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IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 26.09.2019

PRONOUNCED ON : 25.11.2019

CORAM:

THE HONOURABLE MR.JUSTICE A.D.JAGADISH CHANDIRA

Crl.RC.No.806 of 2019  
Crl.MP.No.11760 of 2019

1.Shanmugam  
2.R.Eswaramurthy  
3.S.Mynavathi

...Petitioners/B Party

Vs

1.The Executive Magistrate Cum Revenue Divisional Officer  
Coimbatore South, Coimbatore ..... 1st  
Respondent

2.Viswanathan  
3.Poovathal  
4.Santhamani  
5.Pachai Nayagi  
6.Ramya

7.Babu @ Shanmugam, President  
Tamizhaga Vivsaiyigal Sangam, Coimbatore (Non Political)  
Coimbatore

8.Balasubramanian

9.Arumugam ... Respondents 2 to 9 / A Party

Prayer:- This Criminal Revision Petition is filed, against the order dated, 07.08.2019, made in Na.Ka.No.2277/2019/A1, by the 1st Respondent, Executive Magistrate Cum Revenue Divisional Officer, Coimbatore South, Coimbatore.

For Petitioner : Mr.K.Goviganesan

For Respondent : Mr.M.Mohamed Riyaz-APP-R1  
Mr.K.Myilsamy-R2  
RR3 to 9 -No appearance

ORDER

1.This Criminal Revision Petition is filed, against the order dated, 07.08.2019, made in Na.Ka.No.2277/2019/A1, by the 1st Respondent, Executive Magistrate Cum Revenue Divisional Officer, Coimbatore South, Coimbatore.



2. For the sake of convenience, the Petitioners hereinafter are referred to as B-Party and the Respondents 2 to 9 hereinafter are referred to as A-Party.

3. The facts leading to filing of this Criminal Revision Petition are as follows:-

- a) Layout plots to an extent of 50 cents, comprised in SF.No.160/1B, in Athappagoundan Pudur, Irukur Village, Sulur Taluk, Coimbatore District, were purchased by the Petitioners/B Party from the Respondents 2 to 9/A Party. In between the said lands, B Party have been using a pathway, measuring 25 ft. North-South. While so, in February 2019, the Respondents 2, 8 and 9 the A Party, by virtue of a registered deed, had claimed ownership of the said pathway to use the same to access their lands. Hence, there was a dispute arose between both the parties regarding the usage of the said pathway.
- b) In such a situation, apprehending that there is likelihood of breach of peace among the public, in order to maintain law and order and in order to decide the ownership of the pathway in question, a case was registered in Cr.No.881 of 2019 under Section 145 of Cr.PC and on the basis of the report of the Inspector of Police, Singanallur Police Station, notices were issued to both parties and enquiry was conducted before the 1st Respondent.
- c) In and by the impugned order, the 1st Respondent had concluded that based on the documents, the Petitioners/B Party cannot claim any manner of right over the pathway in question and that the B Party have purchased the lands, excluding the pathway and hence, the contention of the B Party that the pathway belonged to them cannot be accepted, however, held that since the ownership of the pathway in question shall be decided only by a Civil Court, both the parties shall use the pathway in question in common without any hindrance to each other and also directed the Inspector of Police, Singanallur, to supervise and report the situation. Hence, this Criminal Revision Case has been filed, seeking the relief as stated above.

4. This court heard the submissions of the learned counsel for the Petitioners and the learned Additional Public Prosecutor for the 1st Respondent and the learned counsel for the 2nd Respondent.

5. The learned counsel for the Petitioner would submit that the 1st Respondent ought not to have initiated proceedings under Section 145 of Cr.PC when a civil suit is OS.No.17 of 2019 is pending in respect of the same subject matter and that the 1st Respondent, without hearing the Petitioners and



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without accepting the counter filed by them, had passed the impugned order and that the passage has been valued and the same has been sold to the Petitioners and thereafter, the observation to the contrary is not only erroneous, but highly perverse. He would further submit that though the civil dispute regarding pathway is between the Petitioners and the 2nd Respondent only, the other Respondents herein have been added in order to show that there is a breach of peace to invoke Section 145 of Cr.PC and that the 1st Respondent has assumed the role of a Civil Court and passed the impugned order in a civil matter and that there is no incident violating the public peace and therefore, based on assumptions and presumptions, the 1st Respondent cannot pass any order and that in such circumstances, the impugned order of the 1st Respondent is against law, unsustainable and liable to be set aside.

