



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 30.10.2018

DELIVERED ON : 12.11.2018

CORAM:

THE HONOURABLE DR.JUSTICE G.JAYACHANDRAN

Crl.R.C(MD)No.510 of 2018

and

Crl.M.P(MD)Nos.7043 and 7809 of 2018

1.MAMR Muthiah

2.P.Krishnaraj

3.Arunachalam : Petitioners/A-Party

Vs.

1.The Sub Divisional Magistrate-cum-
Revenue Divisional Officer,
Office of the Revenue Divisional Officer,
Madurai - 625 020.

2.The Inspector of Police,
Tallakulam Police Station,
Tallakulam, Madurai - 625 002.

3.A.Natarajan

4.Thenappan Chettiar

5.AC Muthiah

6.Somasundaram

7.Muthupalaniappan : Respondents/B Party

8.PS Prabhu : Respondent/A-Party

PRAYER: Criminal Revision Case is filed under Section 397 read with Section 401 of the Code of Criminal Procedure, to set aside the order dated 24.08.2018 passed in Na.Ka.No.M/6405/2017 by the Sub Divisional Magistrate-cum-Revenue Divisional Officer, Madurai.



For Petitioner

: Mr.T.Mohan
for Mr.K.Prabhakar

For Respondents 1 and 2

: Mr.A.Robinson,
Govt. Advocate (Crl. Side).

For Respondents 3 to 7

: Mr.R.Srinivas for
Mr.S.Sithirai Anandam

For Respondent No.8

: No appearance

ORDER

This Criminal Revision Case is filed praying to set aside the order dated 24.08.2018 passed in Na.Ka.No.M/6405/2017 by the Sub Divisional Magistrate-cum-Revenue Divisional Officer, Madurai.

2.Heard the learned counsel for the petitioner, learned Government Advocate (Criminal side) appearing for the respondents 1 and 2 and the learned counsel appearing for the respondents 3 to 7.

3.Petition schedule property was purchased from Subramania Iyer by Rani Meiyammai Aachi in the year 1959. Rani Meiyammai Aachi executed a Will dated 15.12.1969 in respect of her properties, which include the property bearing No.6, Vallabhai Road, Chokkikulam, Madurai, which is the subject matter of this revision petition. This property is shown as item (I) under schedule 'B' to the Will. On the death of Rani Meiyammai Aachi, the Will got probated by its executor in O.P.No.261 of 1971. The recital of the Will in respect of this property reads as below:

"7.I bequeath the properties dealt with in Schedule B, hereunder, being the bungalow situate at Coonoor, Nilgiri Dist and Madurai town to be enjoyed after my life-time by my husband during his life-time. After the life time of myself and my husband Rajah Sir Muthiah Chettiar of Chettinad, the properties shall vest in the trustees that are appointed hereunder and the trustees shall maintain the said house car the residence of Sri.M.A.M.Ramaswamy Chettiar of Chettinad and Smt.Sigappi Achi of Chettinad. If Rajah Sir Muthiah Chettiar of Chettinad during his life-time or afterwords Sri.M.A.M.Ramaswamy Chettiar and Smt.Sigappi Achi during their lifetime so desire, the trustees may let out the properties and pay therein come to Sri M.A.M.Ramaswamy Chettiar and Smt.Sigappi Achi. If during the life-time of Rajah Sir Muthiah



Chettiar and afterwards during the life-time of Sri M.A.M.Ramaswamy Chettiar and Smt.Sigappi Achi, each of whom will be entitled to half share in the said properties, they desire that the properties should be sold and the trustees consider it beneficial, they shall sell the property and keep the proceeds invested under the terms of investment given to them under this document in regard to 'C' Schedule properties. The said Sri M.A.M.Ramaswamy Chettiar and Smt.Sigappi Achi will be entitled each to half share of the income from the said investment and after their life-time, the entire properties of the amount realised on sale of the said properties with its augmentations shall be taken by their son or sons (natural or adopted) in equal shares, if more than one. If however they do not leave any son or sons, the properties or the moneys relating thereto shall be taken absolutely by the son or sons (natural or adopted) of Kumara Rajah M.A.M.Muthiah Chettiar in equal shares if more than one. In the unlikely event of the above two beneficiaries leaving no male issue (natural or adopted) the properties or monies above referred to shall vest in and be taken as the absolute property of Rajah Muthiah Chettiar Charitable and Educational Trust and shall be utilised for the various objects of the Trust mentioned in the Trust deed dated the 14th March 1957".

