

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 14.12.2020

CORAM

THE HON'BLE MR. JUSTICE R.MAHADEVAN

Crl.R.C.No.1149 of 2015

and

Crl.O.P.No.7500 of 2016

Crl.R.C.No.1149 of 2015:-

- 1.Ranganayagi
- 2.Lakshmathal
- 3.Parameshwari
- 4.T.Muthumanikkam
- 5.R.Selvi
- 6.S.Vimala Devi
- 7.M.Sobana
- 8.S.Kavitha
- 9.S.Arunadevi
- 10.Guruvayurappan

...Petitioner / B Party

-vs-

- 1.State rep. by
The Inspector of Police,
Anamalai Police Station,
Coimbatore District.
(Crime No.304 of 2015)

- 2.The Sub Divisional Magistrate
cum Sub Collector,
Pollachi,
Coimbatore District.

... Respondents 1 & 2 /
Complainant

- 3.Devanasamy

... 3rd Respondent / A Party

Prayer : Criminal Revision Petition filed under Section 397 read with 401 of the Code of Criminal Procedure praying to set aside the order passed in M.C.No.7 of 2015 dated 16.10.2015 on the file of the Sub-Divisional Magistrate cum Sub-Collector, Pollachi.

For Petitioners : Mr.P.Kumaresan
for Mr.M.N.Balakrishnan

For RR 1 & 2 : Mr.G.Ramar
Government Advocate (Crl.Side)

For R - 3 : Mr.G.Ravikumar

Crl.O.P.No.7500 of 2016:-

Devanasamy ... Petitioner

Vs.

- 1.The Sub-Divisional Magistrate
cum Sub-Collector,
Pollachi,
Coimbatore District.
 - 2.The Superintendent of Police,
Superintendent of Police Office,
Coimbatore.
 - 3.The Deputy Superintendent of Police,
Anaimalai,
Coimbatore District.
 - 4.The Inspector of Police,
Anaimalai Police Station,
Coimbatore District.
- ... Respondents

PRAYER: Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, to direct the respondents 2 to 4 for implementation of the order passed by the first respondent made in subsequent proceedings in M.C.No.07/2015/A1 dated 09.02.2016 by providing adequate police protection to the petitioner's property and agricultural assets.

For Petitioner : Mr.G.Ravikumar

For Respondents : Mr.G.Ramar

Government Advocate (Crl.Side)

COMMON ORDER

Since the issue involved is connected and the parties to the proceedings are same, both the Criminal Revision Case and the Criminal Original Petition were heard together and are decided by this common order.

2.The Criminal Revision Case has been filed by the petitioners /B party to quash the order dated 16.10.2015 passed by the Sub Divisional Magistrate -cum- Sub Collector, Pollachi in M.C.No.7/2015/A1, whereas the Criminal Original Petition has been filed by the third respondent in the Criminal Revision Case, seeking a direction to the respondents 2 to 4 / police authorities to implement the order dated 09.02.2016 passed by the Sub Divisional Magistrate - cum - Sub Collector, Pollachi, subsequent to the said proceedings in M.C.No.07/2015/A1 dated 16.10.2015, by providing adequate police protection to this petitioner and his properties.

3.The facts leading to the filing of the present petitions are as follows:

3.1 Originally, the properties in T.S.Nos.288/1A and 288/2 situated in Periyapodhu Village, Pollachi Taluk, Coimbatore District, measuring to an extent of 4.31.0 Hectares and 0.17 acres respectively totalling 10.08 acres, a Well connected to 5 HP electric motor with electricity connection service No.86, 800 coconut plants and cart path in T.S.No.283B belonged to one Shanmugam Chettiar, S/o.Nachimuthu Chettiar. After his demise, the daughters of the said Shanmugam Chettiar, viz., (i)Visalakshi (ii)Muthulakshmi (iii) Ramathal (iv)Parameshwari (v)Lakshmi @ Lakshmiathal (vi) Ranganayagi, jointly executed a power of attorney vide Document No.80/2005 in favour of their brothers viz., Thirumalaisamy and Sakthivadivel, in respect of the said extent of 10.82 acres at Periyapodhu Village, Pollachi Taluk. Thereafter, the legal heirs of the deceased Shanmugam Chettiar numbering 11, sold the said properties to one Balakrishnan and Saraswathi, who are none else than the son and daughter-in-law of the third respondent in Crl.RC.No.1149 of 2015 and the petitioner in Crl.OP.No.7500 of 2016, by name, Devanasamy, through their power agent Lakshmi, by a sale deed dated 22.09.2005 registered as Document No.2332 of 2005, on the file of the Sub Registrar, Anaimalai and since then, they have been in possession and enjoyment of the same. All the revenue records in respect of the said properties stood in their names.

