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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 19.08.2019

CORAM

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

W.P.No.18693 of 2019

and

W.M.P.Nos.18036 and 18038 of 2019

Savithri R Naidu

...Petitioner

..Vs..

1. The Revenue Divisional Officer,
Gobichettipalayam,
Erode.
2. The Deputy Superintendent of Police,
Sathiamangalam,
Erode District.
3. The Tahsildar,
Sathiamangalam Taluk,
Erode District.
4. The Inspector of Police,
Punjai Puliampatti Police Station,
Sathy Road, Punjai Puliampatti,
Erode District.
5. The Authorized Officer,
ARM Branch,
Punjab National Bank,
Nanjappa Road,
Coimbatore 641 018.
6. Santhosh

...Respondents

Prayer: Writ petition filed under Article 226 of the Constitution of India, to issue a Writ of certiorari to call for the records pertaining to the FIR in Crime No.261 of 2019 on the file of the 4th respondent and quash the same.

For Petitioner : Mr.R.Thirumoorthy

For Respondents : Mr.T.Shanmuga Rajeswaran - R1 to R4
Govt. Advocate (Crl. side)
Notice not served - R5



O R D E R

This Writ Petition has been filed by the petitioner to call for the records pertaining to the FIR in Crime No.261 of 2019 on the file of the 4th respondent and quash the same.

2. The petitioner has filed the present writ petition before this Court stating that she is the lawful owner of the property, including the building at old SF. No.342/A2 and New SF.No.327/2, Door No.385 and 386, Sathi-Coimbatore National High Road, Nallur Village, Bhavani Sagar Panchayat Union, Sathyamangalam Taluk, Erode District, measuring an extent of 2.27 acres, vide settlement deed dated 17.02.2004, registered as Document No.220 of 2004, on the file of the SRO, Punjai Puliampatti, Erode District. It is averred that she leased out the abovesaid property to one M/s. Diya Industries, which was later merged into one M/s. VR Textiles Private Limited. Since the said VR Textiles has not paid the monthly rentals, she filed Civil Suits for recovery of arrears of rent in O.S.No.380 of 2013 and O.S.No.75 of 2017 and the same are pending on the file of V Additional District Court, Coimbatore.

3. It is further averred that originally, the abovesaid land belonged to her husband V.Radhakrishnan, who settled the same in favour of her son Vikram R Naidu, by settlement deed dated 03.02.2004, registered as Document No.101 of 2004 on the file of the SRO Punjai, Puliampatti and her son Vikram R Naidu, in turn, settled the same in her favour by settlement deed dated 17.02.2004, registered as Document No.220 of 2004 on the file of the SRO, Punjai Puliampatti.

4. It is stated that her husband Radhakrishnan was the Managing Director of the abovesaid VR Textiles Private Limited and Diya Industries viz., the lessee company and the said company obtained loans from the Punjab National Bank and defaulted in repayment of loan and hence the 5th respondent initiated recovery proceedings under SARFAESI Act in the year 2015 and took physical possession of the immovable properties belonging to the said VR Textiles. The sixth respondent is the son of petitioner's late husband Radhakrishnan and his first wife Vimala and her husband passed away on 17.08.2015.

5. Since the bank took possession of VR textiles, the petitioner and her son Vikram R Naidu met the Chief Manager of Punjab National Bank on 10.06.2016, to demarcate her property measuring 2.27 acres, as the same is not a secured asset and on the same day, markings were done and photos were taken and possession was handed over to the petitioner by the bank. The



property was never under the recovery proceedings, as evident from the possession notice dated 05.06.2016.

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6. The petitioner further averred that V.Radhakrishnan illegally cancelled the settlement deed unilaterally and by creating forged documents, got a settlement deed in favour of 6th respondent, behind her back on 12.11.2007 and thereafter, 6th respondent filed a suit in O.S.No.226 of 2008 for declaration, which was transferred and renumbered as O.S.No.379 of 2013 and the same is pending on the file of the learned V Additional District Judge Court, Coimbatore. Due to pendency of other cases, the parties sought joint trial.

7. The petitioner's son Vikram Naidu has also lodged a criminal complaint against the 6th respondent herein for creating a bogus document and unilaterally canceling the settlement deed and thereafter for executing another settlement deed, for offence under Section 120-B, 467, 466, 471 and 420 IPC in Crime No.90 of 2009 before the CCB Coimbatore and the same is pending in C.C.No.232 of 2014 on the file of the learned Judicial Magistrate-VI, Coimbatore.