4.The fact which is uncontroverted is that Sigappi Aachi and M.A.M.Ramasamy, during their life time, had no natural son or daughter. They adopted one M.A.M.R.Muthiah @ Ayyappan. As per the Will, the property vested with the trust for the benefit of Raja Muthiah Chettiar till his life time, then to M.A.M.Ramasamy Chettiar and his wife Sigappi Aachi. They were given the option of selling the property if the trustee consider it beneficial, but such event did not arise till the life time of M.A.M.Ramasamy Chettiar and Sigappi Aachi. Since M.A.M.Ramasamy Chettiar and Sigappi Aachi adopted M.A.M.R.Muthiah @ Ayyappan, the property did not pass on to the other branch of the family, namely, Kumara Rajah M.A.M.Muthiah Chettiar. Sigappi Aachi died on 24.03.2006. M.A.M.Muthiah Chettiar died on 02.12.2015.

5.During the life time of M.A.M.Ramasamy Chettiar, the adopted son M.A.M.R.Muthiah has fallen out from the grace of his adoptive father and filed suit against M.A.M.Ramasamy Chettiar in which the adoptive father has filed written statement questioning the validity of his adoption. The dispute between M.A.M.Ramasamy Chettiar and M.A.M.Muthiah



Chettiar had led to spurt of litigations all centered upon the interpretation of Rani Meiyammai Aachi Will; the validity of the adoption of M.A.M.R.Muthiah by M.A.M.Ramasamy and his wife Sigappi Aachi; and the right to administer and enjoy the properties covered under the Will of Rani Meiyammai Aachi.

6.As far as the subject matter of this revision is concerned, on 12.06.2017, the Inspector of Police, Tallakulam Police Station, Madurai has registered a case in Crime No.1059 of 2017 under Section 145 Cr.P.C. and forwarded it to the Revenue Divisional Officer, Madurai informing him that in respect of property bearing Door No.7, Vallabhai Road, Chokkikulam, Madurai on 25.05.2017, one Krishnaraj (A-Party) had lodged a complaint alleging criminal trespass, intimidation and unlawful assembly with deadly weapons with intention to dispose his possession of this property by A.C.Muthiah, Somasundaram, Palaniappan and others. The complaint was registered in Crime No.943 of 2017 under Sections 147, 447, 427, 297(b) and 506(i) IPC. Another complaint by one Natarajan (B-Party) alleging Ayyappan @ M.A.M.R.Muthiah after the death of M.A.M.Ramasamy with intention to grab the property with his henchmen, had threatened the security men posted at the premises and tried to dispose the peaceful possession, which he holds as trustee of Rani Meiyammai Aachi Chettinad Charitable Trust. The said complaint was registered in Crime No.330 of 2016 against M.A.M.Muthiah @ Ayyappan and others for offences under Section 109, 448, 341, 294(b), 323 and 506(ii) IPC.

7.The Inspector of Police in his report to the Executive Magistrate has expressed his concern about breach of peace in view of rival claim by two parties and criminal cases registered pursuant to the dispute leading to law and order problem.

8.The Revenue Divisional Officer vide his order dated 24.08.2018, after considering the submissions of the respective parties, in exercise of the power conferred upon him under Section 145(4) Cr.P.C. as Executive Magistrate, has held that the property had been in possession of A.S.Palaniappan of 'B' Party till 28.05.2017. The members of 'A' Party have forcibly evicted Palaniappan from the property. The Inspector of the concerned jurisdiction has intimated about the illegal eviction of 'B' Party from the possession of the property by 'A' party. Hence, 'A' Party led by M.A.M.R.Muthiah was directed to hand over the possession back to A.S.Palaniappan, the person who was in physical possession of the property as on 28.05.2017 and to Rani Meiyammai Chettinadu Trust, represented by Natarajan.

