



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
DATED : 19.09.2017

CORAM :

THE HONOURABLE MR. JUSTICE S. S. SUNDAR

W.P. (MD) No. 23327 of 2016

and

W.M.P. (MD) No. 16751 of 2016

1. Jeyaraj
2. Kalliyammal

... Petitioners

Vs.

1. The Revenue Divisional Officer cum
Sub-Divisional Magistrate,
Ramanathapuram Post & District.

2. The Inspector of Police,
Thiruvadanai Police Station,
Ramanathapuram District.

3. Vethamuthu

... Respondents

PRAYER: Writ Petition is filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, to call for the records in pursuant to the impugned order passed by the 1st respondent in his proceedings in Pa.Mu.(A4)/693/2016, dated 24.10.2016 and quash the same.

For Petitioner : Mr. R. Mathiyalagan
For Respondents 1 & 2 : Mr. A. K. Baskara Pandian
Special Government Pleader

O R D E R

This writ petition is filed for issuance of a writ of Certiorari to quash the impugned order passed by the first respondent in his proceedings in Pa.Mu.(A4)/693/2016, dated 24.10.2016.

2. The petitioner challenges the impugned order on the ground that it has been passed by the first respondent without following the procedure contemplated under Section 145 of the Criminal Procedure Code. It is stated that the first respondent has failed to consider that the proceedings under Section 145 of Criminal Procedure Code cannot be initiated after lapse of eight months from the date of registration of First Information Report. It reveals that the dispute is with regard to possession and



enjoyment of the property. It is also stated by the learned counsel for the petitioner that in a Civil Suit filed by the third respondent in O.S.No.73 of 2009, the relief of permanent injunction prayed for by the third respondent was negatived. It is further contended that the third respondent who has failed to get the order of injunction before the Civil Court cannot be considered as a person in possession.

3.The learned counsel for the petitioner relied upon the Judgment of learned District Munsif Court, Thiruvadanai in O.S.No.73 of 2009. The plaintiff in the said suit is the third respondent. The suit in O.S.No.73 of 2009 has been filed against one Sipion and three others. The petitioner herein is the second defendant in the said suit. It is true that the suit for injunction filed by the third respondent restraining the petitioner and others from interfering with the peaceful and enjoyment of the property was dismissed on merits.

4.However this Court is able to see that the third respondent has produced several documents to prove that he has been in possession of the property. The Civil Court framed two issues.

(i)The first issue in the suit is whether the plaintiff is in enjoyment of the property.

(ii)The second issue in the suit is whether the plaintiff is entitled to get a decree for injunction as against the defendants.

5.While considering the issues which are relating to possession, the Civil Court has given a finding that the plaintiff is not entitled to claim title to the property. It was only on the basis that the plaintiff in the suit namely the third respondent has not proved his title, the relief claimed by third respondent for a decree for permanent injunction has been negatived by the Civil Court. Absolutely, there is no finding in the judgment of the Civil Court that the petitioner was in possession of the property which is the subject matter in the suit.

6.In such circumstances, the Civil Court has ultimately rendered a finding that the third respondent has not proved his lawful possession of the property so as to get permanent injunction as against the defendants. Hence, the question whether the third respondent was in possession or not, has not been concluded in favour of petitioner. Section 145 reads as follows.

"(1) Whenever an Executive Magistrate is satisfied from a report of a police officer or upon other information that a dispute likely to cause a breach of the peace exists concerning any land or water or the boundaries thereof, within his local



jurisdiction, he shall make an order in writing, stating the grounds of his being so satisfied, and requiring the parties concerned in such dispute to attend his Court in person or by pleader, on a specified date and time, and to put in written statements of their respective claims as respects the fact of actual possession of the subject of dispute

(2) For the purposes of this section, the expression "land or water" includes buildings, markets, fisheries, crops or other produce of land, and the rents or profits of any such property

(3) A copy of the order shall be served in the manner provided by the Code for the service of a summons upon such person or persons as the Magistrate may direct, and at least one copy shall be published by being affixed to some conspicuous place at or near the subject of dispute

