

THE HON'BLE DR. JUSTICE B.SIVA SANKARA RAO

CRIMINAL PETITION No.9657 OF 2017

ORDER:

Heard learned counsel for the petitioner and learned public prosecutor, representing the 1st respondent – State, before ordering notice to 2nd respondent – defacto complainant.

2. The 2nd respondent herein is shown as Party 1 and the petitioner herein is shown as Party 2 in the impugned proceedings issued by the Mandal Executive Magistrate of Nandavaram Mandal, Kurnool District, dated 15.06.2017, exercising the power under Section 145(1) Cr.P.C., to appear and file written statement of the respective claims in relation to Survey No.165/C, extent of Acres 2.16 cents of Mugathi Village of Nandavaram Mandal.

3. In fact, a perusal of the record shows there is a Civil Suit O.S.No.33 of 2013 filed by the 2nd respondent herein i.e., 1st party to the said impugned proceedings against the petitioner herein and two others and in that suit, there is an injunction application in I.A.No.124 of 2013 and the injunction application disposed order by the learned Junior Civil Judge, Yemmiganur, was dated 14.07.2014, which is in relation to self-same Acres 2.16 cents as in same survey number, as if in two items of Acres 1.00 cents and Acres 1.16 cents respectively, within the boundaries.

4. Having regard to the above, once the civil court seized of the jurisdiction, the learned Executive Magistrate has no right or jurisdiction to initiate proceedings under Section 145(1) of Cr.P.C., as per the settled law.

5. According and with the above observation, this criminal petition is allowed, quashing the impugned proceedings, dated 15.06.2017, issued by the Mandal Executive Magistrate of Nandavaram Mandal, Kurnool District.

6. Miscellaneous petitions pending consideration, if any, in this case shall stand closed in consequence.

23.10.2017
SS

DR.B.SIVA SANKARA RAO, J