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9.The said order of the Revenue Divisional Officer



directing the 'A' Party led by M.A.M.R.Muthiah to hand over the possession to 'B' Party is impugned in this revision.

10.Contention of the revisin petitioner:

The reliance upon the ex parte injunction granted in favour of 'B' party in O.S.No.733 of 2015 cannot be a base for deciding title, since the ex parte injunction was later vacated. In the absence of proof that 'B' Party or Palaniappan was in possession of the property before 28.05.2017 merely based on surmises, the Revenue Divisional Officer has held that the possession was with 'B' Party.

11.The Executive Magistrate ought to have taken note of the earlier complaint given by Palaniappan as Manager of Tamil Isai Sangam alleging on 29.12.2015, M.A.M.R.Muthiah entered in the property and taken control over the property. The complaint was not registered by the Police knowing well that it is a frivolous complaint. Palaniyappan then filed a private complaint reiterating the same fact. The learned Judicial Magistrate No.II, Madurai directed the police to register the complaint and investigate. On completion of investigation, the police filed referred charge sheet in R.C.S.No.110 of 2017 as 'mistake of fact'. While the police investigation has categorically concluded that 'B' Party was never in possession of the property and possession was always with 'A' Party all along, the Executive Magistrate failed to consider these documents inspite of producing it for his consideration.

12.It is also contended by the learned counsel for the revision petitioners that inspite of civil suits pending touching upon the rival claim regarding title and dismissal of the interim injunction of petition filed by 'B' party, the Executive Magistrate has traversed beyond the scope of his jurisdiction decided title, doubted the Aadhaar Card, residential certificate, legal heirship certificate, PAN card which goes to show that Krishnaraj and his daughter were residing in the said premises since December, 2015.

13.Pointing out that alleging dispossession on 28.05.2017, the Inspector has referred the dispute to first respondent on 11.06.2017. Without passing any order under Section 145(1) Cr.P.C., the Executive Magistrate prolonged the enquiry for nearly 15 months before passing the impugned order. Without any reason to justify that there is imminent threat to peace which is the essential ingredient to exercise power under Section 145(4) Cr.P.C., the impugned order has been passed, when civil Court has already seized of the matter and the threat of breach of peace whosoever ceased to exist.



14. Per contra, the learned counsel appearing for the respondents 3 to 7 would submit that as per the Will of Rani Meiyammai Aachi, the property stands with the Trust found by her. M.A.M. Ramasamy Chettiar, Sigappi Aachi, Kumara Rajah Muthiah are the beneficiaries mentioned in the Will. Though the property devolves upon the lineage mentioned in the Will and now M.A.M.R. Muthiah claims right through the deed of adoption, he was at no point of time in possession of the property either during the lifetime of M.A.M. Ramasamy Chettiar or thereafter. The very adoption deed relied by M.A.M. Muthiah @ Ayyappan is under cloud and he as a person who leads the 'A' Party has not come out from the cloud.

15. The Tamil Isai Sangam is the society under the tutelage of Rani Meiyammal Chettinad Charitable Trust which was maintaining the property. M.A.M. Ramasamy Chettiar during his lifetime permitted Palaniappan, Manager of Tamil Isai Sangam to reside in it. It is used as guest house. M.A.M.R. Muthiah is neither a member of Tamil Isai Sangam nor a trustee in Rani Meiyammai Chettinad Charitable Trust. The complaint to police reporting attempt to forcible eviction, but thwarted by timely intervention or the closure of the complaint regarding the incident dated 29.12.2015 does not mean that 'B' Party lost its possession to 'A' Party on that date. In fact, in the complaint itself it is clearly stated that the lock put up by 'A' Party on that day was removed and Palaniappan was put into possession.

