

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 03.01.2019
Pronounced on : 09.01.2019

CORAM:

THE HONOURABLE MR. JUSTICE V.PARTHIBAN
Crl.R.C.No.1105 of 2018 and
Crl.M.P.No.12976 of 2018

1. K.M.Abdul Wahab
2. M.A.Yusuf Ansari,
3. M.A.Sharfuddin
4. M.A.Syed Ali ...Petitioners/A-Party
Vs.

1. M.A.Nagoor Meeran
2. Muhammed Iqbal
3. Aub Khan
4. Mohamed Saleem ... Respondents /B-Party

5. The Inspector of Po,ice,
R-1 Mambalam Police Station,
T.Nagar, Chennai.
6. The Tahsildar & Executive Magistrate,
Guindy Taluk, Chennai - 600 045. ...Respondents 5&6

The Criminal Revision filed under Section 397 read with 401 of Code of Criminal Procedure against the order dated 10.07.2018 in proceedings No.A1/1671/2018 passed by the The Tahsildar, Executive Magistrate, the 6th respondent herein.

For Petitioners : Mr.M.Babu Muthu Meeran
For Respondents : Mr.K.Sivakumar for RR1 to R4
Mr.G.Harihara Arun Soma Sankar
Govt. Advocate (Crl.Side)
for R5 & R6

ORDER

The above Criminal Revision has been filed against the order passed by 6th respondent / Executive Magistrate dated 10.07.2018. The facts which give rise to filing of the present criminal revision are stated hereunder:

The petitioners herein are the owners of the property in basement area at T.Nagar, Ranganathan Street, bearing Door No.63/24 undivided share measuring total extent of 4715 sq.ft. The petitioners are in possession and enjoyment

of the same from the date of purchase of the property in 1988. The property was originally purchased by the first petitioner along with his partners one Kamal and Nooruddin, in the name of K.N.W. Enterprises. After purchase of the property, the petitioners have constructed 4 shops at the basement area and the same has been rented out. Shop Nos.A2 & A4 had been used by the petitioners and A1 and A3 had been used by Kamal and Nooruddin respectively. Thereafter, shop Nos.A1, 2 and 3 had been reconstructed as one shop and the business was carried on jointly by the partners.

2 While so, one of the partners, Nooruddin sold his undivided share of property to one Ayub Khan. The other partner Kamal had two wives and half share belong to the first wife had been sold to one Nagoor Meeran, the first respondent herein and remaining half share of second wife had been purchased by the sons of first petitioner namely, petitioners 2 to 4 herein. The said Nagoor Meeran, the first respondent herein had purchased subsequently the share of Ayub Khan also. In effect, half share belongs to the Petitioners/A-Party and the remaining half share belongs to Nagoor Meeran, the first respondent herein in the property, totally measuring an extent of 4715 sq.ft. Since the property consists of undivided share, both the parties had been enjoying the property jointly and equally.

3 In august 2017, on behalf of the respondents 1 to 4 / B-Party, an attempt was made to encroach upon the pathway commonly used by both A and B parties. A complaint was lodged before the 5th respondent on 08.08.2017 and the petitioners/A Party approached this Court in Crl.O.P.No.16686 of 2017 for Police Protection and the same has also been allowed by an order dated 12.10.2017. Even after the protection was granted by this Court, the same was not effectively implemented and therefore, another complaint was lodged at the instance of A-party on 26.10.2017. Further, an attempt was made to dispossess the Petitioners/A-Party by the respondents /B party on 06.11.2017 and another complaint was also filed before the 5th respondent dated 06.11.2017. While matters stood with, on 21.06.2017, according to the petitioners, the respondents 1 to 4 / B-Party along with their henchmen trespassed into the property under the possession of the petitioners / A-Party and committed theft of valuable items stored in the shop and also caused extensive damage to the property and forcibly took possession of the entire area to the extent of 4715 sq.ft. Thus, the petitioners / A-Party were dispossessed wrongfully and illegally.

4 In the above circumstances, a complaint was registered on 22.06.2018 before the 5th respondent and the investigation was set in motion and the 5th respondent, during the course of the investigation, visited the scene of occurrence and collected all information as available on the CCTV footage. Thereafter, the case was registered in Crime No.451 of 2018 under Sections 448, 427 and 380 IPC against the respondents/B Party. The respondents 1 to 4 / B-Party by forcibly taking of possession illegally, from the petitioners / A-Party, the 5th respondent registered a case in Crime No.452 of 2018 under Section 145 of Cr.P.C. and requested the 6th respondent to lock the disputed premises, since the dispute was disturbing public tranquility and peace. When the dispute was referred to the 6th respondent, an enquiry was conducted and after summoning the petitioners / A-Party on 10.07.2018, statement was recorded. On the same day, it appears that the 6th respondent passed a final order concluding that the parties shall obtain appropriate reliefs from the Civil Court, in view of the dispute in regard to possession and title of the properties. According to the 6th respondent that both parties are commonly entitled to 4715 sq.ft. of undivided share and both parties are entitled to half of undivided share in the total extent of 4715 sq.ft. and also a dispute in regard to the usage of common pathway in the subject property. The said order passed by the 6th respondent / Executive Magistrate is put to challenge in the present Revision Petition.

