

IN THE HIGH COURT OF JUDICATURE AT MADRAS

CORAM

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

RESERVED ON :21.07.2017

PRONOUNCED ON :05.12.2017

CRL.RC. No.1285 of 2012

and

M.P.No.1 of 2012

Sivakumar

.. Petitioner/'B' party

..Vs..

1.The Sub-Divisional Magistrate/
Sub-Collector,Cuddalore.

2.The Tahsildar, Kurinjpadi Taluk,
Kurinjpadi, Cuddalore District.

3.The Village Administrative Officer,
Vazhudalampattu, Kurinjpadi Taluk,
Cuddalore District.

4.Panneer

5.Rangasamy

6.Ramachandran

7.Samimalai

8.Balu

9.Selvam

10.Jaimurugan

11.Sadasivam

12.Sivasankar

13.Ramachandran

14.Venkatesan

15.Kandasamy

16.Masilamani

.. Respondents

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Prayer:- Criminal Revision Petition filed under Section 397 and 401 Cr.P.C., to set aside the order passed by the Sub-Divisional Magistrate/Sub-Collector, Cuddalore/1st respondent in his proceeding Na.Ka.A2/1963/2012, dated 31.08.2012.

For Petitioner	:Mr.Alex Raj for Mr.R.Gururaj
For R1 to R3	:Mr.B.Ramesh Babu Govt.Advocate
For R4,R6toR15	:Mr.B.Sundarapandiyam
For R5 and R16	:No appearance

ORDER

This Criminal Revision Petition has been filed under Section 397 and 401 Cr.P.C., to set aside the order passed by the Sub-Divisional Magistrate/Sub-Collector, Cuddalore/1st respondent in his proceeding Na.Ka.A2/1963/2012, dated 31.08.2012.

2. The case of the petitioner is that the property subjected in this revision is in Survey Nos.81/3A and 81/7 in Vazhudalampattu Village, Kurinchipadi Taluk is absolutely belongs to petitioner. The 3rd respondent is having vast extent of property in that area. While it so, the 3rd respondent managed to get the posting of Village Administrative Officer of this area. The 2nd respondent is the higher Authority of the 3rd respondent. The respondents 2 and 3 are the authorized officers to maintain the revenue records. In such circumstances, the 2nd respondent to have an easy access to his properties instigated the respondents 4 to 16 to make representation to the 2nd

respondent as if the public path way was obstructed by the petitioner. The respondents 2 and 3 have colluded each other and managed to obtain the impugned order from the 1st respondent.

3. I have heard the counsel for both sides as well as the Government Advocate and also perused the materials available for this Court.

4. Points for consideration in this appeal is that :-

Whether the order dated 31.08.2012 passed by the 1st respondent/Sub-Divisional Magistrate is sustainable in law?

5. The 'B' party in the proceedings initiated by the first respondent is the revision petitioner.

6. The learned counsel for the petitioner has submitted that the order of 1st respondent is illegal, perverse and without jurisdiction. The 1st respondent proceeded to pass an order under Section 147(3) of Cr.P.C without availing any report from the police authorities. With regard to the properties subjected in the proceedings of the 1st respondent, there was a civil suit in O.S.No.131/2012 is pending on the file of District Munsif Court, Cuddalore, in which an order of interim stay also granted in I.A.No.328 of 2012. The property subjected in the present proceedings is absolutely a private property and there is no path way exist therein as alleged by the

respondents 4 to 16. The 1st respondent has proceeded to pass final orders under Section 147(3) without any police report as required under Section 147(1). When there is no police report as the dispute between the parties would likely cause breach of peace regarding the usage of path way, the order of 1st respondent is liable to be set aside.

7. Per contra, the learned Government Advocate contended that the order of 1st respondent is legally valid, since the code of Criminal Procedure did not prohibit the 1st respondent to proceed under Section 145 if the situation warrants. The pendency of Civil Suit with regard to the subject matter is not a bar to proceed under Section 145. The 1st respondent acted according to law and passed the final orders considering the facts and circumstances of the case. The allegations contended by the petitioner as the respondents 2 and 3 are colluded each other is totally wrong.

