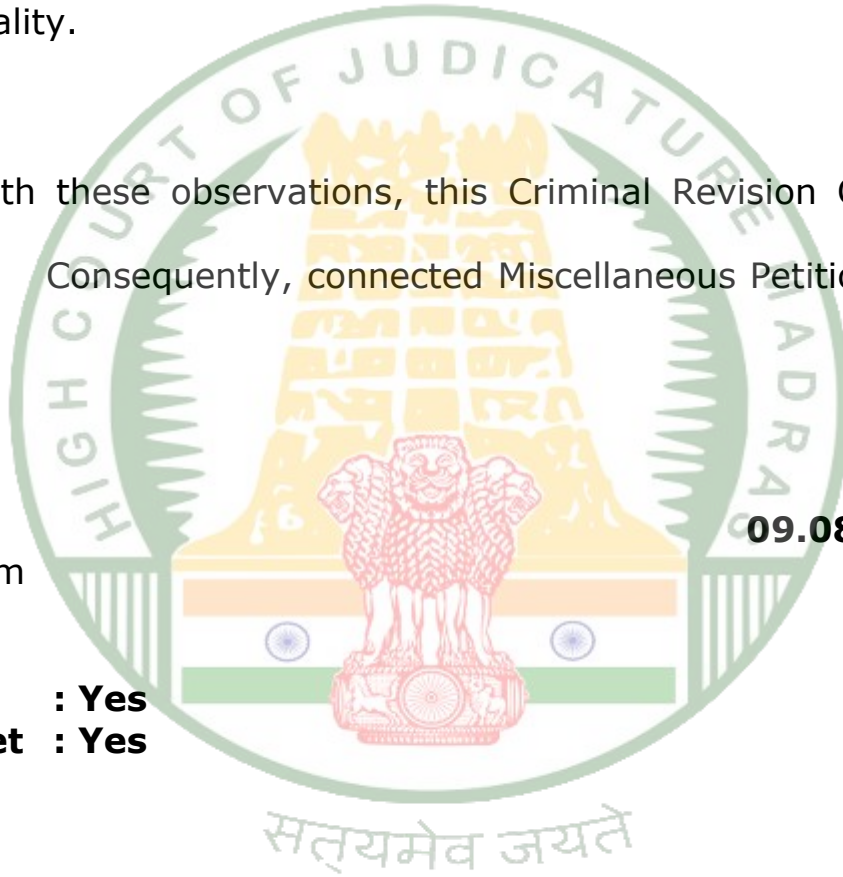
With these observations, this Criminal Revision Case is allowed. Consequently, connected Miscellaneous Petitions are closed.

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Index : Yes
Internet : Yes

To

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- 2.The Inspector of Police,
Avinashipalayam Circle,
Avinashipalayam,
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Tiruppur.



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R.SURESH KUMAR, J.

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