16. The learned counsel would submit that merely quoting delay in disposal of the complaint or dismissal of the interim injunction petition cannot stand in the way ordering repossession, when material on record and evidences clearly establish that the members of 'A' Party have forcibly taken possession of the property and there is threat to peace and law and order.

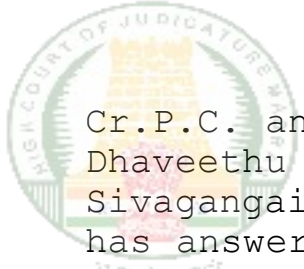
17. The learned counsel pointing out the relevant portions of the order of the Executive Magistrate, exposing the fabrication of documents by 'A' Party to show as if they are in possession, would submit that Krishnaraj never been in possession of the property and M.A.M.R. Muthiah @ Ayyappan, a resident of Chennai had no legal authority to forcibly dispossess 'B' Party from the property by virtue of patta which was issued in his name behind the back of the co-owner Meena Raja Muthiah Kumari Rani.

18. Point for consideration:

"Whether the impugned order is contrary to law and facts?"

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19. Before advertng to the merits of the case as put forth by the learned counsels, it is necessary to extract Section 145



Cr.P.C. and the observation made by Full Bench of this Court in *Dhaveethu v. District Collector, Sivagangai District, Sivagangai and others*, dated 13.04.2016, wherein the Full Bench has answered the query whether the absence of preliminary order under Section 145(1) Cr.P.C. will vitiate the final order passed under Section 145(4) of the Code as below:

"63. In the light of the above discussion, we answer the questions posed by the learned Judge as follows:-

"1. Though the Executive Magistrate is required to pass a preliminary order under Section 145(1), the absence of the same will not vitiate his final order under Section 145(4) of the Code.

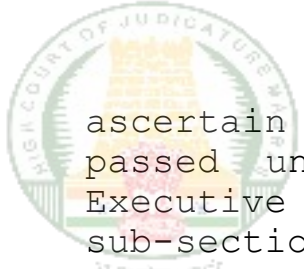
2. The failure of an Executive Magistrate to pass a preliminary order under Section 145(1) of the Code is a mere irregularity and will not affect his jurisdiction.

3. Considering the nature of power vested on the Executive Magistrate under Section 145 of the Code, no prejudice will be caused to parties.

4. The aggrieved parties are empowered to move the very same Authority for reviewing this decision or in its absence, move the competent civil court for an appropriate relief either regarding the title or regarding the right to possession. In rare cases, they can move this Court for a judicial review either under Section 397 of the Code or under Article 226/227 of the Constitution".

20. In view of the observation found in serial (4) above, the learned counsel for the respondent would contend that the revision petitioner instead of pursuing the suit for appropriate relief, had filed revision petition which ought to be resorted only in rare case. This case does not fall under the category of rare case, more particularly, when suits are pending between parties in respect of administering properties similarly placed.

21. The spirit of Section 145 Cr.P.C. empowering Executive Magistrates to pass appropriate orders to maintain peace in the locality cannot be undermined or subverted citing technical reasons. The Executive Magistrate has a sovereign duty to maintain peace. If upon information or from Police Report, he comes to know that dispute likely to cause breach of peace, he is bound to exercise his power under Chapter X of the Code. While exercising the said power, he need not look into the title or the claims of any of the parties to the right to possess the property in dispute. (Obviously it is for the competent Civil Court to decide). His focus must be to



ascertain who was in possession on the date when the order passed under Section 145(1) Cr.P.C. In this case, the Executive Magistrate has not passed any order explicitly under sub-section (1) of Section 145 Cr.P.C. However, this irregularity will not vitiate the final order passed under Section 145(4) of the Code as held by the Full Bench Judgment cited supra.

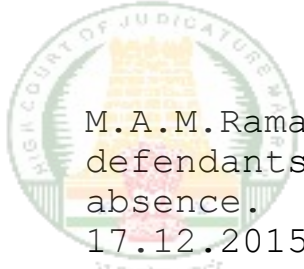
22.The requirement to exercise power under this Section as stated in the Proviso to Section 145(4) Cr.P.C. is, the Executive Magistrate if satisfied, can put in possession the dispossessed party, if the report of the police received within two months from the date of dispossession and such an order is necessary to keep peace.

