



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON: 03.05.2017

DELIVERED ON: 07.06.2017

CORAM:

THE HON'BLE MR. JUSTICE P.N. PRAKASH

Crl.O.P. (MD) No.21429 of 2016 &
Crl.M.P. (MD) No.10986 of 2016

1 S. Panneer Selvam
2 Jeyakala : Petitioners/B Party 2&3

vs.

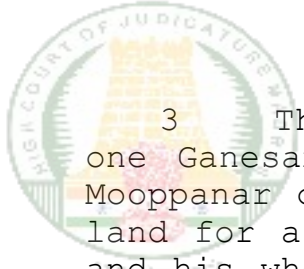
1 The Sub Divisional Executive Magistrate-
cum-Sub Collector,
Cheranmahadevi,
Tirunelveli District.
2 The Inspector of Police,
Cheranmahadevi Police Station,
Cheranmahadevi,
Tirunelveli District. : Respondents/Complainants
3 Parvathi
4 Ramasubramanian : Respondents 3&4/A Party
5 Sudalai Mooppanar : 5th Respondent/1st B Party

Criminal Original Petition filed under Section 482, Cr.P.C. seeking to call for the records in relation to the proceedings of the first respondent dated 28.10.2016 in Ku.Va. Ar/1-Cr.P.C. Section 145/2016 and quash the same.

For petitioners : Mr.J.Parekh Kumar
For RR 1 & 2 : Mr.K.Anbarasan
Government Advocate (Crl. Side)

ORDER

This Criminal Original Petition has been preferred seeking to call for the records in relation to the proceedings of the first respondent dated 28.10.2016 in Ku.Va. Ar/1-Cr.P.C. Section 145/2016 and quash the same.



3 The land measuring 34 cents in Survey No.304/6 belongs to one Ganesan. The said Ganesan took Rs.25,000/- from one Sudalai Mooppanar on 07.05.2003 and granted him permission to cultivate his land for a period of five years. Thereafter, Ganesan went missing and his whereabouts were not known to anyone. His mother Parvathy approached Sudalai Mooppanar and agreed to give money that was paid by him to her son Ganesan and requested him to hand over the land to her. In the mean time, Sudalai Mooppanar had seemingly permitted Panneer Selvam and his wife Jeyakala to cultivate the said land. Therefore, Sudalai Mooppanar assured Parvathy that the money given by her son Ganesan will be handed over to Panneer Selvam and his wife Jeyakala and the possession of the land will be given back to her. However, he did not keep up his word and therefore, there were frequent quarrels between the Parvathy group and the Sudalai Mooppanar group. As both the groups belong to different communities, police apprehended breach of peace and therefore, registered a case in Cr. No.187 of 2016 on 28.09.2016 and referred the matter to the Sub Divisional Executive Magistrate-cum-Sub Collector, Cheranmahadevi, the first respondent herein, for initiating proceedings under Section 145, Cr.P.C. An enquiry was conducted by the first respondent, in which, both sides adduced evidence and it was shown that Panneer Selvam and Jeyakala were in illegal possession of the land. It was also admitted that a suit in O.S. No.94 of 2015 is pending between the parties before the District Munsif Court, Cheranmahadevi. Therefore, subject to the outcome of the said suit, the first respondent has directed Sudalai Mooppanar and Jeyakala to hand over the land to Parvathy, challenging which, Panneer Selvam and Jeyakala are before this Court.

4 Heard the learned counsel for the petitioners and the learned Government Advocate (Crl. Side) appearing for respondents 1 and 2.

5 The learned counsel for the petitioners submitted that the first respondent has no authority to look into the title of the property and that he has exceeded his jurisdiction by passing the impugned order. In support of his contention that the first respondent has no jurisdiction to render a finding on title, the learned counsel for the petitioners has relied upon a judgment of this Court in **A. Shantha vs. The Tahsildar and Executive Magistrate, Mylapore Triplicane Taluk, Chennai 28 and others [2014-2-L.W. (Crl.) 248]**. Further, in support of his contention that during the pendency of the suit, the first respondent ought not to have passed the impugned order, the learned counsel for the petitioners placed reliance upon a judgment of this Court in **Vishwanathan and 2 others vs. The Revenue Divisional Magistrate, Devakottai and another [2012 (1) MWN (Cr.) 458]**.

6 The learned Government Advocate (Crl. Side) refuted the contentions put forth by the learned counsel for the petitioners.

7 This Court gave its anxious consideration to the rival



submissions.

8. This Court has no quarrel with the propositions laid down in the two judgments relied upon by the learned counsel for the petitioners. However, this Court cannot lose sight of a recent judgment of a Full Bench of this Court in **A. Dhaveethu and others vs. the District Collector, Sivagangai and others [2016-2-LW (Cr1.) 1 : 2016 (4) CTC 12]**.

9. On a reading of the impugned order, it is limpid that the first respondent has not given any conclusive finding to the dispute. In fact, he has clearly stated that his order is subject to the outcome of the pending suit in O.S. No.94 of 2015 on the file of the District Munsif Court, Cheranmahadevi. However, he has given a finding that Jeyakala and Sudalai Mooppanar have no right to be in possession of the land and that they are taking advantage of the fact that Parvathy's son Ganesan has gone missing and his whereabouts are not known. Only in those circumstances, the impugned order has been passed, which, in the considered opinion of this Court, cannot be said to be totally illegal, warranting interference.

In view of the foregoing discussion, this Criminal Original Petition fails and is accordingly dismissed as being devoid of merits. Connected Cr1.M.P. is closed.

Sd/-

Assistant Registrar (CS-II)

/True Copy/

Sub Assistant Registrar

To

- 1 The Sub Divisional Executive Magistrate-cum-Sub Collector,
Cheranmahadevi,
Tirunelveli District.
- 2 The Inspector of Police,
Cheranmahadevi Police Station,
Cheranmahadevi,
Tirunelveli District,
- 3 The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

+ 1 CC TO Mr.J.PAREKHK KUMAR, ADVOCATE IN SR No. 59490

CAD

TE/SKN/SAR-I : 13/06/2017 : 3P/5C

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Order in
Cr1.O.P. (MD) No.21429 of 2016
07.06.2017