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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 23.01.2018

[Orders Reserved on 05.04.2017]

CORAM:

THE HONOURABLE MR. JUSTICE A.M. BASHEER AHAMED

Crl.RC(MD)No.322 of 2016

and

Crl.MP(MD)Nos.2719 of 2017 & 4213 of 2016

Chandrasekaran : Petitioner / 3rd Party

Vs.

1.The Sub-Divisional Magistrate (cum)
Revenue Divisional Officer,
Thanjavur Division,
Thanjavur District.

2.The Inspector of Police,
Pappanadu Police Station,
Thanjavur District.

: Respondents / Respondents

3.C.Viswanathan

4.N.Subbaiyan

: Respondents / Respondents
A Party

5.T.Kaliyaperumal

6.Tamilselvan

: Respondents / Respondents /
B Party

Prayer: Revision is filed under Section 397 r/w 401 of Cr.P.C., praying to call for the records pertaining to the order passed in M.C.No.09/2015/A3, dated 31.12.2015 on the file of the Sub-Divisional Magistrate (cum) Revenue Divisional Officer, Thanjavur Division, Thanjavur District and set aside the same as illegal, arbitrary and ultra-vires.

For Petitioner : Mr.R.Venkateshwar

For Respondents 1 & 2 : Mr.P.Kandasamy
Govt.Advocate (crl.side)

<https://hcservices.ecourts.gov.in/hcservices/>

For Respondents-3&4 : Mr.R.M.Arun Swaminathan



For Respondent-5 : Mr.C.Padmaraj
For Respondents-6 : Mr.S.Gopalamanikandan

ORDER

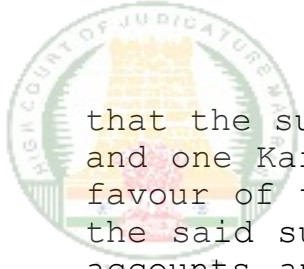
This Criminal Revision has been filed praying to set aside the order passed in M.C.No.09/2015/A3, dated 31.12.2015 by the Sub-Divisional Magistrate (cum) Revenue Divisional Officer, Thanjavur Division, Thanjavur District, as illegal, arbitrary and ultra-vires.

2. The first respondent herein, based upon a Report in K.N.T.11/15/M.7, dated 23.07.2015 from the Tahsildar, Orathanadu, in respect of the dispute regarding usage of a path way between the two groups against 'A'-Party / R3 & R4 herein and 'B'-Party / R5 & R6 herein in Sy.Nos.492/8A, Sy.No.492/5B1, Sy.No.492/5A1 at Ambalapattu South, Parankivettikadu Village, Orathanadu and the said dispute was not settled amicably by way of conducting peace committee, passed the impugned order in M.C.No.09/2015/A3 dated 13.12.2015 under Section 147(3) of Cr.P.C., directing the 'A'-Party not to take possession or to continue in possession of the dispute pathway and the said path way should be used as public pathway and also directing the Tahsildar, Orathanadu and Inspector of Police, Orathanadu, to implement the order to maintain the law and order.

3. The Revision Petitioner / 3rd Party to the said proceedings filed the present Revision as to the correctness, legality or propriety of such findings or order recorded / passed by the first respondent herein, who passed the impugned order. The revision petitioner is the father of the 3rd respondent, who belongs to 'A'-Party.

4. The disputed pathway is in Sy.No.492/8A, Sy.No.492/5B1 and Sy.No.492/5A1 at Parankivettikadu. The revision petitioner and R4 herein claimed that there is no pathway in Survey No. Sy.No.492/8A, Sy.No.492/5B1 and the said lands are patta lands belonged to them and the 'B'-Party has no right of pathway in Sy.No.492/8A, and Sy.No.492/5B1 lands. Joint patta in respect of both lands are also produced by the revision petitioner herein.

5. It is admitted that the 6th respondent, who belongs to 'B'-Party filed a Suit in O.S.No.55 of 2012, on the file of the District Munsif cum Judicial Magistrate, Orathanadu against the revision petitioner and 'A'-Party / R3 & R4 herein, as defendants, seeking the relief of permanent injunction, restraining the defendants not to interfere the usage of Suit pathway in Sy.No.492/8A, 0.03 cents, Sy.No.492/5B1, 0.03 cents and Sy.No.492/5A1, 0.010 ares by the plaintiff (R6 herein) and the suit was dismissed by the trial Court on 11.08.2014 and an appeal was filed by R6 herein before the Sub Court, Pattukkottai and is pending as A.S.No.10 of 2015. Plaintiff / R6 has contended in that suit



that the suit pathway lands were gifted by the plaintiff to one Rasu and one Karunanithi, who are the brothers of the 3rd defendant, in favour of the village panchayat, under a deed, dated 06.01.2006 and the said survey numbers are classified as cart track in the village accounts and the plaintiff has claimed easementary rights over the suit pathway. The trial Court held that there is no prima facie evidence by the plaintiff to show that the suit lands are being used as a pathway and the plaintiff has no locus standi to file the suit in respect of the suit land, as pathway and dismissed the suit of the plaintiff / R6. It is also admitted that appeal was preferred by the said plaintiff / R6 against the Judgment and decree passed by the trial Court and is pending as A.S.No.10 of 2015 on the file of Court of Subordinate Judge, Pudukkottai. Hence, the claim of R6 in the disputed pathway is in subjudice and is still pending for the decision of the competent civil Court / appellate Court. The fact is also admitted in the impugned order itself passed by the first respondent herein.