8. The 6th respondent and another accused filed discharge petition which was dismissed by this Court as well as the Supreme Court on 09.01.2018 and 12.04.2019. In the meanwhile, the Punjab National Bank, which initiated recovery proceedings, had auctioned the machineries of VR Textiles and sold to one Mathizhagan of Mahil Enterprises and with the petitioner's permission by letter dated 04.03.2019, kept the machineries in the above said properties, which was in her possession. While so, on 14.04.2019, the agents of the 6th respondent herein along with henchmen, attempted to trespass into her property and the same was thwarted by her security persons and immediately, she gave a complaint before the 3rd respondent on 17.04.2019. But the complaint was returned stating that no crime was committed. Hence, immediately she installed CCTV cameras around the property. On 17.06.2019, the agents of 6th respondent along with Sub-Inspector of Police from the Punjai Puliamatti Station trespassed into her property, illegally, through an opening between the petitioner's property and the said VR Textiles and threatened her security supervisor Prakash and other Security persons and on coming to know that the same is recorded through CCTV cameras, they left the property. Thereafter, the petitioner filed I.A.No.3 of 2019 in O.S.No.379 of 2013 seeking for an interim injunction restraining the 6th respondent from interfering with her possession and enjoyment of her property on 19.06.2019, which is pending.



9. Since the 6th respondent and his men with the help of the police, attempted to trespass into her property, she gave detailed complaint before the 2nd and 4th respondents on 20.06.2019, narrating the sequence of events, by enclosing 25 documents, seeking for police protection to her property, citing various civil and criminal cases. The 4th respondent instead of acting on her complaint, by giving protection to her and to her property, received an ante dated complaint from the 5th respondent dated 15.06.2019, and ironically registered an FIR in Crime No.261 of 2019 under Section 145 Cr.P.C. and referred the same to the 3rd and 1st respondent. The second respondent herein, in the guise of sending a report to the RDO and Tahsildar, is stated to have threatened her to vacate and handover possession of the property, failing which, they would forcibly evict her. When the said physical possession of the property was handed over by the bank, duly in exercise of the powers under SARFAESI Act, the action of the 2nd respondent and the 4th respondent in collusion with the 6th respondent in threatening her to hand over the physical possession, is illegal and an abuse of process of law. The intention of the 6th respondent is to take possession from the petitioner by using his money and muscle power. If she is dispossessed under the guise of Section 145 of Cr.P.C., proceedings, the same would be put against her in the pending suits and any finding given under Section 145 of Cr.P.C. proceedings would affect her case. Therefore, the petitioner has filed the present writ petition praying to issue a Writ of certiorari to call for records pertaining to the FIR in Crime No.261 of 2019, on the file of the 4th respondent and quash the FIR.

10. The learned counsel for the petitioner would further submit that the petitioner is the owner of the property and she is in lawful possession of the property. The sixth respondent illegally cancelled the settlement deed by creating forged documents and got a settlement deed in his favour, behind her back, dated 12.11.2007, and thereafter, the 6th respondent filed a suit in O.S.No.226 of 2008 for declaration, which was transferred and renumbered as O.S.No.379 of 2013, pending on the file of the learned Additional District Judge, Coimbatore. During the pendency of the suit, with the help of the 2nd and 3rd respondent, the 6th respondent tried to trespass into the petitioner's property and with connivance, the 6th respondent, approached the 3rd and 1st respondents to initiate proceedings under Section 145 of Cr.P.C. The second respondent herein under the guise of sending a report to the RDO and Tahsildar, threatened her to vacate and hand over possession of the property. Therefore, under these circumstances, the FIR in Crime No. 261 of 2019 on the file of the 4th respondent is liable to be quashed.



11. The learned Government Advocate (Criminal Side) would submit that there is an apprehension of breach of peace. Both the petitioner and 5th respondent filed a complaint before the second respondent. The second respondent registered the case under Section 145 of Cr.P.C., Therefore, in order to maintain peace, the second respondent, based on the complaint given by the parties, referred the matter to the executive Magistrate and for proceedings under 145 Cr.P.C. Therefore, FIR need not be quashed.

12. The learned Government Advocate would further submit that there are rival claims against both the parties and group of people involved and also there is a threat to peace. Therefore, the 3rd respondent initiated proceedings u/s.145 Cr.P.C., based on the report filed by the first respondent.

13. Heard the learned counsel for the petitioner and the learned Government Advocate [Criminal Side] and also perused the materials available on record.