3.2 In the year 2008, the legal heirs of one of the vendors of the said Balakrishnan and Saraswathi / Ramaraj, viz., Sasi @ Renuka and Kokila @ Karpagavalli filed a suit in O.S.No.113 of 2008 before the District Munsif, Pollachi, against Thirumalai Chettiar and 14 others, for partition, which was dismissed as not pressed by Judgment and Decree dated 13.04.2018.

3.3 Subsequently, the said Balakrishnan and Saraswathi filed a suit in O.S.No.326 of 2015 for permanent injunction, whereas one Muthumanickam and 7 others claiming themselves as legal heirs of Thirumalai Chettiar, Sakthivel and Radhakrishnan instituted a suit in O.S.No.294 of 2015 before

the Sub Court, Pollachi for partition. The female legal heirs also filed a counter claim petition in I.A.No.999 of 2015. All the civil proceedings are pending.

3.4 When the things stood thus, the said Devanasamy, who is the third respondent in CrI.RC.No.1149/2015 and the petitioner in CrI.OP.No.7500 of 2016 lodged a police complaint, alleging that the legal heirs of the vendors were creating nuisance / disturbance to the possession and enjoyment of the properties by the third respondent in the Criminal Revision/ petitioner in the Criminal Revision Petition, who purchased the same, in favour of his son and daughter-in-law viz., Balakrishnan and Saraswathi, which was registered as FIR in Crime No.278 of 2015 on the file of Anaimalai Police Station, against the accused person. On the other hand, a third party by name Shanmuganandham preferred a complaint against one Rajan and 14 others including the said Devanasamy and his son Balakrishnan as if they were attempting to trespass into the subject properties and the same was registered as FIR in Cr.No.301 of 2015. A counter complaint was also preferred by the said Rajan against the complainant in Cr.No.301 of 2015 Shanmuganandham and 10 others, which was registered as FIR in Cr.No.302 of 2015, on the file of Anaimalai Police Station.

3.5 In these circumstances, the Inspector of Police, Anaimalai Police Station, Coimbatore District, suo motu registered a case in Cr.No.304 of 2015 and forwarded the same to the Sub Divisional Magistrate-cum-Sub Collector, Pollachi, for initiation of proceedings under Section 145 Cr.P.C and directed the Tahsildar, Pollachi to conduct enquiry. Accordingly, the Tahsildar, Pollachi conducted enquiry and submitted a report dated 06.09.2015 stating that there was a likelihood of breach of peace and disturbance to the public tranquility in the locality, where the subject properties are situated. Based on the said report, the Sub Divisional Magistrate-cum-Sub Collector, Pollachi, took up the case on file as M.C.No.7/2015/A1 and summoned both the parties.

3.6 After examining the parties and upon perusal of the documents placed before her, the Sub Divisional Magistrate-cum-Sub Collector, Pollachi, passed an order on 16.10.2015, holding that 'A' party is in the actual possession of the subject properties and hence, 'B' party, who was causing disturbance to them as well public tranquility by making illegal encroachment, should themselves vacate the possession within a period of two days, failing which, the jurisdictional police should render assistance to remove the encroachers and maintain law and order. Feeling aggrieved, 'B' party filed the present Criminal Revision Case to quash the said order passed by the Sub Divisional Magistrate-cum-Sub Collector, Pollachi, and obtained an order of interim stay on 30.10.2015.