(4) The Magistrate shall then, without reference to the merits or the claims of any of the parties, to a right to possess the subject of dispute, peruse the statements so put in, hear the parties, receive all such evidence as may be produced by them, take such further evidence, if any as he thinks necessary, and, if possible, decide whether and which of the parties was, at the date of the order made by him under sub-section (1), in possession of the subject of dispute: Provided that if it appears to the Magistrate that any party has been forcibly and wrongfully dispossessed within two months next before the date on which the report of a police officer or other information was received by the Magistrate, or after that date and before the date of his order under sub-section (1), he may treat the party so dispossessed as if that party had been in possession on the date of his order under sub-section (1)

(5) Nothing in this section shall preclude any party so required to attend, or any other person interested, from showing that no such dispute as aforesaid exists or has existed; and in such case the Magistrate shall cancel his said order, and all further proceedings thereon shall be stayed, but, subject to such cancellation, the order of the Magistrate under sub-section (1) shall be final.

<https://hcservices.ecourts.gov.in/hcservices/> (6) If the Magistrate decides that one of the parties was, or should under the proviso to subsection



(4) be treated as being, in such possession of the said subject, he shall issue an order declaring such party to be entitled to possession thereof until evicted therefrom in due course of law, and forbidding all disturbance of such possession until such eviction; and when he proceeds under the proviso to sub-section (4), may restore to possession the party forcibly and wrongfully dispossessed

(b) The order made under this sub-section shall be served and published in the manner laid down in sub-section (3)

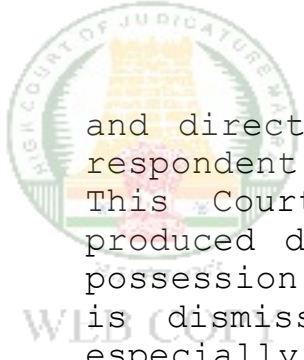
(7) When any party to any such proceeding dies, the Magistrate may cause the legal representative of the deceased party to be made a party to the proceeding and shall thereupon continue the inquiry, and if any question arises as to who the legal representative of a deceased party for the purposes of such proceeding is, all persons claiming to be representatives of the deceased party shall be made parties thereto

(8) If the Magistrate is of opinion that any crop or other produce of the property, the subject of dispute in a proceeding under this section pending before him, is subject to speedy and natural decay, he may make an order for the proper custody or sale of such property, and, upon the completion of the inquiry, shall make such order for the disposal of such property, or the saleproceeds thereof, as he thinks fit

(9) The Magistrate may, if he thinks fit, at any stage of the proceedings under this section, on the application of either party, issue a summons to any witness directing him to attend or to produce any document or thing

(10) Nothing in this section shall be deemed to be in derogation of the powers of the Magistrate to proceed under section 107"

7. From the reading of Section 145 Cr.P.C, it can be seen that the question before the Executive Magistrate is only whether a person is in possession of the property or not and to give protection till the person in possession is evicted otherwise than by due process of law. By the impugned order, the first respondent has confirmed the earlier order restoring patta in the name of original pattadar one Maria soosai son of Yagappa Udayar



and directed the parties namely petitioner as well as the third respondent to approach the Civil Court for appropriate relief. This Court has already found that the third respondent has produced documents before the Civil Court to show that he is in possession. Merely because the suit filed by the third respondent is dismissed, the petitioner cannot claim title or enjoyment especially having regard to the findings of the Civil Court. So far as the petitioners are concerned, they have not produced any document to show that they are the absolute owners in possession of the property. As a matter of fact, the revision petition filed by the petitioners before the District Revenue Officer, Ramanathapuram as against the previous order of first respondent dated 22.06.2012 was dismissed by order dated 28.11.2013 and the said order is not challenged before this Court. The nature of impugned order is only relating to restoration of patta in favour of original pattadar and not one in favour of anyone to protect his possession. The petitioner can approach the Civil Court for appropriate relief as suggested by the District Revenue Officer and the first respondent. Hence this Court find that there is no merit in this petition.

8. Accordingly, this writ petition is dismissed. No costs. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (P&A)

/True copy/

Sub Assistant Registrar

To

1. The Revenue Divisional Officer cum
Sub-Divisional Magistrate,
Ramanathapuram Post & District.

2. The Inspector of Police,
Thiruvadanai Police Station,
Ramanathapuram District.

+1cc to Mr. G. THALAIMUTHARASU, Advocate, SR. 79983
+1cc to Mr. R. MATHIYALAGAN, Advocate, SR. 80294
+1cc to M/S. Special Government Pleader, SR. 79912

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RMI/SSS

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