

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 14.03.2018

PRONOUNCED ON : 18.06.2018

C O R A M

THE HONOURABLE MR. JUSTICE M.V.MURALIDARAN

CRL.R.C.NO.31 OF 2017

AND

CRL.M.P.NO.358 OF 2017

Muthusamy

... Petitioner

Vs.

1. The District Revenue Officer,
Coimbatore District,
Coimbatore.
2. The Sub Collector,
Pollachi Division,
Coimbatore District.
3. The Tahsildar,
Kinathukadavu Tlauk,
Kinathukadavu,
Coimbatore District.
4. The Inspector of Police,
Kinathukadavu Police Station,
Coimbatore District.
5. Jaganathan
6. Raghav Balaji
7. Vichithra
8. Ramachandran

... Respondents

Prayer:

Criminal Revision Case has been filed under Section 397 r/w 401 of Cr.P.C., to set aside the order dated 03.12.2016 made in Na.Ka.No.2602/2016/A1, on the file of the Sub Collector, Pollachi, and allow the above Criminal Revision.

For Petitioner : Mr.C.Prabakaran

For Respondents : Mr.R.Suriyaprakash (for R1 to R4)
Government Advocate (Crl.Side)

Mr.A.Kalaivanan (for R5 to R8)

ORDER

The case of the petitioner is that the properties comprised in S.F.No.143/1 to an extent of 2.65.00 Hectares situate at No.10, Muthur in Sangarayapuram Puthur Madura, in Kinathukadavu Taluk, Coimbatore District was originally belonged to one Chellappa Gounder, the Grand- father of the Petitioner, who acquired the title under a registered sale deed dated 04.11.1958. The said Chellappa Gounder was in absolute possession and enjoyment of the property all along. The Wife of Chellappa Gounder Viz., Pachayammal predeceased him and the Chellappa Gounder died leaving behind two sons and one daughter Viz., (1)Chinnasamy Gounder, father of the Petitioner herein, (2)Perumalsamy Gounder and (3)Smt.Athammal, as his legal heirs to inherit his estate.

2.On 03.11.1966, the sons of Chellappa Gounder partitioned the said property under a Registered deed of partition, pursuant to which they had been in separate possession and enjoyment of the property. Father of the Petitioner herein namely Chinnasamy Gounder, died on 29.05.2011 and Perumalsamy Gounder died on 26.12.2006, leaving behind their respective legal heirs. Followed by which the Petitioner and his Co-brothers have been in possession and enjoyment of their respective properties peacefully without any hindrance. In fact the sisters of the Petitioner executed release deed in favour of the Petitioner in respect of their share under a registered deed dated 06.05.2013 on the file of the Sub Registrar Office, Kinathukadavu in respect of the above said property. Apart from that the Petitioner has mortgaged the said property on 07.02.2003 before the K.91 Kinathukadavu Primary Agricultural Co-operative Bank Limited towards an agricultural Loan under a registered mortgage deed. Again the Petitioner sold a piece of property in Survey No. 141/3 to an extent of 58 cents to one Umapathy on 06.05.2013 under a registered document.No.3822 of 2013 on the file of the Sub Registrar Office, Kinathukadavu and there is no objection from the 'B' parties/Respondents 5 to 8. In such a manner the Petitioner is in possession and enjoyment of the property as absolute owner.

3.The Petitioner contented that in continuation of the above transaction the Revenue records were mutated in favour of the

Petitioner and his Co-brother in Patta No.165 and 338 respectively and thereby they are paying the Kist as well as and other charges to the competent authorities and are enjoying the properties. Under such circumstances, the 5th respondent seems to have made representation to the 2nd respondent herein seeking to cancel the Patta standing in the name of the petitioner alleging that he has purchased the subject matter of the property through the Court auction sale in an execution proceedings before the District Munsif Court, Pollachi and a sale Certificate also been issued in his favour. Without affording sufficient opportunity and considering the materials evidences which stands in favour of the Petitioner, the 2nd respondent has cancelled the Patta. Aggrieved by which the Petitioner has preferred an appeal before the 1st respondent herein and the same is pending for disposal.

4.The petitioner further contented that on the other hand with relates to the title over the property there are suits also been pending before the competent Court of law, viz., District Munsif Court, Pollachi in O.S.No.479 of 2013 and O.S.No.358 of 2015 and other proceedings. It is pertinent to note that, in fact challenging the initiation of the very suit itself, the respondents 6 to 8 have filed Civil Revision Petition No.404 of 2016 before this Court, seeking to strike off the plaint. Upon due contest this Court was pleased to dismiss the above Civil Revision Petition, on 24.08.2016 with a finding that there is an indirect admission by the respondents 4 to 8 herein that the plaintiffs in the suit are in possession of the suit property and there are triable issues involved in the suit.