23.The learned counsel referring the earlier complaint of 'B' Party dated 29.12.2015 submitted that even assuming the 'B' Party was forcibly dispossessed, the police Report referring the matter for 145 Cr.P.C. enquiry is long after expiry of 2 months period.

24.In this regard, the perusal of records would show that on 29.12.2015, the attempt by 'A' Party to drive out Palaniappan of 'B' Party from the premises did not fructify. The lock put up by 'A' Party removed on the same day and Palaniappan has not lost his possession on that day. The Executive Magistrate has considered all the materials which are necessary to decide the party in possession. Incidentally, he has considered the title as well as the conduct of the parties to obtain records to substantiate their claim regarding possession. For doing so, he cannot be blamed that he traversed beyond the scope of Section 145 Cr.P.C.

25.Palaniappan of 'B' Party is admittedly the Manager of Tamil Isai Sangam. It is the society formed by M.A.M.Ramasamy. Its object is akin to the object to Rani Meiyammai Chettinad Charitable Trust. It is a well known fact that M.A.M.Ramasamy Chettiar and his adopting son M.A.M.R.Muthiah @ Ayyappan were not getting on together and when M.A.M.Ramasamy Chettiar died on 02.12.2015 suits between them regarding the right to enjoy and possess the properties were pending.

26.The claim of possession by M.A.M.R.Muthiah in respect of this property is through the resolution of the Rani Meiyammai Achi of Chettinad Trust during its Board Meeting held on 21.12.2015. Contrarily, in his plaint filed in O.S.No.1534 of 2015 on the file of the Third Additional Subordinate Judge, Madurai, seeking injunction against Palaniappan and Rani Meiyammai Achi Trust, he has averred that he got the possession of the property immediately after the death of



M.A.M.Ramasamy Chettiar On 02.12.2015. He has alleged that the defendants on 12.12.2015 attempted to grab the property in his absence. This plaint is signed by M.A.M.R.Muthiah on 17.12.2015, which is much prior to the date of the meeting alleged to have held on 21.12.2015 and the resolution of the Rani Meiyammai Achi Trustees giving the possession of the property.

27.This contradiction which is brought to the notice of this Court by the learned counsel for the respondents 3 to 7 clearly show that the 'A' Party led by M.A.M.R.Muthiah without resorting to the legal means to prove his right over the property whatsoever had resorted to illegal means to dispossess the possession of 'B' Party by force. His earlier attempts, the complaints and counter complaints has made the jurisdictional Inspector of Police to report the matter to the Executive Magistrate fearing dispute between two groups likely to cause breach of peace. The first respondent after taking into consideration the facts on record and the likelihood of breach of peace has passed the impugned order to maintain peace. This Court finds no illegality of infirmity in his order. Therefore, this Criminal Revision Case is liable to be dismissed.

28.In the result, this Criminal Revision Case is dismissed. The order dated 24.08.2018 passed in Na.Ka.No.M/6405/2017 by the Sub Divisional Magistrate-cum-Revenue Divisional Officer, Madurai is confirmed. Consequently, connected Miscellaneous Petitions are dismissed.

Sd/-

Assistant Registrar(Crl. Side)

/True Copy/

Sub Assistant Registrar(CS-II)

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To

1.The Sub Divisional Magistrate-cum-
Revenue Divisional Officer,
Office of the Revenue Divisional Officer,
Madurai - 625 020.

2.The Inspector of Police,
Tallakulam Police Station,
Tallakulam, Madurai - 625 002.



3.The Government Advocate(Crl. Side)
Madurai Bench of Madras High Court,
Madurai.

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ORDER MADE IN
Crl.R.C (MD) No.510 of 2018
and
Crl.M.P (MD) Nos.7043 and 7809 of 2018
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