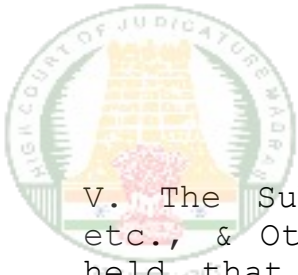
6. The counsel for the revision petitioner, in support of his contentions, relies the following decisions:-

(i) In the Judgment of the Apex Court in Ram Sumer Puri Mahant Vs. state of U.P. And Others reported in (1985) 1 SCC 427, it has been held that "Section 145 of Cr.P.C., - initiation of parallel proceedings during pendency of the civil litigation involving the question of possession of same property not justified.

(ii) The Judgment of this Court in Senthamaraikannan and Two Others Vs. Govindarajulu Naidu reported in (1998 (11) CTC 228), wherein it has been held that "when the civil Court which is competent to grant injunction has not chosen to consider it as a fit case to grant interim injunction, it was not proper on the part of the Executive Magistrate to have ordered in injunction. It virtually amounts to userping of jurisdiction, which he has none. The Executive Magistrate ought not to have passed any order when a competent Court is seized of the same."

(iii). In the aforesaid decision, a Judgment of this Court in Indira and 2 Others Vs Dr.Vasantha and 2 others reported in (1990 TLNJ (Crl.) 67) has been relied, in which it has been held that, "The initiation of parallel proceedings when the identical matter in respect of the disputed property was pending in a civil Court wherein the question of possession was involved, initiation of parallel criminal proceedings under Section 145 of Cr.PC., would not be justified".

(iv) In the Judgment of this Court in A.Narayanan Vs. The Revenue Divisional Officer and others reported in (2011 (1) T.N.L.R. 17), wherein it has been held that "Magistrate passed an order in nature of prohibitory injunction which is beyond his jurisdiction when the dispute regarding immovable property is pending before the civil Court".



(v) In the Judgment of this Court in V.Jeyachandran V. The Sub Divisional Magistrate and Revenue Divisional Officer etc., & Others reported in (2002 (2) L.W. CrI. 695), it has been held that, "Criminal P.C., Section 145(1) - Preliminary order issued by Sub-Divisional Magistrate (R1) under Section 145(1) Cr.P.C., - Held that when once civil Court has taken note of dispute between the parties regarding declaration of possession, it is not open to Executive Authority to entertain any application - To invoke Section 145 there should be a report from the competent police officer that there was a threat to law and order or possibility of breach of peace in the area - Preliminary order quashed".

(vi). In the Judgment of the Orissa High Court in Bhima Nayak Vs. Panjashaw Durgah reported in (1979 CrI.L.J. 1200), wherein it has been held that " Once a dispute as to possession has been resolved in the proper manner by the civil Court of competent jurisdiction, there should be no longer exist a dispute within the meaning of Section 145(1) Cr.P.C., and so a Magistrate should not again proceed to decide the question of possession in a proceedings under Section 145 of Cr.P.C.,

7. The 6th respondent in this Revision has filed a Writ Petition in W.P(MD)No.70 of 2017 before this Court, seeking issuance of a Writ of Mandamus, directing the 4th respondent / the Deputy Superintendent of Police, Orathanadu, Thanjavur District, to implement the order of the 3rd respondent / the Project Development Officer, Rural Development, Orathanadu, Thanujavur District, dated 12.12.2016 and the Writ Petition was ordered directing the 3rd respondent to remove the encroachments subsequently made by the respondents 6 to 9 within a period of two months and the 4th respondent was directed to give necessary protection at the time of removal of encroachment and the 3rd respondent further directed to lodge a complaint against the encroachers to the 4th respondent and the 4th respondent also directed to take penal action.

8.The above said order was passed subsequent to the impugned order passed by the first respondent. On perusal of the order, dated 04.01.2017 passed in W.P.(MD)No.70 of 2017, the A-Party / R3 & R4 herein are ordered as R6 & R7, but they were not heard in the said writ petition and there is no mentioning about the pendency of the civil suit in respect of the suit cart tract

9. In view of the above decisions and also the facts and circumstances of the case, the Criminal Revision is allowed and the impugned order passed in M.C.No.09/2015/A3, dated 31.12.2015 by the 1st respondent / the Sub-Divisional Magistrate (cum) Revenue Divisional Officer, Thanjavur Division, Thanjavur District, in respect of the disputed land claimed as common pathway with easementary right of B-Party is beyond his jurisdiction, since the matter in respect of the claim of B-Party / R5 is subjudiced and is pending before the competent civil jurisdiction, is set aside.



Both the parties are directed to seek appropriate remedy through civil Court and shall not cause disturbance to law and order. Consequently, the connected miscellaneous petitions are closed. No costs.

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Sd/-
Assistant Registrar (CSII)

/True Copy/

Sub-Assistant Registrar

To

- 1.The Sub-Divisional Magistrate (cum)
Revenue Divisional Officer,
Thanjavur Division,
Thanjavur District.
 - 2.The Inspector of Police,
Pappanadu Police Station,
Thanjavur District.
 - 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.
 - 4.The Record Keeper, (2 copies)
Criminal Record Section
Madurai Bench of Madras High Court, Madurai
- +One cc to Mr.R.Venkateshwar, Advocate, SR.No.43582

MPK
RL/7C/5P/SKN/RSK/SAR1/25/1/2018

Cr1.RC (MD) No.322 of 2016

23.01.2018