



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 25.03.2019

CORAM :

THE HONOURABLE MR.JUSTICE N.SESHASAYEE

W.P.(MD)No.5683 of 2019
and W.M.P.(MD).No.4484 of 2019

Kajini Mohammed

... Petitioner

Vs.

1.The Revenue Divisional Officer,
Thiruchendur, Thoothukudi District.

2.Govindaraj,
Revenue Divisional Officer,
Tiruchendur, Thoothukudi District.

3.The Inspector of Police,
Thiruchendur Police Station,
Thoothukudi District.

4.Venkataramaraj

... Respondents

Prayer: Writ Petition - filed under Article 226 of the Constitution of India, to issue a Writ of Certiorari, calling for the records pertaining to the impugned order passed by the first respondent in M.C.No.238/ 2018 dated 07.12.2018 and quash the same.

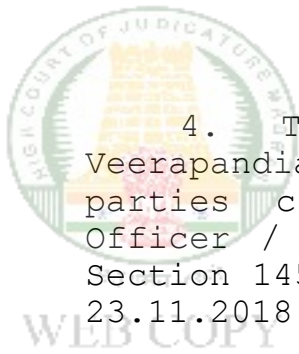
For Petitioner	: Mr.R.Subramanian
For R1 to R3	: Mr.Aravindh Pandian, ASG, Asst. By Mrs.S.Bharathi, Government Advocate (Crl. Side)
For R4	: Mr.R.J.Karthick

O R D E R

This Criminal Original Petition has been filed to quash the impugned order passed by the first respondent in M.C.No.238 of 2018 dated 07.12.2018.

2.Heard Mr.R.Subramanian, learned counsel appearing for the petitioner and Mr.Aravindh Pandian, learned Additional Advocate General assisted by Mrs.S.Bharathi, learned Government Advocate (Crl. side), appearing for the respondents.

3. An order of the learned Executive Magistrate passed dated 07.12.2018 in M.C.No.238 of 2018, by the proceedings under Section 145 Cr.P.C., is now under challenge.



4. There is a piece of land in Survey No.293/B, Veerapandiapattinam, Tiruchendur Taluk, over which two sets of parties claim title and possession. The Revenue Divisional Officer / first respondent herein had initiated proceedings under Section 145 Cr.P.C based on the report of the third respondent dated 23.11.2018.

5. Earlier when the Revenue Divisional Officer had issued notice for an enquiry, the same came to be challenged by the present petitioner in CrI.O.P.(MD).No.21823 of 2018 on the ground that the Revenue Divisional Officer has not passed a preliminary order before the proceedings to hold an enquiry for passing final order.

6. In the Full Bench Judgement, in ***Dhaveethu and others Vs. The District Collector, Sivagangai District and others*** [2016 (4) CTC 12], this Court has held that passing a preliminary Order under Section 145 Cr.P.C. by the Executive Magistrate is only an irregularity and not an illegality, and inasmuch as during the pendency of the proceedings the present order now impugned has been passed, this Court has chosen to dismiss the said petition vide its order dated 15.03.2019.

7. In the final order, the parties represented by the fourth respondent was treated as "A party" by the learned Executive Magistrate. The petitioner obviously belongs to "B party" before him.

8. The learned counsel appearing for the petitioner submitted that in the entire text of the impugned order, it is nowhere indicated that the learned Executive Magistrate has actually entered a finding as to who was or who has been in actual possession of the property at any time prior to the enquiry and that he maintained this silence throughout the Order. He added that he actually proceeded to evaluate the evidentiary documents before him and proceeded to declare the title of 'A' party/those represented by the fourth respondent, as if he were a Civil Court.

9. The learned Additional Advocate General appearing for the respondents 1 to 3 submitted that this Court can profitably employ the doctrine of severance and limit the Order to one relating to possession alone. Relying on the judgment of the Full Bench referred to above, the learned Additional Advocate General submitted that if at all the petitioner is aggrieved, he has other remedies available under law without a need to challenge the order passed in these proceedings. In particular, he submitted that civil remedy is an ideal option to the petitioner and that any findings as to possession by the learned Executive Magistrate is not binding on the Civil Court.

10. The learned counsel appearing for the fourth respondent has only buttressed the submissions of the learned Additional Advocate General.



11. What however keeps the impugned Order away from consideration on the application of doctrine of severance for segregating the finding on title to the property by the Executive Magistrate from the rest is that nowhere in the entire text of the Order, the Executive Magistrate has ventured to make a statement as to who among rival parties before him was entitled to possession. It is not necessary to reproduce Section 145 Cr.P.C or to cite any authorities since the law is only too firmly settled in that possession over a law. Section 145 Cr.P.C is more intended to preserve *inter alia* with a view to preserve the peace and tranquility getting affected due to a dispute over the same. Hence, the Code itself provides that in the eventuality of the Executive Magistrate finding it difficult to decide who is in actual physical possession of the property, he is given power under Section 146 Cr.P.C either to go for attachment of the property or for appointing a receiver for the property. Still the endeavour must be one to determine who is in actual possession. Here, this Court finds the effort of the Executive Magistrate either falls short of the statutory requirements or is seen distracted into determining the title.

12. Left with limited option, this Court necessarily has to interfere with the Order and accordingly the impugned proceedings of the first respondent dated 07.12.2018 is hereby set aside and the matter is remanded back to the first respondent, who shall decide the issue *de novo* strictly in conformity with the parameters laid down under Section 145 Cr.P.C. It is clarified that inasmuch as this Court has already held that its notice/summon issued without passing the preliminary order is only an irregularity and it is not necessary for the Executive Magistrate to pass the preliminary Order, it will be sufficient for him if he commences his proceedings for passing the final order *de novo*. He is required to complete the entire proceedings within a period of twelve weeks after the General Election schedule to take place on 18.04.2019.

13. The Writ Petition stands disposed of accordingly. No costs. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (W)

/ True Copy /

Sub Assistant Registrar (CS-)

Tsg/CM

To

1. The Revenue Divisional Officer,
Thiruchendur,
Thoothukudi District.



2. The Revenue Divisional Officer,
Tiruchendur, Thoothukudi District.

3. The Inspector of Police,
Thiruchendur Police Station,
Thoothukudi District.

Copy To:

The Section Officer,
ER Section,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.R.J.KARTHICK, Advocate (SR-56478[F] dated 26/03/2019)

+1 CC to M/s.R.SUBRAMANIAN, Advocate (SR-56642[F] dated 26/03/2019)

W.P. (MD) No. 5683 of 2019
and W.M.P. (MD) .No. 4484 of 2019
25.03.2019

ES/13.06.2019/4P/7C