5 According to Mr.C.Babu Muthu Meeran, the learned counsel appearing for the petitioners that learned Executive Magistrate / 6th respondent herein has not followed the procedures as contemplated under Section 145 of Cr.P.C. According to him, the 6th respondent has not passed any preliminary order as to who was in possession of the subject property at the time when the complaint was lodged at the instance of the petitioners / A-Party in terms of Section 145 of Cr.P.C. He would particularly draw the attention of this Court to Section 145(4) of Cr.P.C and the Proviso to the Sub-Section which reads as under:

"145. Procedure where dispute concerning land or water is likely to cause breach of peace

"(4) The Magistrate shall then, without reference to the merits or the claims of any of the parties, to a right to possess the subject of dispute, peruse the statements so put in, hear the parties, receive all such evidence as may be produced by them, take such further evidence, if any as he thinks necessary, and, if possible, decide whether and which of the

parties was, at the date of the order made by him under sub-section (1), in possession of the subject of dispute:

Provided that if it appears to the Magistrate that any party has been forcibly and wrongfully dispossessed within two months next before the date on which the report of a police officer or other information was received by the Magistrate, or after that date and before the date of his order under sub-section (1), he may treat the party so dispossessed as if that party had been in possession on the date of his order under sub-section (1) "

6 Unfortunately, without dealing with the aspect of the possession, 6th respondent has passed final orders without adverting to the various materials, which were placed for consideration, while deciding the factum of possession at the time of dispute. The Executive Magistrate / 6th respondent has merely directed the parties to obtain appropriate relief from the Civil Court without making any reference to the factum of possession by either party A or B. According to the learned counsel, on the day, when the dispute arose between the parties, which gave rise to filing criminal case under Section 145 Cr.P.C, the petitioners/A-Party was in possession and they were wrongfully dispossessed and in which event the petitioners herein ought to have been restored with the possession by the 6th respondent.

7 The learned counsel appearing for the petitioners would draw the attention of this Court to the decision of the Hon'ble Full Bench of this Court on the scope of Section 145 reported in 2016-2-L.W.(CrI.)1. He would particularly draw reference to the order passed by the Hon'ble Supreme Court of India as relied on by the Full Bench of this Court in Paragraph No.26, which is extracted hereunder:

"26. The Supreme Court, in its decision in R.H.Bhutani Considered the object and scheme of the said provision. In paras 8 and 9, it was observed as follows:- The object of Section 145, no doubt, is to prevent breach of peace and for that end to provide a speedy remedy by bringing the parties before the Court and ascertaining who of them was in actual possession and to maintain status quo until their rights are determined a competent Court. The section requires that the

Magistrate must be satisfied before initiating proceedings that a dispute, regarding an immoveable property exists and that such dispute is likely to cause breach of peace. But once he is satisfied of these two conditions, the Section requires him to pass a preliminary order under Sub-S.(1) and thereafter to make an enquiry under Sub-S (4) and pass a final order under Sub-S. (6). It is not necessary that at the time of passing the final order the apprehension of breach of peace should continue or exist. The enquiry under Sec.145 is limited to the question as to who was in actual possession on the date of the preliminary order irrespective of the rights of the parties. Under the second proviso, the party who is found to have been forcibly and wrongfully dispossessed within two months next preceding the date of the preliminary order may for the purpose of the enquiry be deemed to have been in possession on the date of that order. The opposite party may of course prove that dispossession took place more than two months next preceding the date of that order and in that case the Magistrate would have to cancel his preliminary order. On the other hand, if he is satisfied that dispossession was both forcible and wrongful and took place within the prescribed period, the party dispossessed would be deemed to be in actual possession on the date of the preliminary order and the Magistrate would then proceed to make his final order directing the dispossessor to restore possession and prohibit him from interfering with that possession until the applicant is evicted in due course of law. This is broadly the scheme of Sec. 145.. .. The satisfaction under SubS.(1) is of the Magistrate. The question whether on the materials before him, he should initiate proceedings or not is, therefore, in his discretion which, no doubt, has to be exercised in accordance with the well recognised rules of law in that behalf. No hard and fast rule can, therefore, be laid down as to the sufficiency of material for his satisfaction. The language of the Sub-Section is clear and unambiguous that he can arrive at his satisfaction both from the police report or "from other information" which must include an application by the party dispossessed. The High Court, in the exercise of its revisional jurisdiction, would not go into the question of sufficiency of material, which has satisfied the Magistrate..."