3.7 Taking advantage of the aforesaid interim order, 'B' party took steps to dispossess 'A' party from the subject properties, which compelled the said Devanasamy / third respondent in the Criminal Revision /petitioner in the Criminal Original Petition, to file a petition in Crl.MP.No.2 of 2015 in Crl.RC.No.1149 of 2015, to vacate the interim order granted on 30.10.2015 and this Court by order dated 07.01.2016 vacated the said interim order. Thereafter, the said Devanasamy sent a representation dated 27.01.2016 to the respondent police to take steps to implement the order passed by the Sub Divisional Magistrate -cum-Sub Collector, Pollachi, and evict 'B' party from the subject properties. Pursuant to the same, the Sub Collector, Pollachi, vide her communication dated 09.02.2016, directed the Deputy Superintendent of Police, Pollachi Taluk, to remove the encroachment in the subject properties and maintain law and order in the locality; and she also sent a circular dated 24.02.2016 to the Tahsildar, Pollachi, in this regard. Finding no response on the same, the said Devanasamy has approached this Court with the present Criminal Original Petition for the aforesaid relief.

4.The learned counsel for the revision petitioners/ B party submitted that the Sub Divisional Magistrate-cum-Sub Collector, Pollachi, without considering the fact that the civil proceedings are pending before the District Munsif Court, Pollachi, with respect to the subject properties, and without providing sufficient opportunities to the 'B' party to produce the relevant documents to substantiate their rights over the same, erred in holding that 'A' party is the owner and 'B' party is the illegal occupants of the subject properties. The learned counsel further submitted that Section 145(4) Cr.P.C. authorizes the Sub Divisional Magistrate-cum-Sub Collector, Pollachi, to decide the possession of the disputed properties, but she went wrong and passed the impugned order thereby deciding the ownership of the subject properties. Thus, according to the learned counsel, the order impugned herein is contrary to law, weightage of evidence and all probabilities of the case and hence, the same is liable to be set aside.

5.Per contra, the learned counsel for the petitioner in the Criminal Original Petition / third respondent in the Criminal Revision Case, submitted that the petitioner had purchased the subject properties in favour of his son and daughter-in-law, viz., Balakrishnan and Saraswathi for a valuable sale consideration by a registered sale deed dated 22.09.2005 bearing Doc.No.2332/2005 and they have been in possession and enjoyment of the same and all the revenue records with respect to the subject properties stood in their names; however, the legal heirs of one of the vendors with the help of henchmen, were creating disturbance to the peaceful possession and enjoyment of the subject properties by the lawful purchasers and also instituted civil proceedings. The

learned counsel further submitted that based on the sale deeds and the revenue records such as patta pass book etc., the Sub Divisional Magistrate-cum-Sub Collector, Pollachi, exercising her power under Section 145 Cr.P.C, rightly passed the order impugned herein in favour of 'A' party, thereby directing the 'B' party to vacate the possession and hence, the same does not call for any interference. It is also submitted that following the said order, the Sub Collector, Pollachi, by her proceedings dated 09.02.2016, directed the police authorities to remove the encroachment in the subject properties and maintain law and order in the locality. Despite the same, the revision petitioners /'B' party did not allow the petitioner in Cr1.OP/ 'A' party to do farming activities and were also causing disturbance to their peaceful possession and enjoyment of the subject properties. Hence, the learned counsel prayed for appropriate direction to the police authorities in this regard.

6. Heard both sides and perused the documents placed before this Court.

7. At the outset, this Court, in order to give quietus to the issue involved herein, felt it necessary to appointment an Advocate Commissioner to ascertain the physical possession of the subject properties. Accordingly, by order dated 14.09.2020, one Ms.R.Rathna Thara, Advocate was appointed as Commissioner, who inturn, inspected the subject properties, after giving due notice to all the parties and filed her report dated 22.09.2020, stating that there is a family consisting of husband and wife, who have been employed by the third respondent in the Criminal Revision and on enquiry, it was found that they have been living there from 2005 and they are taking care of the subject properties and rearing the cattles etc. The Report further proceeds to state that the actual physical possession is with the third respondent in the Criminal Revision, who had purchased the subject properties in the year 2005 in favour of his son and daughter-in-law; and the petitioners in the Criminal Revision have put up a temporary room only to claim that they are in physical possession of the disputed properties. Thereafter, this Court, at the request of the learned counsel appearing for both sides, directed the said Advocate Commissioner to make one more attempt to have settlement talks with the parties. However, the sincere efforts taken by the Advocate Commissioner to have the matter settled peacefully, ended in vain. Hence, this Court is constrained to delve into the matter and decide the same on merits.

