

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :27.06.2019

CORAM

THE HONOURABLE Mr.JUSTICE N. ANAND VENKATESH

CrI.O.P.No.15913 of 2019

and

CrI.M.P.No.7934 of 2019

Miss.D.Wilma Kalavathy ... Petitioner

Vs.

1.The Revenue Divisional Office,
Erode,
Erode District.

2.The State Represented by,
The Inspector of Police,
Erode South Police Station,
Erode District.

3.Mrs.Anne Sheela Samuel
(3rd respondent is impleaded as per
the order of this Hon'ble Court dated
25.06.2019 made in CrI.M.P.No.8099 of 2019
in CrI.O.P.No.15913 of 2019) ... Respondents

Prayer: Criminal Original Petition is filed under Section 482 of
Criminal Procedure Code, to call for the records in
Na.Ka.No.5379/2018/A2 dated 04.06.2019 on the file of the
Revenue Divisional Officer, Erode and set aside the same.

For Petitioner : Mr.S.Suresh

For Respondents : Mr.M.Mohamed Riyaz,
Additional Public Prosecutor

For R3 : Mr.M.Guruprasad

O R D E R

The learned Additional Public Prosecutor takes notice
for the 1st and 2nd respondents. Mr.M.Guruprasad, takes notice
for the 3rd respondent.

2.The order passed by the 1st respondent dated 04.06.2019 in exercise of his powers under Section 107 of Cr.P.C has been put to challenge in the present petition.

3.It is seen from records that the petitioner and the 3rd respondent are closely related. The petitioner is the daughter of one Devasagayam and Rosy Devasagayam. The church was established and all the family members were performing the services in the church as pastors. After the death of the parents of the petitioner, one Samuel Devasagayam, who is the brother of the petitioner was appointed as the Managing Trustee.

He died in the year 2018. Thereafter, dispute arose between the parties and there are two suits pending in O.S.Nos.688 of 2018 and 109 of 2019.

4.At this juncture, based on the complaint given by the parties, the 1st respondent initiated proceedings under Section 107 of Cr.P.C. During the pendency of the proceedings, certain interim orders were passed regarding conducting prayers in the Church. Ultimately, a final order was passed by the 1st respondent on 04.06.2019, wherein he has directed the Tahsildar and the respondent police to hand over the possession of the property to the 3rd respondent. This order has now been put to challenge.

5.The learned counsel for the petitioner submitted that the 1st respondent had exceeded its jurisdiction in acting like a Civil Court and he has gone beyond the scope of Section 107 of Cr.P.C. The learned counsel submitted that Section 107 of Cr.P.C pertains to security for keeping peace and the said proceedings can never be used to decide the inter se dispute between the parties, regarding the property and right to run the church.

6.Mr.M.Guruprasad, the learned counsel appearing on behalf of the 3rd respondent submitted that even though the dispute regarding the property is pending before the Competent Civil Court, there was tension prevailing which would have resulted in disturbance to the public tranquillity and therefore the 1st respondent thought it fit to initiate proceedings under Section 107 of Cr.P.C. The learned counsel further submitted that certain interim orders were passed during the pendency of the proceedings and the parties were given various days and time for the purpose of conducting the prayer. The learned counsel submitted that the dispute regarding the property can be decided by the Competent Civil Court. However, insofar as, the time and date allotted for the prayer in the church is concerned, the same may be maintained till the disposal of the cases before the Civil court.

7. Heard the learned Additional Public Prosecutor appearing on behalf of the 1st and 2nd respondents.

8. It is apparent from the impugned order passed by the 1st respondent that he has exceeded its jurisdiction under Section 107 of Cr.P.C. The 1st respondent had acted as if he is a Civil Court, by deciding the inter se dispute between the parties regarding the property and has gone to the extent of directing the respondent police and the Tahsildar to take possession from the petitioner and hand it over to the 3rd respondent. This is a clear over reach on the part of the 1st respondent and the 1st respondent ought not to have passed an order of this nature. The 1st respondent was aware of the fact that the parties were already agitating their rights before the Competent Civil Court and that two suits are pending and therefore the 1st respondent should have relegated the parties to the Civil Court to decide their inter se rights and he should not have ventured to decide the same.