According to the learned counsel, the enquiry under Section 145 of Cr.P.C is limited to the question as to who was in possession on the date of the preliminary order, irrespective of the rights of the parties. If only the 6th respondent applied his mind properly to the facts of the case vis-a-vis the claim of the petitioners herein, he ought to have ordered possession to the petitioners herein. Unfortunately, 6th respondent without touching upon the issue of possession, has simply passed an order by referring the parties to obtain necessary relief from the Civil Court. The learned counsel would therefore, submit that the order impugned in the Revision Petition may be set aside and the matter may be remanded back to the 6th respondent for fresh consideration on the aspect of possession of the subject property in terms of the Provisions of Section 145(4) of Cr.P.C.

8 Per contra, the learned counsel appearing for respondents 1 to 4 herein would submit that there was no wrongful dispossession at all and the contention put forth on behalf of the petitioners is without any basis. The 6th respondent, while passing the order, has taken into consideration all the relevant materials and therefore, the same does not call for any interference.

9 The learned Government Advocate (Crl.Side) appearing for respondent 5 and 6 would also reiterated the submissions as above and would support the order passed by the learned Executive Magistrate / 6th respondent.

10 Heard the learned counsels appearing for both the parties and perused materials and pleadings placed on record.

11 The Executive Magistrate/6th respondent, while passing the impugned order, has failed in his duty to appreciate the scope of Section 145(4) and the proviso attached to that. When a dispute of this nature is brought before him for consideration, the first and foremost aspect to be looked into is to see who was in possession of the subject property without any reference to the rights of the parties on the day, when such dispute was being adjudicated upon in terms of scheme of Section 145 of Cr.P.C. Unfortunately, in this case the 6th respondent appears to have abdicated the mandatory duty cast upon him under Section 145 Cr.P.C. in deciding the issue on the aspect of possession of the subject property by either A-Party or B-Party. As far as the facts of the present case are concerned, the petitioners A-Party assert that they were

wrongfully dispossessed at the instance of respondents/B-Party and for such wrongful and forcible dispossession, several complaints had been lodged before the 5th respondent, for which, 5th respondent had acted and filed a criminal case against the respondents 1 to 4/B-Party. While so, it is unfortunate that the 6th respondent has not taken into consideration those aspects for deciding the issue of possession of subject property in terms of Section 145(4) of Cr.P.C.

12 As rightly contended by the learned counsel for the petitioners, that the scope of Section 145 extends to give a finding in respect of the possession of the subject property and in which event it is incumbent upon the 6th respondent to give a specific finding on that aspect and pass orders on the basis of such finding in order to restore the possession of the subject property to the parties concerned. In this case, this Court finds that the 6th respondent has failed to discharge his duties on the aspect of rendering a finding of who was in possession of the property on the crucial date. The order passed by the 6th respondent directing the parties to obtain necessary/appropriate relief from the Civil Courts cannot be construed as a fulfillment of requirement of Section 145 proceedings, particularly in the absence of any finding in regard to possession aspect.

13 It is needless to mention that in Civil Proceedings, it will take a considerable time to decide as to the lawful possession and title of the parties. Till such right is decided by the Civil Court, a party, who was in possession at the time of the dispute, cannot be unjustly denied their possession. Merely, directing the parties to obtain necessary reliefs in the Civil Courts amounts to abdication of statutory responsibility cast on the 6th respondent under the provisions of Section 145 of Cr.P.C. By directing the parties to obtain necessary reliefs before the Civil Court would by default be a help to a party to take undue advantage of either possession by themselves or dispossession of the other parties concerned.

14 In view of the above, this Court is of the considered view that the order dated 10.07.2018 in proceedings No.A1/1671/2018 passed by the The Tahsildar, Executive Magistrate, the 6th respondent herein does not meet the requirement of Section 145 of Cr.P.C. Therefore, the same is liable to be interfered with.

15 For the said reasons, the impugned order dated 10.07.2018 passed in proceedings no.A1/1671/2018 by the 6th respondent herein is set aside and the matter is remanded

back to 6th respondent. The 6th respondent is directed to issue notice to the parties concerned and grant personal hearing to them and on the basis of the materials placed for consideration, the 6th respondent is directed to pass final orders within a period of eight weeks from the date on which, the matter is being remanded to his file. The 6th respondent is also directed to take into consideration the relevant materials in support of the claim of both the parties and decide the aspect of possession of the property without reference to the right to possess the property, on the date when the dispute arose between the parties, particularly, with the reference to the scheme of Section 145(4) of Cr.P.C.

16 With the above directions, the criminal revision is allowed. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS iii)

//True Copy//

Sub Assistant Registrar

cgi/pns

To

1. The Tahsildar & Executive Magistrate,
Guindy Taluk, Chennai - 600 045.
2. The Inspector of Police,
R-1 Mambalam Police Station,
T.Nagar, Chennai.
3. The Public Prosecutor,
High Court of Madras.

+1cc to Mr. Babu Muthu Meeran, Advocate SR.No. 2290

+1cc to Mr.K.Sivakumar, Advocate SR.No. 3405

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CrI.M.P.No.12976 of 2018

A.SK(05/02/2019)

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