8. The learned counsel for the respondents 4 and 6 to 15 would submit that the representation was made only when the petitioner obstruct the path way which was used by the villages to reach their lands. Based on the representation the 2nd respondent attempted to convene peace meeting. In spite of notice the petitioner did not participate in the peace meeting. On the other hand all villages have participated the said meeting and thereafter the 1st respondent has proceeded to pass final orders which was confirmed by the Principal Session Judge, Cuddalore.

9.While considering the rival contention of the parties as well as the materials available before the Court it is learnt that the learned counsel for petitioner has mainly projected his case on the point of jurisdiction, pendency of Civil Suit and want of necessary police report.

10. On perusal of the typed set filed before this Court as against very same proceedings issued by the first respondent on Na.Ka.No.A2/1921/2012 with regard to remove of alleged encroachment, the revision petitioner herein appears to have filed in O.S.No.109 of 2012, before the District Munsif, Cuddalore and also obtained interim injunction for declaration of title to the suit property and restraining the official defendant and also the private parties ('A' party) in the proceedings and also to declare the proceedings of the second defendant in Na.Ka.No. A2/1921/2012, passed by the Sub-Division Magistrate in Na.Ka.No.A2/1921/2012 dated May 2012 as null and void and also filed an Interim Application No.314 of 2012 in which, the interim order restraining the all further proceedings on the file of the Sub-Division Magistrate who is arrayed as a second defendant in the suit (first respondent herein) has been granted.

11. It appears that as against the summons issued under Order 147(1) of Cr.P.C by the Sub-Division Magistrate,Cuddalore in the very same proceedings wherein he was directed to appear for the meeting, the revision

petitioner herein filed Criminal Revision before the Principal Session Judge, Cuddalore in CrI.R.P.31 of 2012.

12. After hearing both the parties, the Sessions Court, Cuddalore by a Judgment dated 01.08.2012 has held that as per Section 147 (1) of Criminal Procedure Code either an report of the Police Officer or based upon any other information, the Revenue Divisional Officer-cum-Sub Collector can initiate the proceedings and also observed that since 'A' party is not a party to the proceedings in the Civil Suit and accordingly, dismissed the Criminal Revision.

13. Subsequently, thereto the Impugned Order, dated 31.08.2012 was passed by the first respondent-Sub Division Magistrate/Sub-Collector, Cuddalore on 31.08.2012 wherein it is stated that

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bgw;whh;/ mj;jil Miz uj;jhfp muR tHf;F K:yk; vjph; tHf;F
jh;fy; bra;J jw;nghJ ,ilf;fhy jil Miz uj;J bra;ag;gl;Ls;sJ”

and in the subsequent paragraphs, the Sub-Division Magistrate, Cuddalore appears to have passed a final order under 147 Sub-clause 3, whereby,he has lifted the prohibitory order in respect of the alleged road in the suit property and also deletion of the said extent from the patta given to the revision petitioner who is a plaintiff in O.S.No.132 of 2012.

14. From the documents, it appears that the Interim Order granted in I.A.No.328 of 2012 in O.S.No.131 of 2012 initially, an interim order has been granted which was extended from time to time. It is seen that on 30.08.2012, the interim order in I.A.No.328 of 2012 is extended till 5.9.2012. When that being the case, the observation made by the first respondent Sub Division Magistrate, Cuddalore that interim order has already been vacated is found to be factually on erroneous appreciation of un-disputed facts when an interim order in respect of very same proceeding have been granted by a Civil Court of competent jurisdiction and the same has been extended on 30.08.2012 upto next hearing date, the order passed by the first respondent on 31.08.2012 on the premise that there is no interim order to proceed in a matter cannot stand the legal scrutiny and accordingly, the impugned order in Na.Ka.No.A2/1963/2012 dated 31.08.2012 is hereby set aside and the matter is remanded back to the first respondent and with direction to proceed with proceedings in accordance with law.