5.The Petitioner submits that, relating to the Patta proceedings, W.P.No.16428 of 2016 is pending before this Court and an order of status quo was granted on 28.04.2016 in W.M.P.No.14195 of 2016. While matter stood thus, the respondents 5 to 8 are trying to trespass into the property and take forcible possession with a view to grab the entire land which is the ancestral property of the Petitioner. Therefore, the petitioner has lodged a complaint on 16.10.2016, before the 4th respondent police, seeking to take necessary Criminal action against the respondents 6 to 8. But instead of taking appropriate Criminal action the 4th respondent have registered a case under Section 145 of Cr.P.C. in Crime Nos.374 of 2016 and 375 of 2016, in respect of Crime No.375 of 2016 filed against the respondents was closed as "mistake of facts", but Crime No.374 of 2016 filed against the petitioner was charge sheeted and referred the matter to the 2nd respondent herein who is the jurisdiction Executive Magistrate to conduct enquiry under Section 145 Cr.P.C. In the said proceedings the Petitioner and his parties are arrayed as A-party and the respondents 5 to 8 are arrayed as B-party; without even issuing a proper notice on appropriate time and without affording sufficient opportunity to

the Petitioner, the 2nd respondent passed an order holding that the A-parties have not produced any documents and based on the documents of B-parties it was held that till the disposal of Civil suit, both the parties are restrained to enter into the subject matter of the property and based on the decision arrived in the Civil suit the parties can enjoy the properties, by an order dated 03.12.2016 in Na.Ka.No.2602/2016/A1, which is impugned herein. The notice was served in the impugned order on the day when the order was passed through a mobile phone to the Petitioner and he was threatened to receive the copy of the order forcibly. Therefore there is no free and fair enquiry by the 1st respondent.

6.It is the further case of the petitioner is that a mere reading of the proceedings itself clearly reveals that the 1st respondent has not afforded an opportunity to the Petitioners to put forth their case and virtually an ex-parte order was passed with a view to help the private respondents thereby prevent them from entering into the subject matter of the property which is in their possession for the past 8 decades. The impugned order is nothing but clear abuse of process of law, colourable exercise of power and miscarriage of justice.

7.In this context the learned counsel for the petitioner has relied on a judgment reported in 2002 (2) CTC 445 in the case of Ranbir Singh -Vs- Dalbir Singh.

8.But, it is the case of the respondents 5 to 8 that notice was served to all the parties, but the petitioner was refused to receive the notice and not attended the enquiry and hence, the Inspector of Police has filed the report of refusal of the petitioner to receive the notice.

9.I heard Mr.C.Prabhakaran, learned counsel for the petitioner, Mr.R.Suriyaprakash, learned Government Advocate (Criminal Side) for the respondents 1 to 4 and Mr.A.Kalaivanan, learned counsel for the respondents 5 to 8 and perused the entire materials available on records.

10.On careful perusal of the available records and the impugned order this Court is able to see that there is a civil dispute regarding title and possession is pending between the petitioners and respondents and the matter remains clutched before the competent Court.

11.Now there arise two interesting questions before this Court viz., whether the impugned order is vitiated by the factum of pendency of the Civil Dispute and as to whether an order can be passed by the Sub Divisional Magistrate restraining both the parties from entering into the disputed property.

12.No doubt that mere pendency of a civil suit is not a bar to the concerned authority from exercising powers under Section 145 of Cr.P.C. But at the same time, it is noteworthy that in the course of pendency of a civil litigation if there is a threat of breach of peace or problem regarding proper safeguarding of the subject suit property, temporary relief can be sought for before the Civil Court by way of injunction or by way of appointment of receiver etc.

13.When a provision for interim relief is accessible before the civil Court, the parties of a civil litigation concerning question of title and possession cannot take thereby to an action under Section 145 of Cr.P.C.