14. Admittedly, in this case, there are civil suits pending. Both the parties have filed civil suits. The 6th respondent filed a suit in O.S.No.226 of 2008 for declaration, which was transferred and renumbered as O.S.379 of 2013, and the same is pending on the file of the learned V Additional District Judge, Coimbatore. The suits filed by the petitioners in O.S.No.380 of 2013 and 75 of 2017 are pending. Both the parties have filed the suits in respect of the suit property. Further, based on the complaint given by the petitioner in Crime No.90 of 2009, the case in C.C.No.232 of 2014, on the file of the learned Judicial Magistrate-VI, Coimbatore is also pending. During the pendency of the civil suit, the 6th respondent filed a complaint against the petitioners before the 4th respondent. The 4th respondent referred the matter to the first respondent to register the case under Section 145 of Cr.P.C. The petitioner has filed an interlocutory application in I.A.No.3 of 2019 in O.S.No.379 of 2013 seeking to restrain the respondents from interfering with the possession and enjoyment of the property. Therefore, according to the petitioner, initiating proceedings under Section 145 of Cr.P.C. is unwarranted. According to the petitioner, the proceedings under Section 145 Cr.P.C. would be initiated only when the situation is likely to cause breach of peace over a dispute concerning land or water.

15. When the civil suit is pending between the parties regarding the question of ownership, parallel proceedings under 145 Cr.P.C. is totally unwarranted. The parties would very well



prove their claim before the Civil Court by adducing oral evidence and producing documentary evidence, in their support.

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16. The judgment and decree would be obtained from the civil Court will be binding on the parties and it would more value than a decision taken in the proceedings under Section 145 Cr.P.C.

17. In support of his contention, the learned counsel for the petitioner, has placed reliance on the judgment of the Hon'ble Apex Court in the matter of Ram Sumer Puri Mahant Vs. State of U.P. And others (1985) 1 SCC 427:

'When a civil litigation is pending for the same property wherein the question of possession is involved and the parties are in a position to approach the civil Court for interim orders such as injunction or appointment or receiver for adequate protection of the property during pendency of the dispute, there is no justification for initiating a parallel criminal proceeding under section 145 Cr.P.C. Multiplicity of litigation is not in the interest of the parties nor should public time be allowed to be wasted over meaningless litigation. Therefore, the parallel proceeding should not continue and the order of the Magistrate directing initiation of such a proceeding under Section 145 Cr.P.C. must be quashed.'

18. But in this case, the 6th respondent has filed a suit for declaration in O.S.No.226 of 2008. Subsequently, it was renumbered as O.S.379 of 2013. Therefore, the suit is pending from 2008 and the petitioner has also filed a petition seeking for interim injunction restraining the sixth respondent from interfering with her possession and enjoyment of the property on 19.06.2019 in I.A.No.3 of 2019 in O.S.No.379 of 2013. At this stage, initiating the proceedings under Section 145 of Cr.P.C. is unwarranted.

19. It is submitted by the learned counsel for the 6th respondent that in the case referred to by them, at the time of initiating the proceedings under 145 of Cr.P.C., there was no charge sheet pending. The said contention has no force, as the pending charge sheet, is not in any way connected to the proceedings under section 145 of Cr.P.C.. Therefore, initiating proceedings under section 145 of Cr.P.C. is totally unwarranted. When there are civil cases and criminal cases are pending between the parties, the parties shall work out the remedy before the said Courts. As stated earlier, if the judgment and



decree would be obtained in the Civil Court, it will bind on the parties. The criminal case between the parties should reach logical end and trial Court would set aside the guilt of the accused. When such being the position, the 6th respondent approached the police to give a criminal colour involving breach of peace in the locality, to the civil dispute. The 4th respondent, without applying his mind, referred the matter to the first respondent. The first respondent has also without realizing that the civil cases are pending between the parties and the dispute is purely civil in nature, proceeded further. Therefore, this court is of the view that the arguments advanced on the side of the petitioner has some force and acceptable. As rightly contended by the counsel for petitioner, criminal colour is given to a civil dispute in this case.

20. In the result, the Writ Petition is allowed and the FIR in Crime No.261 of 2019 on the file of the 4th respondent is quashed. The parties are at liberty to workout their remedy before the competent Court in the manner known to law. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(C.O.)

/True Copy/

Sub Assistant Registrar

To

1. The Revenue Divisional Officer, Gobichettipalayam, Erode.
2. The Deputy Superintendent of Police, Sathiamangalam, Erode District.
3. The Tahsildar, Sathiamangalam Taluk, Erode District.
4. The Inspector of Police, Punjai Puliampatti Police Station, Sathy Road, Punjai Puliampatti, Erode District.
5. The Government Pleader, High Court, Madras.
6. The Authorized Officer, ARM Branch, Punjab National Bank, Nanjappa Road, Coimbatore 641 018.

+1 cc to M/s.K.S.Karthik Raja, Advocate Sr.No. 70618

+1 cc to Mr.R.Thirumoorthy, Advocate Sr.No.70879

AKM/27.01.2020/7P- 9C /

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