

IN THE HIGH COURT OF BOMBAY AT GOA
CRIMINAL WRIT PETITION NO.168 OF 2019

Nagu Fondu Velip and Anr.

.... Petitioners.

V/s

Thulo Bombo Velip and 3 Ors.

.... Respondents

Mr. Dinesh Eknath Naik for the Petitioners.

CORAM: NITIN W. SAMBRE, J.

DATE: APRIL 6, 2021

P.C.:-

1] This Court has heard respective Counsels at length on 30/3/2021 and at the behest of Counsel for the Petitioner, adjourned the matter for today so as to enable him to make statement for withdrawal.

2] At this stage, learned Counsel for the Petitioners submits that the Court may pass appropriate order in the matter as he has no instructions to withdraw the Petition as the parties are trying to settle the matter amicably.

3] The present Writ Petition is directed against the orders dated

8/5/2019 and 28/09/2018 passed by the learned Sessions Judge, South Goa at Margao in Criminal Revision Application No. 05/2019 and the one passed by Deputy Collector & SDO, Quepem respectively.

4] The suit properties consist of lands bearing Survey No.8/o and 9/o situated at Village Naqueri, Taluka Quepem. The Head Constable attached to Concolim Police Station referred the case under Section 145 of Cr.P.C based on the complaint of Respondents. Respondents claim that they are enjoying possession over the suit property which was obstructed and threatened by the Petitioners. Deputy Collector/SDO vide Order dated 9/9/2014 noticed possession of Respondents over the suit property and restrained the Petitioners from dispossessing the Respondents from the suit property. The said order was later on quashed by the Sessions Court in revisional jurisdiction ordering remand. As such after appreciating the contentions and evidence on record vide impugned order dated 28/9/2018, Deputy Collector held that possession of Survey No.8/o and 9/o shall remain with the Respondents except the area of 109700 sq. mtrs out of Survey No.9/o which is claimed to be in possession of legal heirs of late Chandru Sakhlu Velip.

5] Petitioners feeling aggrieved preferred Criminal Revision Application No.05 of 2019 which was dismissed vide order impugned dated 08/05/2019 thereby affirming the order of Sub-Divisional Officer referred to above. The aforesaid orders are passed by the learned SDO in exercise of the powers under Section 145 of the Criminal Procedure Code.

6] The contentions of the learned Counsel for the Petitioners are, both the orders impugned are not sustainable in law. The Magistrate so also the Sessions Court has failed to appreciate failure on the part of the Respondents in satisfying the ingredients of Section 145 of the Criminal Procedure Code. According to him, there is no likelihood of breach of peace in the locality, particularly when Petitioners are claiming title and possession based on Sale Deed dated ^{19th January} ~~15th August,~~ ²⁰⁰⁶ ~~1997~~. According to him, civil suit initiated by the Petitioners is already pending and that being so, both the orders are liable to be quashed and set aside thereby rejecting the proceedings under Section 145 of the Criminal Procedure Code.

Corrections carried
Out as per order
Dated 03.05.2021
passed in
CRMA No.34 of 2021

7] The learned Counsel for the Petitioners would then claim that once there is title document in favour of the Petitioners, the attempt

on the part of Respondents in claiming breach of peace and further invoking provisions of Section 145 of Criminal Procedure Code is in gross abuse of process of law.

8] Per contra, Counsel for the Respondents would urge that attempt on the part of the Petitioners so as to interfere in possession of the Respondents has prompted them to file complaint which has rightly resulted into invoking provisions of Section 145 of the Criminal Procedure Code as threat of dispossession was given by the Petitioners. According to him, once civil suit is pending between the parties, as is initiated by the Petitioners, concurrent finding recorded by both the courts below vide impugned orders does not call for any interference.

9] Considered rival submissions.

10] The fact remains that the Petitioners are claiming their right over the suit property by virtue of Sale Deed and as such are questioning legality of the orders impugned. This Court cannot be oblivious to the fact that the Petitioners are also litigating in civil court in relation to the suit property against the Respondents wherein

declaration is sought. The said Suit being Regular Civil Suit No.43/2018 is pending adjudication.

11] As far as the orders impugned are concerned, this Court is required to restrict itself to the extent of satisfaction recorded by the authorities for invoking provisions of Section 145 of the Criminal Procedure Code. On one hand, Petitioners are claiming title to the suit property and as such their possession, whereas Respondents claim to be in settled possession of the suit property. Based on the complaint filed by the Respondents, it appears from the record that police authorities rightly submitted report thereby forming an opinion in regard to likelihood of breach of peace in the said locality, particularly on the issue of obstruction carried out by the Petitioners. The authorities while exercising powers under Section 145 of the Criminal Procedure Code have recorded satisfaction to the extent of dispute which may result in likelihood of disturbance of peace in the locality. Apart from above, there exists a civil suit initiated by the Petitioners which is already pending adjudication before the competent civil court.

12] In the aforesaid backdrop, fact remains that it is always open for

the Petitioners to seek injunction in the said proceedings having regard to the title claimed by them. The orders impugned passed by the Magistrate and Sessions Court are always subject to outcome of the civil proceedings, as the orders impugned are in the form of summary proceedings.

13] In the aforesaid background and having regard to concurrent findings recorded by both the courts blow, I do not see any reason which calls for any interference in the orders impugned. Petition as such fails and same stands dismissed.

14] However, it is clarified that civil court shall decide rival claims of the parties in pending suit without being influenced by the finding recorded hereinabove.

(NITIN W. SAMBRE, J.)