6. In support of his contentions, the learned counsel for the Petitioners would rely on the decisions reported in AIR 1985 SC 472 (Ram Sumer Puri Vs. State of UP), 1991 CrLJ 1798 (Indira and others Vs. Dr. Vasantha and others) and 2001 1 LW CrL 138 (Ponnan Vs. Sakkarai @ Govindasamy)

7. The learned Additional Public Prosecutor for the 1st Respondent would submit that a dispute existed between the A-Party and B-Party in respect of a pathway and that finding that the dispute was likely to cause breach of peace, the Inspector of Police had registered a case in FIR.No.881 of 2019 under Section 145 of Cr.PC and had referred the matter for enquiry to the 1st Respondent and that based on the request made by the Inspector of Police, both the parties were directed to appear before the 1st Respondent on 4.7.2019 and after hearing the parties and perusing the documents, the 1st Respondent had passed the impugned order, directing the parties to use the pathway without blocking the other party.

8. At this juncture, the learned counsel for the Petitioners would submit that there was already a civil suit pending between the parties, in respect of the usage of the pathway in OS.No.17 of 2019 before the District Munsif Court, Sular and that when the Civil Court is already seized of the matter, the 1st Respondent had passed the impugned order, which is illegal and thereby, he would seek to set aside the same.

9. Though the notice had been served on behalf of the private Respondents and affidavit of service had been filed, only the 2nd Respondent had entered appearance and thereby, this Court had directed the names of the other Respondents to be printed in the cause list and accordingly, their names have printed in the cause list. However, there is no representation for the other Respondents.



10. I have given my careful and anxious consideration to the rival contentions put forward by the learned counsel for the Petitioners and the learned Additional Public Prosecutor for the 1st Respondent and the learned counsel for the 2nd Respondent and perused the entire materials placed before this Court.

11. It is seen from the records that the dispute between the parties is with regard to usage of a pathway, in respect of which, a civil suit in O.No.17 of 2019 is pending on the file of the District Munsif Court, Sulur. However, it is seen from the impugned order that the 1st Respondent has assumed the role of a Civil Court and rendered a finding relating to the ownership of the property in question. When already the Civil Court is seized of the matter, it is not open to the 1st Respondent to usurp the jurisdiction of the Civil Court and analyse the documents and to give a finding with regard to title and possession and as such the impugned order is illegal.

12. In this regard, in AIR 1985 SC 472 (Ram Sumer Puri Vs. State of UP), it was observed by the Honourable Supreme Court that when a civil litigation is pending for the property, wherein the question of possession is involved and has been adjudicated, initiation of a parallel criminal proceeding, under Section 145 of the Code, would not be justified and that multiplicity of litigation is not in the interest of the parties nor should public time be allowed to be wasted over meaningless litigation.

13. In 1991 CrL LJ 1798 (Indira and others Vs. Dr. Vasantha and others), applying the decision reported AIR 1985 SC 472 (Ram Sumer Puri Vs. State of UP), this Court, finding that there were civil proceedings pending between the parties, long before the impugned order passed therein, declaring the possession in favour of the 1st Respondent therein, had set aside the impugned order therein.

14. In the decision of this Court reported in 2001 1 LW CrL 138 (Ponnan Vs. Sakkarai @ Goindasamy), it was held as under:-

"9. Applying the aforesaid principles enunciated in the decisions, I am of the view that the order passed by the Executive Authority date 8.3.99 is liable to be set aside. When the parties are already fighting before the Civil Court in respect of the subject matter, the possession or otherwise can be decided only by the civil court. The finding of the Executive Authority amounts to interference in the jurisdiction



of the Civil Court and on this sole ground, the order is vitiated.

10. For the reasons mentioned above, the revision is allowed and the order passed by the Executive Magistrate-cum-Revenue Divisional Officer, Kallakurichi dated 8.3.99 is set aside. The parties are directed to decide the rights in the pending civil suit. The learned District Munsif Kallakurichi is directed to dispose both the suits in a period of three months. If the suits could not be disposed of in a period of three months for valid reasons, it is open to the trial court to consider the appointment of a receiver relating to the rice mill. Consequently, CrI.MP.2360/99 is closed."

15. In the result, in the light of the aforesaid principles laid down in the above decisions, this Criminal Revision Petition is allowed and the impugned order, dated 7.8.2019 passed under Section 145 of Cr.PC, is set aside. However, it is made clear that it is open to the parties to exercise their respective rights and claims, in respect of the pathway in dispute, before the appropriate Civil Court. Consequently, the connected MP is closed.

Sd/-  
Assistant Registrar(CS IV)

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Sub Assistant Registrar

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To:

1. The Public Prosecutor, High Court,  
Madras.
2. The Executive Magistrate Cum Revenue Divisional Officer  
Coimbatore South, Coimbatore.

+1cc to Mr.K.Myilsamy, Advocate Sr.98114  
+1cc to M/s.K.Govi Ganesan, Advocate Sr.98276

CrI.RC.No.806 of 2019

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