

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 13.10.2017

CORAM

THE HON'BLE MR. JUSTICE M.S. RAMESH

W.P.No.7945 of 2015
and M.P.Nos.1 & 2 of 2015

1. P.Mohan Rao
2. Manoharan
3. Sundaramurthy

...Petitioners

Vs.

1. The Revenue Divisional Officer,
cum-Sub Divisional Magistrate,
Tiruttani, Tiruvallur District.
2. The Inspector of Police
Tiruvallankadu Police Station,
Tiruvallankadu.
3. Ravi
4. Logu
5. Nagaraj
6. Dilli
7. Ramachandran

...Respondents

Prayer:- Petition filed under Article 226 of the Constitution of India praying for issuance of a Writ of certiorari to call for the records of the impugned order in Na.Ka.303/14/A1 dated 04.02.2015 on the file of the first respondent and quash the same.

For Petitioners: Mr.D.S.Ramesh

For Respondents

R1 & R2 : Mr.S.Babu

R3 to R7 : Mr.J.Thilagaraj

O R D E R

The prayer sought for in this writ petition is to call for the records of the impugned order in Na.Ka.303/14/A1 dated 04.02.2015 on the file of the first respondent and quash the same.

2. It is represented that the impugned order of the learned first respondent is liable to be quashed on the sole ground that it is already brought to the notice of the first respondent/Revenue Divisional Officer that a suit in O.S.No.28 of 2010 on the file of the District Munsif Court, Tiruttani has been filed by the petitioners herein seeking for a decree of permanent injunction, claiming that the petitioners are in possession of the subject property. Recognising the petitioners' possession, an order of interim injunction has already been granted in the said suit. Though these aspects were brought to the notice of the first respondent herein, he has chosen to get along with the enquiry under Section 145 of Cr.P.C. and passed the impugned order.

3. It would not be appropriate for the first respondent to continue with the proceedings under Section 145 of Cr.P.C., whenever it is brought to the notice that the issue of possession is already pending before the Civil Court. As a matter of fact, the Hon'ble Supreme Court in the Judgment in "(2000) 4 SCC 440 - Amersh Tiwari Vs. Lalta Prasad Dubey and another" had observed as follows :-

"14. We clarify that we are not stating that in every case where a civil suit is filed, Section 145 proceedings would never lie. It is only in cases where civil suit is for possession or for declaration of title in respect of the same property and where reliefs regarding protection of the property concerned can be applied for and granted by the civil court that proceedings under Section 145 should not be allowed to continue. This is because the civil court is competent to decide the question of title as well as the possession between the parties and the orders of the civil court would be binding on the Magistrate."

In view of the aforesaid established proposition, the impugned order can not be sustained.

4. In the result, the writ petition stands allowed and the impugned order in Na.Ka.303/14/A1 dated 04.02.2015 on the file of the first respondent is quashed. Consequently, connected miscellaneous petitions are closed. No costs.

Sd/-

Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

To

1. The Revenue Divisional Officer,
cum-Sub Divisional Magistrate,
Tiruttani, Tiruvallur District.

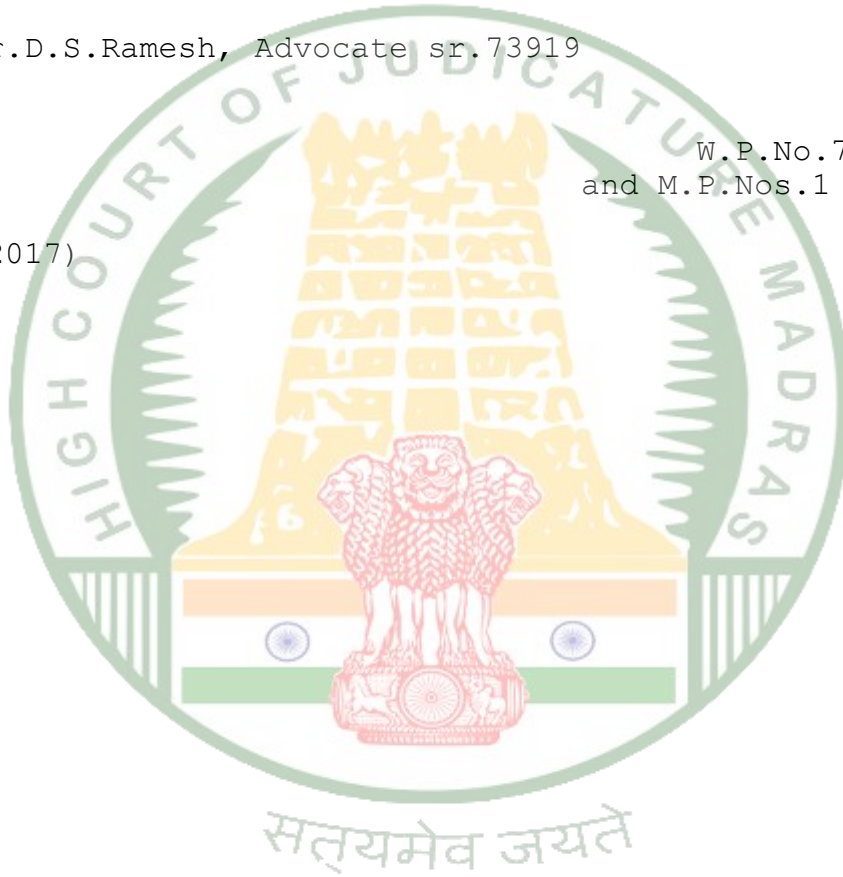
2. The Inspector of Police
Tiruvalankadu Police Staion,
Tiruvalankadu.

+2cc to Mr.J.Thilagaraj, Advocate sr.73825

+1cc to Mr.D.S.Ramesh, Advocate sr.73919

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ss(27/10/2017)



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