

IN THE HIGH COURT OF JUDICATURE AT MADRAS
Dated: 02.03.2018
CORAM
THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

CRL.R.C.No.943 of 2017
and
Crl.M.P.No.8844 of 2017

Perumal

.. Petitioner

Vs.

1.The Sub Division Magistrate-cum-Sub Collector,
Tirupattur,
Vellore District.

2.The Inspector of Police,
Natrampalli Police Station,
Vellore District.
(Crime No.98/2017)

3.Kandasamy Udaiyar

4.Panchayappa Udaiyar

5.Kannu Udaiyar

6.Ranganathan

... Respondents

Prayer: Criminal Revision Case filed under Section 397 r/w 401 of Cr.P.C., to call for the records of the proceedings of 1st respondent in M.C.No.45 of 2017 dated 02.06.2017 and set aside the same.

For Petitioner : Mr.E.Kannadasan

For Respondents : Mr.R.Suriyaprakash (for R1 & R2)
Government Advocate

Mr.V.Jeeva Giridharan (for R5 & R6)

No Appearance (for R3 & R4)

O R D E R

This criminal revision petition is preferred by the petitioner against the order passed by the Executive Magistrate, Tirupattur, Vellore Court in M.C.No.45 of 2017 dated 2.6.2017 in respect of crime number 98 of 2017 on the file of the 2nd respondent.

2.Brief case of the petitioner

The petitioner have purchased a property in Survey No.429, Natrampalli village, Vellore District to an extent of 0.21.5 Hecter which was originally belong to one Anumanthappa Gounder and Chennappa Gounder. After demise of Chennappa Gounder his legal heirs had jointly sold the above property to the petitioner by registered sale deed on 19.7.2016. After purchase, the respondents 3 to 6 had filed a suit seeking permanent injunction to an extent of 0.59 cent of small hut and clay pot manufacturing place in Survey No.429. Aggrieved party preferred appeal on the file of the Additional District Court, Tirupattur and it was dismissed by confirming the lower Court order. Thereafter the aggrieved party preferred second appeal in S.A.No. 315 of 2010 and the same was pending before this Hon'ble Court. The respondents 3 to 6 created problems by taking advantage of civil Court orders and trying to grab the entire extent of the property. This criminal revision is preferred by the petitioner against the order passed by the Executive Magistrate, Tirupattur, Vellore Court in M.C.No.45 of 2017 dated 2.6.2017.

3.The learned counsel for the petitioner submits that the 1st respondent failed to consider the fact that the permanent injunction granted in favour of respondents 3,5 &6 with an extend of 0.59 cent in survey No.429 Natrampalli village, Vellore district but herein the 1st respondent paved way by way this impugned order and open the gate to encroach the properties of petitioner to the respondents 3 to 6.

4.The learned counsel for the petitioner submits that the 1st respondent failed to consider the malafied intention and misrepresentation on the part of 3 to 6 respondents to grab the entire properties of the petitioner by playing fraud on using the civil Court order.

5.The learned counsel for the petitioner submits that the 1st respondent failed to appreciate the petitioner who is a law abiding citizen and at most he has not disturbed the suit scheduled property of 0.59 cent which was subject matter of suit but the 1st respondent failed to look into the ulterior motive of respondents 3 to 6.

6.The learned counsel for the petitioner submits that the impugned order passed by the 1st respondent was against the judgment/decreed of the Civil Court further it shows non application of mind on the part of the 1st respondent.

7.The learned counsel appearing for the respondent supported the findings of the Executive Magistrate and sought for dismissal of the criminal revision.

8.I heard Mr.E.Kannadasan, learned counsel for the petitioner, Mr.R.Suriyaprakash, learned Government Advocate for

the respondents 1 and 2 and Mr.V.Jeeva Giridharan, learned counsel for the respondents 5 and 6 and perused the entire materials available on record. No representation on behalf of the respondents 3 and 4.

9.It is needless to say that, the Executive Magistrate should show their restraint in entering the civil disputes between the parties and lis is pending before this Hon'ble Court.

10.On careful reading of the annexures filed by the petitioner and the copy of the judgments in O.S.No.600 of 1992 and A.S.Nos.44 and 45 of 2004 on the sale deed executed infavour of the petitioner vide document No.1204 of 2016 dated 3.6.2016 would disclose the civil dispute between the parties. Therefore the learned Executive Magistrate exceeded his jurisdiction and the order passed in M.C.No.45 of 2017 dated 2.6.2017 cannot be sustained.

11. Time and again this Court and the Hon'ble Apex Court very categorically held that once the civil dispute is pending between the parties and the Civil Court seized the matter, the Executive Magistrate have power to pass orders under Section 145 of Cr.Pc. and the learned Executive Magistrate ought to have directed this petitioner to work out the remedy before the Civil Courts. But he without working the same, the learned Executive Magistrate has passed the present order dated 02.06.2017.

12. In the result, this criminal revision petition is allowed and the order passed by the Executive Magistrate, Tirupattur, Vellore Court in M.C.No.45 of 2017 dated 2.6.2017 is set aside. Consequently, connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

vs

To

1.The Sub Division Magistrate-cum-Sub Collector,
Tirupattur,Vellore District.

2.The Inspector of Police,
Natrampalli Police Station,
Vellore District.

CRL.R.C.No.943 of 2017
and
Crl.M.P.No.8844 of 2017

KAN(CO)
rrs 22/03/2019