



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 11.09.2017

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**THE HONOURABLE MR.JUSTICE S.S.SUNDAR**

Cr1.O.P(MD).No.3981 of 2015

G.Prabakaran

... Petitioner

Vs.

1.Suriyakala

2.The Sub Inspector of Police,  
South Police Station,  
Thanjavur  
(Crime No.230 of 2008)

... Respondent

PRAYER: Criminal Original Petition filed under Section 482 of the Criminal Procedure Code, to call for the records pertaining to Cr1.R.C.No.39 of 2014, dated 16.02.2015 on the file of the II Additional District & Sessions Judge, Thanjavur by confirming in the proceedings in Na.Ka.No.2849/2008/A3, dated 23.08.2014 on the file of the Revenue Divisional Officer, Thanjavur and set aside the same.

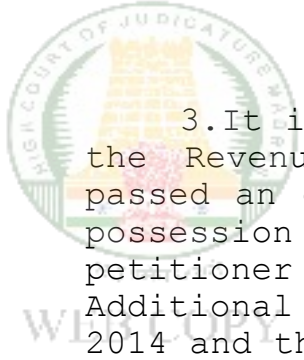
For Petitioner : Mr.G.Karnan

For Respondents : Mr.K.V.Rajendran  
Government Advocate (Cr1.Side)

O R D E R

This petition is filed to quash the order passed in Cr1.R.C.No.39 of 2014, dated 16.02.2015, on the file of the II Additional District and Sessions Judge, Thanjavur, confirming the order passed by the Executive Magistrate, Thanjavur by proceedings reference in Na.Ka.No.2489/2008/A3, dated 23.08.2014.

2.The petitioner states that he is in possession of the property namely residential house bearing door No.C1/69A, Senkamala Nachiamman Kovil Street, Rajappa Nagar, Thanjavur. The property is only a thatched house. The following facts are not in dispute. The respondent has preferred a complaint before the Executive Magistrate. As per the complaint, the first respondent has categorically admitted that the petitioner is in possession of the thatched house as a tenant under the first respondent. It is further stated by the first respondent herself that the petitioner claimed ownership over the building contrary to the documents and that therefore the property should be redeemed from the petitioner.



3. It is on the basis of this statement of the first respondent, the Revenue Divisional Officer by his impugned proceedings has passed an order as if the petitioner should not interfere with the possession of the first respondent. Aggrieved by the same, the petitioner seems to have preferred the revision before the II Additional District and Sessions Judge, Thanjavur in CrI.RC.No.39 of 2014 and the same was dismissed by order dated 16.02.2015 confirming the order passed by the Revenue Divisional Officer.

4. The learned II Additional District and Sessions Judge, Thanjavur has also observed that the Revenue Divisional Officer has decided the possession on the basis of the documentary evidence adduced by the first respondent and that therefore the findings of the Revenue Divisional Officer, cannot be interfered with in the revision.

5. The learned counsel for the petitioner pointed out that the findings of the Revenue Divisional Officer as well as Revisional Authority namely the learned II Additional District and Sessions Judge, Thanjavur is contrary to the admitted facts. The first respondent herself has categorically admitted that the petitioner is in possession of the property as a tenant. Under such circumstances the impugned order passed by the learned II Additional District and Sessions Judge, confirming the order of Revenue Divisional Order is unsustainable.

6. This Court finds that there is merit in the case of the petitioner. The order passed by the Revenue Divisional Order clearly indicates the nature of the complaint given by the first respondent, wherein the first respondent has categorically admitted that the petitioner is in possession of the thatched house as a tenant under the first respondent. The scope of the enquiry under section 145 has to be seen in this case.

Section 145(1) of the Criminal Procedure Code reads as follows:

"The Executive Magistrate only if he is satisfied from the report of the police officer that the dispute is likely to cause breach of peace exists required to make order in writing and required the parties concerned attend his Court in person and put in written statement of their respective claims regarding the fact of actual possession of the subject matter on dispute".

(ii) As per Section 145 (4), the Magistrate shall then is required to peruse the statements so put in and receive all such evidence as may be produced before him and decide whether any and which of the parties was on the date of order may under Sub Section (1), in possession of the property. It is also made clear that under section 145 (4) the Magistrate has to take a decision with regard to the question of possession without reference to the merits or the claims of any of the parties to a right to possession the subject matter of dispute.



(iii) As per Section 145(6) (a), if the Magistrate decide that one of the parties is being in such possession of the property, he shall then issue an order declaring such a party to be entitled to possession thereof until to be evicted therefrom in due course of law.

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7. In the present case, the first respondent herself has admitted that the petitioner was in possession when the proceeding was initiated by the Revenue Divisional Officer, under Section 145 of Criminal Procedure Code. It is to be noted that the complaint that was lodged by the first respondent before the Police clearly indicates that there is a candid admission in favour of the petitioner with regard to his possession as a tenant. When the petitioner's possession as a tenant is admitted, there is no scope for initiating the proceedings under Section 145 of Criminal Procedure Code.

8. In such view of the matter, this Court is inclined to entertain this petition and the order passed by the learned II Additional District and Sessions Judge, Thanjavur in CrI.R.C.No.39 of 2014, confirming the order of Revenue Divisional Officer, Thanjavur in proceedings initiated in Na.Ka.No.2849/2008/A3, dated 23.08.2014 is set aside. Accordingly, the Criminal Original Petition is allowed.

9. Since, the findings of this Court and observations made in this CrI.O.P is not about genuineness of the claim of title or right of any one. It is open to the petitioner, to pursue his suit for permanent injunction and if he establishes his title and lawful possession, the Civil Court may consider his claim. It is also open to the first respondent to file the suit for recovery of possession. In case the first respondent establishes his right, title and interest over the property as owner, he may seek eviction and get a decree for recovery of possession.

Sd/-

Assistant Registrar(T&P)

/True Copy/

Sub-Assistant Registrar

To

1. The II Additional District and Sessions Judge, Thanjavur
2. The Sub Inspector of Police, South Police Station, Thanjavur
3. The Additional Public Prosecutor,

Madurai Bench of Madras High Court, Madurai-23

+One cc to Mr.G.Karnan, Advocate, SR.No.78163

+One cc to Mrs.Lakshmi Kanth, Advocate, SR.No.77953

dsk/dss

RL/6C/3P/RSK/SAR1/15/9/2017

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ORDER MADE IN

CrI.O.P(MD).No.3981 of 2015

11.09.2017