

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 07.02.2019

CORAM:

THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN

CRL.O.P.No.1827 of 2019
and Crl.M.P.Nos.1123 & 1492 of 2019

1. Santhakumari
2. Natarajan
3. Sathish
4. Rajesh ... Petitioners

Vs.

1. The Revenue Divisional Office
-cum- Sub Divisional Magistrate,
Chengalpattu,
Kancheepuram District.

2. The State Rep. by
The Inspector of Police,
E9, Thazhambur Police Station,
Kancheepuram District.

... Respondents

PRAYER: Criminal Original Petition filed under Section 482 of Cr.P.C. praying to call for the records in Na.Ka.No.4714/2018/A dated 09.01.2019, on the file of the Revenue Divisional Officer, Chengalpattu, Kancheepuram District cum Sub Divisional Magistrate and quash the order. (Prayer amended as per the order passed by this Court by an order dated 29.01.2019 in Crl.M.P.No.1492 of 2019 in Crl.O.P.No.1827 of 2019)

For Petitioners : Mr.Vinodh Kumar

For Respondents : Mr.Mohammed Riyaz
Additional Public Prosecutor.

O R D E R

This Criminal Original Petition has been filed challenging the order passed by the first respondent in Na.Ka.No.4714/2018/A dated 09.01.2019.

2. The learned counsel appearing for the petitioners would submit that the notice was issued by the first respondent on 26.12.2018, on the face of it there is absolutely no prima facie

material to entertain the petition under Section 107 of Cr.P.C. Even on the date of hearing ie., on 09.01.2019, the petitioners appeared through their counsel and requested time to file relevant documents. Without considering the request made by their counsel, the first respondent passed mandatory injunction, thereby directing the petitioners to remove the compound wall put up in the land purchased by the B Party ad measuring 0.13 cents and also restraining them not to interfere the peaceful possession and enjoyment of the B Party. Thereby the first respondent granted the mandatory injunction and permanent injunction as against the petitioners. Hence, he prayed to quash the impugned order.

3. The learned Additional Public Prosecutor appearing for the respondents would submit that the petitioner initially filed this petition challenging the notice issued by the first respondent dated 26.12.2018. Pending this petition, the first respondent passed the final order on 09.01.2019, thereby restraining the petitioners/A party from interfering the peaceful possession and enjoyment of the B Party land. Therefore, he sought for dismissal of this petition.

4. Heard Mr.C.Vinodh Kumar, learned counsel appearing for the petitioners and Mr.M.Mohamed Riyaz, learned Additional Public Prosecutor appearing for the respondents.

5. This petition has been filed by the petitioners challenging the impugned order passed by the first respondent dated 09.01.2019, thereby directing the petitioners/A party to remove the construction put up by them in the land ad measuring 0.13 cents of the B party land and also restraining the petitioners/A party not to interfere with the peaceful possession and enjoyment of the disputed property.

6. In this regard, it is relevant to rely the provisions under Section 107 of Cr.P.C. as follows :-

"107. Security for keeping the peace in other cases :-

(1) When an Executive Magistrate receives information that any person is likely to commit a breach of the peace or disturb the public tranquillity or to do any wrongful act that may probably occasion a breach of the peace or disturb the public

tranquillity and is of opinion that there is sufficient ground for proceeding, he may in the manner hereinafter provided, require such person to show cause why he should not be ordered to execute a bond with or without sureties for keeping the peace for such period, not exceeding one year, as the Magistrate thinks fit

(2) Proceeding under this section may be taken before any Executive Magistrate when either the place where the breach of the peace or disturbance is apprehended is within his local jurisdiction or there is within such jurisdiction a person who is likely to commit a breach of the peace or disturb the public tranquillity or to do any wrongful act as aforesaid beyond such jurisdiction."

It is seen that the first respondent ought to have authorized the proceeding laid down under Section 107 of Cr.P.C., on receipt of information that any person is likely to commit a breach of peace or disturb the public tranquillity and there is sufficient ground for proceeding, the Executive Magistrate may order such person to execute a bond with or without sureties for keeping the peace for such period, not exceeding one year.

7. It is also seen from the first respondent's order dated 09.01.2019, he directly issued the order as if the B party is the owner of the disputed property and directed the petitioners/A party to remove the construction put up by them and also restraining them from interfering the peaceful possession and enjoyment of the said property. It is also seen that the first respondent is not a civil Court to declare that the property belongs to the B party and also restraining the petitioners/A party not to interfere in the said property. The first respondent acted as a civil Court in the property dispute between the petitioners/A party and the B party. The parties have to approach the appropriate civil Court for proper relief in respect of the dispute between them. Therefore, the first respondent has no power and no jurisdiction to interfere with the ownership of the property and to declare either in favour of A party or B party.

8. In view of the above discussions, this Court feels that the impugned order has no legs to stand and it is liable to be set aside. Accordingly, the impugned order in

Na.Ka.No.4714/2018/A dated 09.01.2019, passed by the Revenue Divisional Officer-cum-Sub Divisional Magistrate, Chengalpattu, Kancheepuram District is set aside and this Criminal Original Petition stands allowed. Consequently, connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

rts

To

1. The Revenue Divisional Officer
-cum- Sub Divisional Magistrate,
Chengalpattu,
Kancheepuram District.
2. The Inspector of Police,
E9, Thazhambur Police Station,
Kancheepuram District.
3. The Public Prosecutor,
High Court of Madras,
Chennai.

+1cc to Mr.Vinodh Kumar, Advocate sr.10911

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rr(co)
nr 19/03/2019