

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 04.03.2020

CORAM

THE HON'BLE MR.JUSTICE N.ANAND VENKATESH

W.P.No.7866 of 2018
and
WMP Nos.9835 & 34055 of 2018

1.K.Jaganathan
2.A.Priya
3.A.Arul Gandhi

..Petitioners

.v.

1.The Revenue Divisional Officer/
Sub Divisional Magistrate,
Tiruchengode,
Namakkal District.

2.S.Vijayalakshmi

3.The Inspector of Police,
Komarapalayam Police Station,
Namakkal District.

..Respondents

Prayer:- Writ petition filed under Article 226 of the Constitution of India praying to issue a Writ of Certiorarified Mandamus, to call for the records relating to the impugned order made in Mu.Mu.No.4682/2017/C, dated 23.03.2018 passed by the 1st respondent, quash the same, and consequently forebear the respondents from in any way interfering with the petitioners' right to property measuring 2307 1/2 sq ft., bearing T.S.No.2/1C, Ward C, Block 18, Komarapalayam, Namakkal District.

For Petitioners : Mr.N.Manokaran

For R 1 & R 3 : Mr.G.Rajesh
Government Advocate

For R 2 : Mr.S.Ramajayam

O R D E R

This writ petition has been filed challenging the impugned order passed by the 1st respondent dated 23.03.2018.

2.The case of the petitioners is that they are the owners of the property by virtue of a registered Sale Deed dated 05.02.2004. The 1st petitioner had executed a Settlement Deed in favour of his son late K.J.Sivaraman on 28.11.2005. Due to subsequent developments, this Settlement Deed came to be cancelled by a cancellation deed dated 10.02.2009. The further case of the petitioners is that the above said Sivaraman had executed a registered release deed in favour of the 1st petitioner on 25.01.2010 and he relinquished all his claims over the property.

3.The 2nd respondent is the wife of the said Sivaraman. There was a serious dispute between the 1st and 2nd petitioners on the one hand and their son and the 2nd respondent on the other. Complaints were also given to the Police. Unfortunately, the above said Sivaraman died on 23.08.2017, leaving behind the 2nd respondent and two children.

4.The 2nd respondent had given a complaint to the Police and also to the 1st respondent. The 1st respondent entertained the complaint and has passed the impugned order to the effect that the petitioners will have to vacate the tenants in the first floor and the possession must be given to the 2nd respondent. Aggrieved by the same, the present writ petition has been filed before this Court.

5.Mr.N.Manokaran, learned counsel appearing on behalf of the petitioners submitted that the 1st respondent has assumed a jurisdiction which he did not have and the order passed by the 1st respondent is a nullity. The learned counsel for the petitioners further submitted that the 1st respondent had dealt with the issue like a Civil Court and issued mandatory directions to evict the tenant in the 1st floor and give possession of the property to the 2nd respondent. The learned counsel for the petitioners submitted that there is already a suit pending between the parties in O.S.No.73/2018, before the District Munsif Court, Thiruchengode and in the said suit, the parties can workout their rights and the 1st respondent ought not to have interfered into the dispute.

6.The learned counsel appearing on behalf of the 2nd respondent submitted that the 1st respondent had derived the power u/s 145 of the Criminal Procedure Code. The learned

counsel for the 2nd respondent submitted that the property was purchased by selling the jewels of the 2nd respondent and the Settlement Deed was unilaterally cancelled and the 2nd respondent had right over the property and this was recognised by the 1st respondent while passing the impugned order. The learned counsel for the 2nd respondent submitted that taking into consideration the facts and circumstances of the case, and the pitiable situation of the 2nd respondent, the 1st respondent has passed the impugned order and there is absolutely no ground to interfere with the same.

7. Heard Mr.G.Rajesh, learned Government Advocate appearing on behalf of the respondents 1 and 3.

8. This Court has carefully considered the submissions made on either side and the materials available on record.

9. It is clear that there is a dispute with regard to the property between the petitioners 1 and 2 and the 2nd respondent who had already filed a suit pending in O.S.No.73/2018, on the file of the District Munsif Court, Thiruchengode. The parties will have to necessarily agitate their rights in the pending suit. Therefore, this Court does not want to give any finding on the right over the property since it will have an impact in the suit that is pending before the Court below.

10. This Court therefore will directly enter into the issue as to whether the 1st respondent has the power and jurisdiction to pass the impugned order. The 1st respondent has virtually acted like a Civil Court and has given a mandatory direction to the petitioners to evict the tenant and put the 2nd respondent in possession of the property. According to the learned counsel for the 2nd respondent, the power of the 1st respondent can be traced under Section 145 of the Code of Criminal Procedure. A careful reading of the impugned order passed by the 1st respondent, does not in any way indicate that he was conducting proceedings under Section 145 of Cr.P.C. Even otherwise, the present dispute will not fall within the scope of Section 145 of Cr.P.C. To initiate proceedings under Section 145 of Cr.P.C., three requirements will have to be fulfilled viz; (i) there must be a real breach of peace inviting such proceedings; (ii) there must be material on record to prove the actual breach of peace; and (iii) the Executive Magistrate should form a subjective satisfaction to initiate such proceedings. The object of this Section is to merely maintain law and order and to prevent any breach of peace.

11. In the present case, it was a private dispute between the 1st and 2nd petitioners and the 2nd respondent.

This dispute will not fall within the scope of Section 145 of Cr.P.C. The 1st respondent ought not to have usurped the jurisdiction of Civil Court and decided the rival rights of the parties. The 1st respondent did not have the jurisdiction to issue directions to the petitioners to evict the tenant and to put the 2nd respondent in possession of the property. The impugned order passed by the 1st respondent is an illegality on the face of it and it requires the interference of this Court.

12. In view of the above discussion, this Court has no hesitation to interfere with the impugned order passed by the 1st respondent dated 23.03.2018 and accordingly, the same is quashed. This order will not have any bearing on the rights of the parties which is now pending by way of a Civil Suit in O.S.No.73/2018, on the file of the District Munsif Court, Thiruchengode. The Civil Court has to independently consider the rights of the parties and decide the suit.

In the result, this writ petition is allowed. No costs. Consequently, the connected miscellaneous petitions are closed.

Sd/-
Assistant Registrar(CS II)

//True Copy//

Sub Assistant Registrar

KP

To

1.The Revenue Divisional Officer/
Sub Divisional Magistrate,
Tiruchengode, Namakkal District.

2.The Inspector of Police,
Komarapalayam Police Station,
Namakkal District.

3.The District Munsif Court,
Thiruchengode.

4.Government Advocate,
High Court, Madras.

W.P.No.7866 of 2018

MP (CO)
RPP (21/05/2020)