8. The issue involved herein is, whether the orders passed by the Sub Divisional Magistrate - cum - Sub Collector, Pollachi, under Section 145 Cr.P.C., are valid in law. Before examining the same, it would be relevant to look into the object and scheme of the said provision, which was noted in the decision of the Supreme Court, in R.H.Bhutani

Vs. Mani J.Desai [AIR 1968 SC 1444] and the same read as under:-

"8.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 immovable 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.

9.The satisfaction under Sub-S.(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..."

9. In Chandu Naik Vs. Sitaram B. Naik [1978 (1) SCC 210], regarding the nature of the order passed by the Executive Magistrate under Section 145 of the Code, it was observed by the Supreme Court that "in substance and in effect, a proceeding under Section 145 of the Code is, not for the purpose of evicting any person from any land, but is primarily concerned with the prevention of the breach of the peace by declaring the party found in possession to be entitled to remain in possession until evicted therefrom in due course of law". It was further observed that "although the party who forcibly and wrongfully dispossessed the other party attracting the application of the proviso to Sub-Section (4) of Section 145 of the Code has to be factually and physically evicted from the property, by a legal fiction it is only for the purpose of treating him in possession on the date of the preliminary order".

10. Also, the Supreme Court in Ashok Kumar v. State of Uttarakhand and others, [(2013) 3 SCC 366], while dealing with the order of attachment passed by the Revenue authority, was of the categorical view that "the object of Section 145 Cr.P.C is merely to maintain law and order and to prevent breach of peace by maintaining one or other of the parties in possession and not for evicting any person from possession and the scope of enquiry under Section 145 is in respect of actual possession without reference to the merits or claim of any of the parties to a right to possess the subject of dispute".

11. From the above, it is obvious that Section 145 Cr.P.C. is intended to provide a speedy remedy for the prevention of breach of peace, arising out of disputes concerning any land or water or the boundaries, by maintaining one or other of the parties, in possession. Where the Magistrate relies upon the report of a police officer or on any other information. Though he is required to pass a preliminary order and serve it on the parties in the manner provided under the code, there is nothing in the said provision, which declares that the non-existence of a preliminary order will vitiate a final order passed by him. On the other hand, the internal evidence found in the very section itself shows that his order can be reviewed either at the instance of the party, who was wrongfully dispossessed within two months of the order or by a party, who was to be restored to possession. Besides that, the findings rendered by the Executive Magistrate are not conclusive and are rebuttable in a competent Court. If any party moves the civil court and obtains either an interim order or a decree regarding the property, then the decision of the Executive Magistrate vanishes into thin air. Therefore, in short, the object of the Section is to enable a magistrate to

intervene and pass a temporary order in regard to possession of a property in dispute having effect, until the actual right of one of the parties gets determined by a competent civil court; it must be construed to be a mere power to restore peace and not beyond that; the aggrieved parties can always move the judicial forum i.e. the civil court to establish either the right to possession or the title to the property; and the power of judicial review of the same is also limited.

12. Admittedly, the petitioner in the Criminal Original Petition and the third respondent in the Criminal Revision, had purchased the subject properties in favour of his son and the daughter-in-law, for a valuable sale consideration by a registered sale deed bearing Doc.No.2332/2005 dated 22.09.2005 and have been in possession and enjoyment of the same till date. All the revenue records pertaining to the said properties, stood in their names. Though the legal heirs of one of the vendors preferred civil suit in respect of the subject properties, the same is pending without there being any interim order. However, they have been repeatedly causing nuisance / disturbance to the possession and enjoyment of the same by the petitioner in the Criminal Original Petition, which also created a law and order problem in the locality, where the subject properties are situated. As such, Section 145 Cr.P.C proceedings was initiated. After following due procedure and upon satisfying the materials produced by the parties, the Sub Divisional Magistrate-cum-Sub Collector, Pollachi, in order to maintain law and order, passed the order impugned in the Criminal Revision, in favour of 'A' party, who is in the actual possession of the subject properties.

13. It is contended on the side of the revision petitioners / 'B' party that without considering the pendency of the civil suit in respect of the subject properties and without providing sufficient opportunities to the revision petitioners to establish their rights over the same by producing the relevant documents, the Sub Divisional Magistrate -cum -Sub Collector, Pollachi decided the title issue in favour of 'A' party and passed the impugned order, which is arbitrary, illegal and contrary to the provisions of law. The said contention was resisted on the side of the petitioner in the Criminal Original Petition / 'A' party that the petitioner's son and daughter-in-law are the lawful owners of the subject properties and they have been in possession and enjoyment of the same till date, which was interfered with by 'B' party, creating encroachment and causing disturbance to the public tranquility.