14.The issue as to whether a proceeding under Section 145 of Cr.P.C., can be maintained when civil litigation is pending between the parties for the same property was analysed by the Hon'ble Supreme Court in the cases of Ram Sumer Purl Mahant v. State of U.P. and Ors., AIR 1985 SC 472 : 1985 East Cr. C 444 (SC), Amresh Tiwari v. Lalta Prasad Dubey and Anr., AIR 2000 SC 1504 : 2000 (2) East Cr. C 667 (SC), Ranbir Singh v. Dalbir Singh and Ors., AIR 2002 SC 1500 : 2002 JCR 124 (SC) : 2002 (1) JCJR 445 (SC), and by this Court in the cases of Arjun Ch. Samal and Ors. v. Ananta Ch. Dash and Ors., (1992) (2) OLR 302, Radhamohan Panda and Ors. v. Brundaban. 1986 (1) OLR 586, Basanta Kr. Sahoo and Anr. v. Ruksen Sahoo, 1989 (2) OLR 308, Dhirendranath v. Niranjana, 1989 (2) OLR 495, Choudhury Prafulla Kumar Das and Anr. v. Lingaraj Rath and Anr., (1991) 4 OCR 145 : 1991 (1) OLR 340, and several other cases. Whereby in all these cases an uniform observation made by the Hon'ble Courts is that when dispute relating to property is pending in civil Court involving question of title and possession, the parties can approach the civil Court for any interim relief of injunction, appointment of receiver and continuation of a proceedings under Section 145 of Cr.P.C., for the same property would be inappropriate.

15.It would further be useful to look into the case of Amresh Tiwari stated above the Division Bench of the Hon'ble Apex Court clarified as following that

"We clarify that we are not stating that in every case where a civil suit is filed, Section 145 of Cr.P.C. 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 of Cr.P.C., should not be allowed to continue. This is because the civil Court is competent to decide the question of title as well as possession between the parties and the

orders of the civil Court would be binding on the Magistrate."

16. Thus the above principle that Section 145 of Cr.P.C., proceedings is not maintainable when civil litigation, is pending in a competent Court between the same parties involving question of possession and title of the property and the civil Court in session is competent to pass orders regarding protection of the property has been reiterated in several cases. But without appreciating the aforementioned legal position, the 2nd respondent has passed the impugned order, neither in accordance with the settled provisions of law nor in harmony with the facts and circumstances of the case.

17. On further scrutiny of the impugned order, this Court finds that the Sub Divisional Magistrate categorically by referring upon some revenue entries had chosen to declare that the property is exclusive property of the private respondents and they have unfettered title.

18. It is very odd to see that the 1st respondent at one point of discussion declares that the subject properties are ascertained to be the absolute properties of the private respondent on appraisal of the revenue records and accordingly a finding is set up by him in the impugned order that the title is vested absolutely with the private respondents.

19. Coming to the other fact of the impugned order as to whether it is possible for a Sub Divisional Magistrate to restrain both the parties from entering into the disputed property, it would be useful to refer the following decisions:

- Venkatakrishnan & Ors Vs State of Tamil Nadu & ors reported in (1989) 1 Crimes 236, wherein this Hon'ble Court held that the order restraining both the parties from entering into the property is without jurisdiction.
- J. Ameer Humza vs C. Srinivasan and Others reported in 2005 MLJ (Cri) 550 wherein it was held that preventing both parties from entering into the premises by virtue of an order under section 145 of Cr.P.C. is erroneous and accordingly, it is liable to be set aside
- Karthikeyan and others vs. State by Inspector of Police (I & O), and others reported in 1990 M.L.J. (Cri) 149 holding that in a proceedings initiated under Section 145(1) of the Code of Criminal Procedure, the Sub-Divisional Magistrate cannot restrain both the parties from entering into the property.
- Sundarasamy v. Shanmugham and others reported in 1992-

L.W-(Cr1)79, in the said case it was held that there is no scope whatsoever under Section 145(1) of Cr.P.C., to direct both the parties not to enter upon the disputed premise.

20.The above referred decisions would clearly demonstrate that that No order can be passed by the Sub Divisional Magistrate restraining both the parties from entering into the disputed property while exercising his power under Section 145 (1) of the Code of Criminal Procedure.

21.It is the case of the respondents 5 to 7, all the revenue records stand in the name of the petitioner, which was created based on the partition deed without any previous document. The said revenue records was mutated as per the order of the Sub-Collector, Pollachi vide Na.Ka.No.3512/2013/A1 dated 27.02.2014 by cancelling the earlier order M.T.R.126/1992, M.T.R. Ne.Mu.13173/2012 which was stood in the name of the petitioner without any previous documents and also restored the earlier order in M.T.R.343/1987 dated 23.10.1987, which was stand in the name of the 5th respondent Mr.Jaganathan.

