

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.10.2018

CORAM

THE HONOURABLE MR.JUSTICE P.RAJAMANICKAM

W.P.No.29036 of 2016
and

WMP.Nos. 25088 and 25089 of 2016

G.Sairam

... Petitioner

Vs.

1. The District Collector,
Villupuram District,
Villupuram.
2. The Revenue Divisional Officer,
Villupuram.
3. The Deputy Inspector General of Police,
Villupuram Range, Villupuram.-605 602
4. Thiruaaraselvam Respondents

Prayer : Writ Petition filed under Article 226 of the Constitution of India, praying to issue an appropriate Order, Direction or Writ, including a Writ of Certiorari to call for the records relating to the Impugned Order of the second respondent in Mu.Mu A-1/100/2016 dated 12.07.2016 and quash the same.

For Petitioner : Mr.S.Ravi

For Respondents : Mr.M.Ezhumalai,

Government Advocate for R1 to 3

Mr.D.S.Tirumavalevan for R4.

WEB COPY
O R D E R

This Writ Petition has been filed under Article 226 of the Constitution of India to quash the order passed by the second respondent in Mu.Mu A-1/100/2016 dated 12.07.2016.

2. The learned counsel for the petitioner has submitted that the petitioner is in possession of Shop No.8, K.K.Road at Villupuram, and he is doing business in that shop. He further submitted that on 21.10.2015, the fourth respondent herein has

locked the doors of the said shop with another lock and removed the locks which were put up by the petitioner and hence, the petitioner has lodged a complaint before the Inspector of Police, Town Police Station, Villupuram, on 21.10.2015 and for that, CSR.No.294/2015 has been issued. He further submitted that subsequently on 27.10.2015, the fourth respondent along with his friends, had broke open the doors of the said shop and removed the materials worth about Rs.3 lakhs and hence, the petitioner has lodged another complaint on 28.10.2015 and based on the said complaint, the Inspector of Police, Town Police Station, Villupuram, has registered a case on 31.10.2015, in Crime No.314 of 2015 under Sections 448 and 380 IPC. He further submitted that when the fact remains so, the second respondent has passed the impugned Order on 12.07.2016, without summoning the petitioner. He further submitted that in the said impugned Order, the second respondent has declared that one Usharani, is the owner of the said shop and the fourth respondent is having a license for the said shop. He further submitted that the second respondent has no jurisdiction to pass orders declaring the title of the parties under section 145 Cr.P.C.

3. He further submitted that already in respect of the said property, the fourth respondent has filed a suit in O.S.No.196 of 2014 on the file of the Principal District Munsif, Villupuram, as against one Balaji and also filed an application in I.A.No.622 of 2014, seeking interim injunction. But the learned Principal District Munsif has dismissed the said petition by the order dated 26.11.2014. He further submitted that as against the said order, the fourth respondent has filed C.M.A.No.8 of 2014 on the file of the II Additional Subordinate Judge, Villupuram, and also filed an application in I.A.No.622 of 2014 seeking interim injunction and said application was also dismissed on 09.10.2015.

4. He further submitted that since the petitioner is in possession of the said property, he has filed an application in O.S.No.196 of 2014 to implead him as defendant and the said petition is still pending. He further submitted that when the Civil Court declined to grant injunction in favour of the fourth respondent, the second respondent has passed the impugned Order in favour of the fourth respondent, overlooking the order passed by the Civil Court and hence he prayed to quash the impugned Order passed by the second respondent.

5. The learned Government Advocate who is appearing for the respondents 1 to 3 has submitted that based on the report submitted by the Inspector of Police, Town Police Station, Villupuram, the second respondent has initiated proceedings under Section 145 Cr.P.C and during the enquiry, the petitioner herein has appeared, but he has not produced any documentary

evidence to show that he is in possession of the said property and after taking into consideration the materials produced by other parties, the second respondent has passed the Impugned Order and therefore he prayed for dismissal of the Writ Petition.

6. The learned counsel for the fourth respondent has submitted that the petitioner herein has lodged a complaint before the Inspector of Police, Town Police Station, Villupuram, only on behalf of one Balaji and against the said Balaji, the Civil Suit has been filed by the fourth respondent. He further submitted that the second respondent has added the said Balaji as one of the parties and issued notice to him and after giving sufficient opportunity to him, the second respondent has passed the impugned Order. He further submitted that though the Petitioner herein has filed a party implead petition in O.S.No.196 of 2014 on the file of the Principal District Munsif, Villupuram, the said petition is still pending. He further submitted that in the proceedings before the second respondent, the petitioner herein was not at all a party and hence he has no locus standi to challenge the order of the second respondent. He further submitted that so far the petitioner was not impleaded as a party in the Civil suit and under the said circumstances, the petitioner cannot challenge the order passed by the second respondent.

7. This Court has considered the rival submissions and also perused the materials placed before it.

8. It is seen from the typed set of papers filed by the petitioner, in the impugned Order, in the reference the second respondent has shown the FIR in Crime No.314 of 2015 of Town Police Station, Villupuram, registered under section 448 and 380 of IPC. In the body of the order, the second respondent has stated that the said FIR was registered under section 145 Cr.P.C. The said fact, itself would show that the second respondent has passed the order mechanically without verifying the fact that under what provisions of law, the said FIR was registered.

9. It is also to be pointed out that the said FIR itself has been registered only based on the complaint given by the petitioner/complainant herein. In such a case, the second respondent should have issued a notice to the petitioner herein. But the impugned Order shows that the second respondent has not sent any notice to the petitioner herein. A perusal of the said order shows that even though notice was not sent to the petitioner herein, he has voluntarily appeared before the second respondent and produced a copy of the letter dated 01.06.2016, which was sent by him to the Inspector of Police, Town Police Station, Villupuram,. Even thereafter, the second respondent has not chosen to implead the petitioner herein as a party and give

an opportunity to him to file his objections. Since the rights of the petitioners are involved, he is entitled to challenge the impugned order. Further, in the said order, the second respondent has stated that the fourth respondent is having license to run a shop in the aforesaid property and Usharani is having title over the said property. Under Section 145 of Cr.P.C. the second respondent is not entitled to declare title in respect of the property.

10. As already pointed that even in the year 2014 itself, the fourth respondent has filed a suit and also filed an application seeking interim injunction and the said application was dismissed by the learned District Munsif, Villupuram. As against the said order, the fourth respondent has filed CMA before the II Additional Subordinate Judge, Villupuram and also filed an application seeking interim injunction and the said application was also dismissed and that being so, the second respondent should not have interfered in the aforesaid matter and passed the impugned Order. Therefore the said order is liable to be quashed.

11. In the result, the Writ Petition is allowed. The impugned Order passed by the second respondent is set aside. Consequently, connected miscellaneous petition is closed. No costs.

Sd/-
Assistant Registrar(CS IX)

//True Copy//

Sub Assistant Registrar

To

1. The District Collector,
Villupuram District,
Villupuram.
2. The Revenue Divisional Officer,
Villupuram.
3. The Deputy Inspector General of Police,
Villupuram Range,
Villupuram.
4. The Government Pleader,
High Court, Madras.

+lcc to Mr.S.Ravi, Advocate, S.R.No.71790

W.P.No.29036 of 2016

SV(CO)
GSP(28/11/2018)