14. It is seen from the order impugned in the Criminal Revision that taking note of the revenue records pertaining to the subject properties, which stand in the names of the petitioner's son and daughter-in-law, who are the lawful purchasers, by virtue of the sale deed executed in the year 2005 and also considering the fact that no document was

produced by the revision petitioners to establish their rights over the subject properties and no interim order was obtained in the civil suit filed by them, the Sub Divisional Magistrate-cum-Sub Collector, Pollachi, passed the order dated 16.10.2015, observing that the petitioner in the Criminal Original Petition / 'A' party is in the actual possession of the subject properties and directing the revision petitioners / 'B' party to remove the encroachment and vacate the possession, within a period of two days. It is significant to point out here that the report of the Advocate Commissioner would clearly state that the petitioner in the Criminal Original Petition is in the actual possession and enjoyment of the subject properties and the Revision Petitioners, to claim possession, have put up temporary room in the same. It is also to be noted that the civil suit filed by the revision petitioners is pending without any interim order; and the order of interim stay granted in favour of the revision petitioners, was subsequently, vacated, vide order dated 07.01.2016 in MP.No.2 of 2015 in CrI.RC.No.1149 of 2015. It is settled law that adjudication of the dispute by a civil Court will have a bearing on the litigation of proceedings under Section 145 Cr.P.C. and mere pendency of a civil litigation will not oust such jurisdiction.

15.This Court is of the view that the order so passed by the Sub Divisional Magistrate-cum-Sub Collector is only with respect to the actual physical possession of the subject properties and it does not confer any title / ownership or right to possession of the same. Further, the said order is passed based on apprehension of the breach of the peace and is temporary in nature, irrespective of the rights of the parties; and that, the life of the same is conterminous with the passing of a decree by a Civil Court and the moment a Civil Court makes an order in the civil suit, it displaces the order of the Criminal Court. Inasmuch as the parties have already initiated civil proceedings, the said order would always be subject to decision of the civil court. At this juncture, the answer given to the queries (3) and (4) in the reference made before the Full Bench of this Court in A.Dhaveethu v. the District Collector, Sivagangai and others [2016 (4) CTC 12] is gainfully extracted hereunder:

"(3)Considering the nature of power vested on the Executive Magistrate under Section 145 of the Code, no prejudice will be caused to parties.

(4)The aggrieved parties are empowered to move the very same Authority for reviewing his decision or in its absence, move the competent civil court for an appropriate relief either regarding the title or regarding the right to possession. In rare cases, they can move this Court for a judicial review either under Section 397 of the Code or under Article 226/227 of the Constitution".

16. In view of the aforesaid reasonings and findings, there is no illegality or infirmity in the order so passed by the Sub Divisional Magistrate- cum- Sub Collector, Pollachi, warranting interference at the hands of this Court. Leaving it open to the parties to work out their remedies before the Court, where the civil proceedings are said to have been pending, this Criminal Revision stands dismissed.

17. Having regard to the fact that despite the order dated 16.10.2015 and the consequential direction dated 09.02.2016, issued by the Sub Divisional Magistrate- cum- Sub Collector, Pollachi, the revision petitioners are indulged in the act of causing disturbance to the peaceful possession and enjoyment of the subject properties by the petitioner in the Criminal Original Petition, this Court directs the respondent police to give adequate police protection to the petitioner and his properties, at the cost of the petitioner, for removal of encroachment in the subject properties. Accordingly, the Criminal Original Petition is disposed of.

Sd/-

Assistant Registrar (CS II)

//True Copy//

Sub Assistant Registrar

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To

1. The Sub-Divisional Magistrate
cum Sub-Collector,
Pollachi, Coimbatore District.

2. The Superintendent of Police,
Superintendent of Police Office,
Coimbatore.

3. The Deputy Superintendent of Police,
Anaimalai,
Coimbatore District.

4. The Inspector of Police,
Anamalai Police Station,
Coimbatore District.

5. The Public Prosecutor,
High Court, Madras - 104.

LN (CO)

SM/18/02/2021

Cr1.R.C.No.1149 of 2015
and
Cr1.O.P.No.7500 of 2016