

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 07.08.2020

DELIVERED ON : 17.08.2020

CORAM :

THE HON'BLE MR. JUSTICE P.N. PRAKASH

Crl.R.C. No.636 of 2020 & Crl.M.P. No.4737 of 2020

1 Sasikumar
2 Kannan
3 Sasikala
4 Periyakannu (Muthusamy)
5 Senthamarai Petitioners
vs.
1 The Sub-Divisional Executive Magistrate
Tiruchengode
Namakkal District
2 The Inspector of Police
Mallasamudram Police Station
Namakkal District
3 Periyasamy
4 Sulochana
5 M.M. Muthusamy
6 Raman
Respondents

Criminal Revision under Sections 397 and 401 Cr.P.C. seeking to call for the records pertaining to the order in Roc.No.(MC) 01/2019/C dated 14.07.2020 passed by the Sub Divisional Executive Magistrate, Tiruchengode, Namakkal District and set aside the same.

For petitioners
For RR 1 & 2

.. Mr. B. Gopalakrishnan
.. Mrs. P. Kritika Kamal
Govt. Advocate (Crl. Side)

ORDER

The final order dated 14.07.2020 passed by the Sub Divisional Executive Magistrate, Tiruchengode, Namakkal District (for brevity "the Executive Magistrate"), the first respondent herein, under Section 145(4) Cr.P.C., is under assail in this criminal revision petition.

2 The brief facts are as under:

2.1 A dispute arose between Periasamy group, the private respondents herein ("A" party) and Sasikumar group, the petitioners herein ("B" party) in connection with the enjoyment of a pathway in Mallasamudram Village S.No.383/2.

2.2 According to "A" party, they have a right of passage to their lands through the said pathway and that the "B" party had locked the pathway in order to prevent them ("A" party) from using it.

2.3 It is seen that the quarrel had erupted into violence and on the complaint of Periasamy ("A" party), a case in Mallasamudram P.S. Cr.No.286 of 2019 was registered for the offences under Sections 147, 294(b), 323, 324, 427 and 506 (II) IPC against Sasikumar and others of "B" party.

2.4 While the investigation was in progress, the quarrel further escalated and there was an apparent threat to peace and so, the Mallasamudram police registered a case in Cr. No.310 of 2010 on 21.09.2019 under Section 145 Cr.P.C. against the members of "A" party and "B" party and submitted a report to the Sub-Divisional Executive Magistrate, Tiruchengode, Namakkal District, the first respondent herein (for brevity "the Executive Magistrate"), for appropriate action.

2.5 The Executive Magistrate called for a report from the Village Administrative Officer, in pursuance whereof, the latter submitted his report on 22.10.2019. After considering the reports submitted by the police and the Village Administrative Officer, the Executive Magistrate passed a preliminary order under Section 145(1) Cr.P.C. on 19.11.2019 and called upon both parties to appear before him and produce evidence in support of their respective stands.

2.6 Hearings were conducted on various dates and ultimately, by order dated 14.07.2020, the Executive Magistrate has determined that the members of "A" party were dispossessed or prevented from using the pathway by the members of the "B" party and directed restoration of status quo ante. Challenging

the said order, the members of "B" party have preferred the instant criminal revision.

3 The learned counsel for "B" party submitted that when a civil case in O.S. No.98 of 2011 is still pending before the Additional District Munsif, Tiruchengode, in respect of the disputed land, the Executive Magistrate ought not to have passed the impugned order at all.

4 It is seen that in O.S. No.98 of 2011, the members of the "A" party nor their beneficiaries are parties. This injunction suit was filed by "B" party against Perumal Gounder and 9 others, who have nothing to do with the members of "A" party. The said injunction suit was filed in the year 2011 when the defendants therein threatened the possession of "B" party, whereas, the present cause of action is pursuant to "B" party preventing "A" party from using the pathway from September 2019. In respect of the quarrel with "A" party, there is no civil litigation pending. Further, the members of "A" party and "B" party are relatives, inasmuch as Periasamy (first named in "A" party) is the brother of Karuppannan, who is the father of Sasikumar (first named in "B" party). Both these branches derived their title from document no.1299 of 1975 and document no.440 of 1978. Vide document no.1299 of 1975, the said Periasamy and Karuppannan purchased the property in 1975 and as per document no.440 of 1978, they partitioned the property in such a way that they preserved the pathway that was going through S.No.383/2. After the dispute arose, when spot inspection was conducted by the Revenue officials, it was found that the members of "B" party had planted some coconut and banana saplings and have also constructed a small water tank so as to obstruct the free usage of the pathway by the members of "A" party. This Court perused the partition deed in Doc. No.440 of 1978 and found that there is a reference to a pathway for the usage of "A" party.

5 All the aforesaid factors have been duly taken into consideration by the Executive Magistrate in arriving at the conclusion that the right of "A" party to freely use the pathway in question has been obstructed by "B" party. In fact, the Executive Magistrate has correctly understood the law governing Section 145 Cr.P.C., which is evident from the following passage in the impugned order:

"This order purely determines only who were in possession/usage of pathway in S.No.383/2 and does not confer any right/title to any parties. Both parties may approach competent civil court for permanent right over the property and until any such orders, both parties shall implement this order and maintain peace and tranquillity."

6 This Court places on record its appreciation to the Executive Magistrate for correctly appreciating and applying the law, for maintaining peace and tranquillity. The police are directed to comply with the order dated 14.07.2020 passed by the Executive Magistrate.

In the result, this criminal revision petition is dismissed as being devoid of merits. Connected Crl.M.P. is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

cad

To

1 The Sub-Divisional Executive Magistrate
Tiruchengode
Namakkal District

2 The Inspector of Police
Mallasamudram Police Station
Namakkal District

3 The Public Prosecutor
High Court, Madras

+1cc to Mr.B.Gopalakrishnan, Advocate, S.R.No.26786

Crl.R.C. No.636 of 2020

SKS (CO)
KKV/16/09/2020

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