15. In this view of the matter, the other contentions raised by the rival parties are left open it is to be stated that though the revision petitioner have challenged the initial notice issued under 147 (1) of Cr.P.C before the Principal Sessions Judge, Cuddalore and after dismissal of the order passed by the CrI.O.P by the Principal Sessions Judge on 1.8.1973 it was not challenged by the revision petitioner herein. The same remains unchallenged.

16. In this view of the matter, this Criminal Revision Petition is allowed and the impugned order Na.Ka.No.A2/1963/2012 dated 31.08.2012 is set aside and the matter is remanded back to the 1st respondent/Sub-Divisional Magistrate, Cuddalore to deal with the issue in accordance with law. Consequently, connected Miscellaneous Petition is closed.

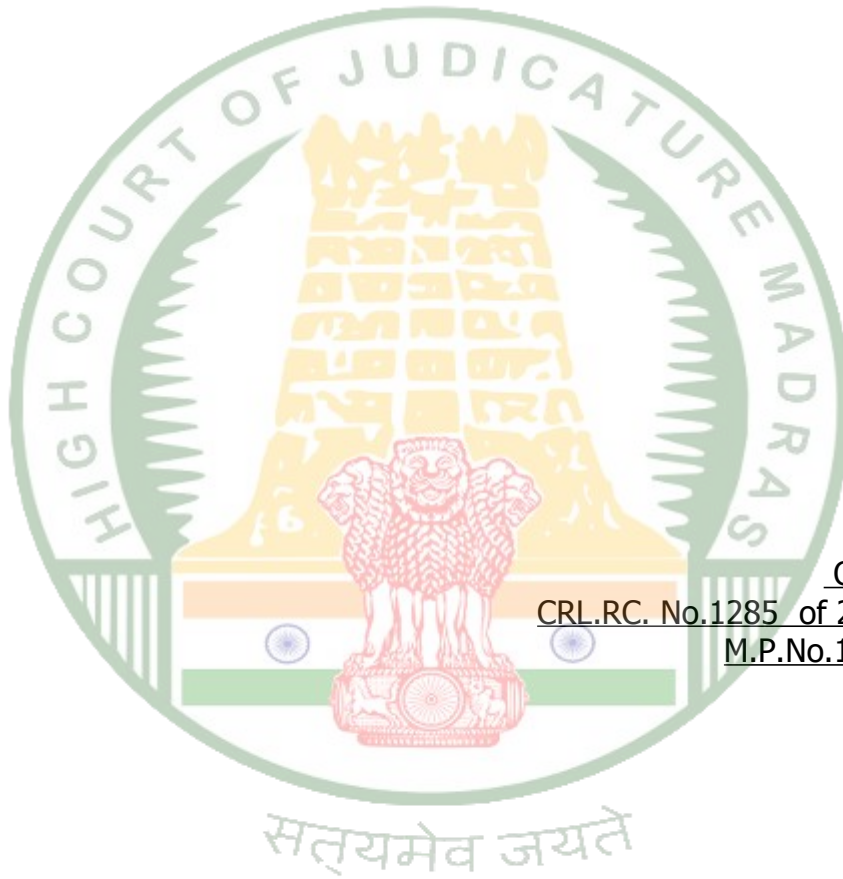
05.12.2017

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To

- 1.The Sub-Divisional Magistrate/
Sub-Collector,Cuddalore.
- 2.The Tahsildar, Kurinjipadi Taluk,
Kurinjipadi, Cuddalore District.
- 3.The Village Administrative Officer,
Vazhudalampattu, Kurinjipadi Taluk,
Cuddalore District.
- 4.The Public Prosecutor,
High Court, Madras.

RMT.TEEKAA RAMAN,J.,
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