22.During the pendency of the above proceedings of the Sub-Collector, Pollachi, the petitioner has instituted a suit in O.S.No.479 of 2013 on the file of the learned District Munsif, Pollachi, for direction to the Sub-Collector, not to effect any changes in the Revenue records. The above suit was stayed by this Court in C.R.P.(PD)No.3292 of 2015 dated 11.09.2015, against the order of the Sub-Collector, Pollachi vide Ne.Mu.No.8055/2014/E1 before the District Revenue Officer, Coimbatore, which was also dismissed and confirming the order of the Sub-Collector, Pollachi.

23.Pursuant to the order passed by the Sub-Collector, Pollachi, which was confirmed by the learned District Revenue Officer, Coimbatore, as per records came to know that the 5th respondent Mr.Jaganathan has sold the property to the 7th respondent Smt.M.Vichithra through his power agent one Mr.Ragav Balaji, who is the 6th respondent herein as per the Sale Deed dated 28.05.2015 in Doc.No.3344/2015 and 3345/2015, dated 28.05.2015. Pursuant to the sale deed, all the revenue records were also mutated in the name of the 7th respondent Smt.Vichithra.

24.As per the records, this Court came to know that Mr.Jaganathan 5th respondent herein had purchased the property through Court auction and the said Court auction also attained finality and no challenge was made against the Court auction.

25.Apart from this, as on date, there was no interim order granted in the present suit in O.S.No.358 of 2015, pending before the learned District Munsif Court, Pollachi.

26.The respondents 5 to 7 also informed this Court by record as per the Civil Court order vide application in E.A.No.3 of 1974 in E.P.No.289 of 1968 in O.S.No.797 of 1967, thereafter, the possession of the property was also delivered to the 5th respondent Mr.Jaganathan and the Court also put into the possession of the property to the 5th respondent Mr.Jaganathan and patta was also issued in the name of Mr.Jaganathan in M.T.R.343/1987 dated 23.10.1987. Therefore, pursuant to the sale deed in Doc.No.3344/2015 and 3345/2015 dated 28.05.2015, which was executed by the 5th respondent through the power agent of the 5th respondent through 6th respondent in favour of the 7th respondent and possession was also delivered, since based on the Court order, the delivery of the possession in E.A.3 of 1974 in E.P.No.289 of 1968, the possession of the 7th respondent was proved.

27.When the very execution of the sale deed dated 28.05.2015 executed by the 5th respondent through the 6th respondent power agent in favour of the 7th respondent questioning and without any interim order granted in favour of this petitioner, the 2nd respondent Revenue Divisional Officer, Pollachi had no jurisdiction to exercise the power under Section 145(1) of Code of Civil Procedure.

28.Time and again, this Court and the Hon'ble Apex Court has very categorically held that once the Civil Court has seized the matter, the Revenue Divisional Officer have no power under Section 145 of the Code of Criminal Procedure. Both the parties has approached before the Civil Court and get appropriate orders in favour of them and though the Revenue Divisional Officer, Pollachi well aware that the possession of the property was delivered by the competent Civil Court to the 5th respondent Mr.Jaganathan who legally enjoyed and should not restraining the 7th respondent from entering into the property. In fact, the petitioner has not obtained any interim order in his suit in O.S.No.358 of 2015 pending before the learned District Munsif Court, Pollachi and also not challenging the order of mutation of records, which was granted in favour of the 7th respondent, but the order of the Revenue Divisional Officer restraining both the parties from entering into the property is seriously prejudiced to the 7th respondent.

29.For the foregoing reasons this Court comes to the conclusion that infirmity of restraining both the parties from entering into the subject matter of the dispute is a serious one and would be sufficient to vitiate Section 145 Cr.P.C. Proceedings.

30.In the result:

(a) this Criminal Revision Petition is

allowed and the order passed in Na.Ka.No.2606/2016/A1, dated 03.12.2016 passed by the 2nd Respondent is set aside;

(b) the respondents 2 and 4 are directed to restore the possession of the property to the 7th respondent immediately without any further delay;

(c) both the parties are directed to pursue their suit in O.S.No.358 of 2015 pending on the file of the learned District Munsif Court, Pollachi;

(d) the learned District Munsif, Pollachi is directed to dispose the suit in O.S.No.358 of 2015 without influencing the order passed in this Revision and pass the Judgment independently, based on the documents and evidences produced by both the parties. Consequently, connected miscellaneous petition is closed. No costs.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

vs

To

The District Munsif Court,
Pollachi.

+1cc to Mr.C.Prabakaran, Advocate, S.R.No.38418

Cr1.R.C.No.31 of 2017
and
CRL.M.P.No.358 of 2017

KK(CO)
CS/31/07/18