9. This Court has no hesitation to interfere with the order passed by the 1st respondent since it is per se illegal. Insofar as, the interim orders are concerned, it was done more as an arrangement during the pendency of the proceedings and those interim orders also merge along with the final order, after the completion of the proceedings. Therefore the request made by the learned counsel for the 3rd respondent to continue with the interim arrangement cannot be acceded by this Court.

10. In view of the above, the impugned order passed by the 1st respondent dated 04.06.2019 is hereby quashed. It is left open to the parties to agitate their rights before the Competent Civil Court, where two suits are pending and the parties can always seek for the interim relief even during the pendency of the suit. This order is not passed on the merits of the case and it is made clear that this order will not have any bearing on the merits of the case and the Court below shall independently assess and pass appropriate orders.

11. In the result, this Criminal original Petition is allowed. Consequently, connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

jas/ub

To

1.The Revenue Divisional Office,
Erode,
Erode District.

2.The Inspector of Police,
Erode South Police Station,
Erode District.

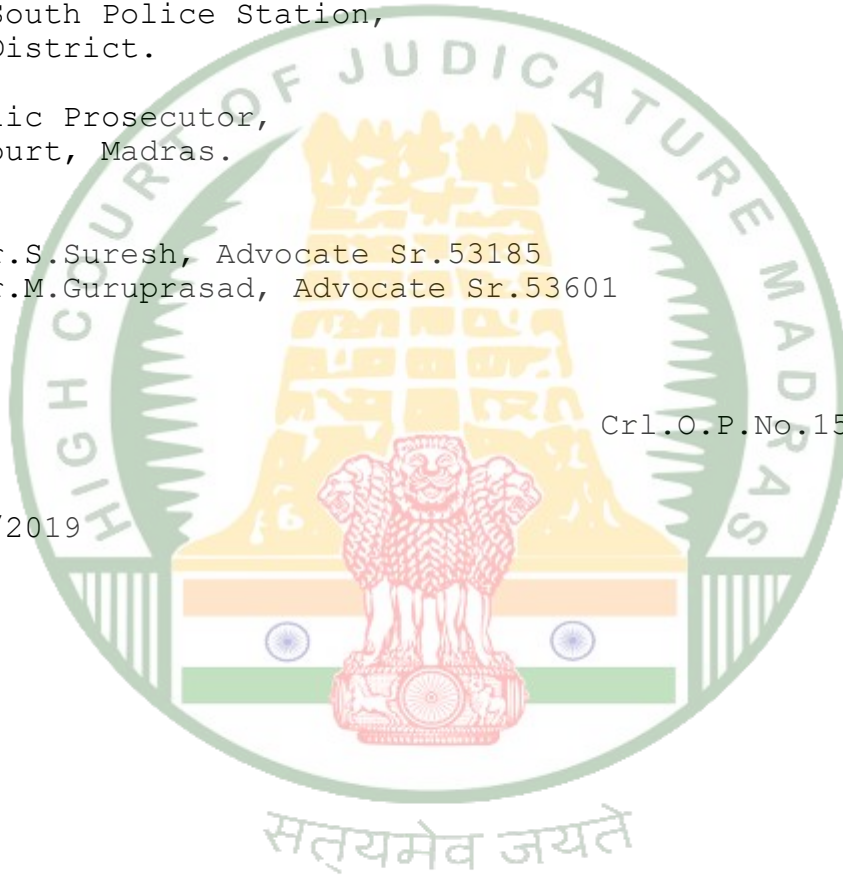
3.The Public Prosecutor,
High Court, Madras.

+1cc to Mr.S.Suresh, Advocate Sr.53185

+1cc to Mr.M.Guruprasad, Advocate Sr.53601

Crl.O.P.No.15913 of 2019

gj II[co]
srg 19/07/2019



WEB COPY