

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 04.12.2018

CORAM:

THE HONOURABLE MR. JUSTICE V.PARTHIBAN

Crl.R.C.No.293 of 2018

Jayalakshmi

... Petitioner

Vs.

1.The Sub-Divisional Magistrate/Revenue Divisional Officer,
Ponneri Division,
Thiruvallur.

2.Sooryakanthi

3.Mariammal

4.The Sub-Inspector of Police,
Gummudipoondi Police Station,
Gummudipoondi,
Thiruvallur District.

R4 impleaded as per order dated 19.03.2018 in
Crl.M.P.No.3947 of 2018 in Crl.R.C.No.293 of 2018.

.... Respondents

PRAYER : The Criminal Revision filed under Section 397 read with
401 of Code of Criminal Procedure against the order dated
30.03.2017 in Na.Ka.No.5782/2015/A1 passed by the first
respondent.

For Petitioner : Mr.N.R.Anantha Ramakrishnan

For Respondents : Mr.G.Harihara Arun Somasankar,
Govt. Advocate (Crl.side) for R1 & R4

O R D E R

The present criminal revision case has been filed against
the order dated 30.03.2017 in Na.Ka.No.5782/2015/A1 passed by
the first respondent.

2. The facts which gave rise to filing of this revision case are stated hereunder:-

(i) The case of the revision petitioner is that she has purchased the agricultural lands in S.No.46 measuring 86 Ares, S.No.80/3 measuring 8.50 Ares & S.No.81/1 measuring 31.50 Ares, in Seliambedu Village, Ponneri Taluk, Tiruvallur District under registered sale deeds dated 14.05.2004 and 17.05.2004. She was also issued patta No.397 for the properties purchased by her. It appears that the respondents 2 and 3 attempted to disturb the peaceful possession and enjoyment of the properties by the revision petitioner. Therefore, she filed a suit in O.S.No.16 of 2014 before the District Munsif Court, Ponneri for permanent injunction. The respondents 2 and 3 herein, were also arrayed as defendants 2 and 7 in the said suit.

(ii) The learned District Munsif, Ponneri, after hearing the parties, had dismissed the interim injunction petition in I.A.No.124 of 2014, against which, the petitioner herein filed C.M.A.No.1 of 2015, before Subordinate Court, Ponneri and the same was pending. While so, the first respondent initiated proceedings purported to be under Section 145 of Cr.P.C and notice was issued to her. The petitioner submitted oral and documentary evidence in support of the claim of ownership of the subject property. It was also brought to the knowledge of the first respondent about the pendency of the original suit in O.S.No.16 of 2014 and C.M.A.No.1 of 2015. The first respondent without appreciating the claim of the petitioner and also the fact of pendency of original suit and C.M.A., passed an order on 30.03.2017, cancelling the patta granted in favour of the petitioner and transferring the same to other parties by restoring the status-quo.

3. According to the learned counsel for the revision petitioner, the order passed by the first respondent under Section 145 of Cr.P.C., is unsustainable for the simple reason that the entire proceedings was a patta proceedings and not under Section 145 of Cr.P.C. He would submit that nowhere in the order there was even whisper about any breach of peace warranting issuance of order under Section 145 of Cr.P.C. The order impugned is contrary to the ambit and scope of Section 145 of Cr.P.C. Therefore, the same is liable to be interfered with.

4. The learned counsel for the respondents 2 and 3 would submit that it was a proceeding under Patta Pass Book Act and the appeal/revision shall lie before the District Revenue Officer (DRO). Therefore, the present revision case before this Court is non-maintainable.

5. The learned counsel appearing for the first respondent

would submit that the order was passed under Section 145 of Cr.P.C.

6. After taking into consideration the relevant materials placed on record, this Court has considered the submissions of the learned counsel and finds that there is considerable force in the contention put forth on behalf of the revision petitioner. The entire order as it could be seen that it proceeds on the footing as if it was a patta proceedings and the first respondent ultimately ordered for cancellation of patta granted in favour of the petitioner.

7. As rightly contended by the learned counsel for the petitioner that nowhere the first respondent has given any finding in regard to breach of peace as per the requirement of Section 145 of Cr.P.C. which is extracted herein:-

"145. Procedure where dispute concerning land or water is likely to cause breach of peace

(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."

8. As per the above Section, the cardinal requirement was that the dispute between the parties is likely to cause breach of peace. In the instant case, there was no such likely hood of breach of peace reflected in the order passed by the first respondent. Moreover, the first respondent has not taken into consideration the pendency of civil suit and C.M.A as between the parties and the same has not reached finality. When the civil suit was pending between the parties, it was beyond the power of the Executive Magistrate to pass orders for change of patta by exercising jurisdiction under Section 145 of Cr.P.C. The principle requirement of the said Section is a breach of peace. Unless such fact is established beyond any doubt, the power could not be exercised under the said Section. The power under the Section cannot be misused for settlement of patta dispute between the parties. In this case, the first respondent has exceeded his power vested with him under Section 145 of Cr.P.C.

9. After perusing the impugned order, this Court can come to the only conclusion that the first respondent had either mistakenly or consciously invoked his power under Section 145 of Cr.P.C. and adjudicated the claim of patta to the subject property. It is very unfortunate that the first respondent has not understood under what contingency such power vested with him under Section 145 of Cr.P.C. could be invoked and exercised. When civil cases are pending between the parties, the first respondent ought to have restrained from exercising his power under Section 145 of Cr.P.C, unless there was imminent threat of public peace and in the absence of such situation, the order passed by the first respondent under Section 145 of Cr.P.C. is nothing but a colourable exercise of power. Therefore, the same cannot be sustained.

10. For the above said reasons, this Court is of the view that the impugned order passed by the first respondent is liable to be interfered with. Therefore, the order dated 30.03.2017 in Na.Ka.No.5782/2015/A1 passed by the first respondent, is hereby set aside and the criminal revision case is allowed.

Sd/-

Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

gsk

To

- 1.The Sub-Divisional Magistrate/Revenue Divisional Officer,
Ponneri Division, Thiruvallur.
- 2.The Sub-Inspector of Police,
Gummudipoondi Police Station,
Gummudipoondi,
Thiruvallur District.

+1 cc to M/s.N.R.Anantha Ramakrishnan, Advocate Sr.No.83071

+1 cc to Mr.T.P.Sekar, Advocate Sr.No.83176

Cr1.R.C.No.293 of 2018

CSL/26.12.2018