



IN THE HIGH COURT OF JUDICATURE AT MADRAS

WEB COPY

ORDERS RESERVED ON
27.08.2021

ORDERS PRONOUNCED ON
01.10.2021

CORAM

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

CRL.R.C.NO.461 OF 2015

AND

M.P.NO.1 OF 2015

M.R.R.Radhakrishnan

.. Petitioner/'A' Party

.. Vs ..

1. The State of Tamil Nadu,
Rep. by the Inspector of Police,
Cuddalore New Town Police Station,
Cuddalore.

2. P.R.S.Venkatesan
(G.K.Vasan Party)

.. Respondents/'B' Party

PRAYER :

Criminal Revision Case filed under Sections 397 and 401 of the Criminal Procedure Code, against the order passed by the learned Sub-Divisional Executive Magistrate and Revenue Divisional Officer, Cuddalore, in M.C.No.248 of 2014 (A2/4196/2014), dated 08.05.2015 under Section 145(4) of Cr.P.C. holding the second respondent to be put in possession.

For Petitioner: Mr.Dr.A.Thiyagarajan, Senior Counsel
for Mr.S.Ramesh Kumar

For R-1 : Mr.R.Vinoth Raja
Government Advocate

For R-2 : Mr.P.Mahaadevan
for Mr.C.A.Anburaja



ORDER

The matter is heard through "Video Conference".

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This Criminal Revision Case has been filed by the 'A' party against the order passed by the learned Sub-Divisional Executive Magistrate and Revenue Divisional Officer, Cuddalore, in M.C.No.248 of 2014 (A2/4196/2014), dated 08.05.2015 under Section 145(4) of Cr.P.C. holding the second respondent to be put in possession.

2. In view of the dispute arising between 'A' party and 'B' party, the Tahsildar has passed an order under Section 146 (1) of Cr.P.C., whereby, both the parties are restrained from entering the premises. Subsequently, an R.D.O enquiry was conducted and order was passed under Section 145 (4) of Cr.P.C, on 08.05.2015. The 'A' party is the District Congress President, Indian National Congress, Cuddalore, while 'B' party belongs to G.K.Vasan group.

3. The Sub-Divisional Executive Magistrate and Revenue Divisional Officer has taken a view that earlier there was an order passed in M.C.No.2/1996 whereby, the Taluk Executive Magistrate has handed over possession to 'B' Party and hence, the learned Sub-Divisional Executive Magistrate, had passed a similar order. Challenging the said order, the above Criminal Revision Case has been filed by the 'A' party.

4. Mr.Dr.A.Thiyagarajan, learned Senior Counsel for Mr.S.Ramesh Kumar for the petitioner/'A' Party contended that the reasoning assigned by the learned Sub-Divisional Executive Magistrate-cum-Revenue Divisional Officer is contrary to Section 145 (4) of Cr.P.C. Since the crucial point that has to be decided as to whether who is in possession of the property on the date of the dispute and without any reference to the same, the impugned order was passed. Furthermore, earlier civil suits have been withdrawn, in view of the subsequent merge of the 'Tamil Maanila Congress' along with the 'Indian National Congress' and again, it was split up and hence, the incident has taken place. Learned Senior Counsel for the revision petitioner further contended that the subject matter of the land and premises are not individual property and the property belong to the property of 'A' party.

5. Learned counsel appearing for the second respondent would contend that on the earlier round of litigation, a similar proceedings under Section 145 of Cr.P.C. was conducted and it was completed to its logical end and found in favour of the 'B' party. The said order, which was attained finality, is still in



force and in pursuance of the said order, 'B' party is still in continuous possession and the learned counsel made submissions in support of the impugned order.

6. The learned Government Advocate (Crl.Side) appearing for the first respondent made submissions as to the action taken by the revenue authorities.

7. After hearing the rival submissions and on perusal of records, it is seen that the petition premises is immovable property measuring 1 acre and 11.715 sq. ft. of land in T.S.No.449/4 situated in Bharathi Road, Cuddalore Town called as Nehru Bhavan. According to 'B' party, the property was under the possession and enjoyment of 'B' party's father P.R.Srinivasa Padaiyachi. On the death of 'B' party's father P.R.Srinivasa Padayachi, the second respondent herein/'B' party has inherited the same as a legal heir and he was in possession and enjoyment of the same. 'B' party's father had permitted the above property, to be used as Janata Party office, when there was a split in the Congress Party in the national level. However, the said Janatha Party never claimed any right or title over the same. Similarly, in the year 1995 also when there was a proceedings under Section 145 of Cr.P.C, in M.C.No.2 of 1996, forcible possession was taken from the 'B' party however, the same has been handed over to the 'B' party.

8. The record further reveals that while allowing M.C.No.2 of 1996, there had been a specific direction that the dispute regarding right and title, has to be decided by way of a civil litigation only.

9. In pursuant to the said order in M.C.No.2 of 1996, 'A' party has filed a suit in O.S.No.837 of 1996, before the learned District Munsif, Cuddalore, but the said suit was dismissed as withdrawn. Having withdrawn the suit, the 'A' party had lost its locus standi to raise any claim whatsoever, over the property. Since the 'A' party had failed to perform the directions as directed by the learned Sub-Divisional Magistrate, in M.C.No.2 of 1996, they have no right whatsoever to raise any allegation claiming any iota of right over the property. As such, the order in M.C.No.2 of 1996 has become final. The said order also has not been challenged before any of the appellate forum, in accordance with law. The said order having become final, being passed by a quasi-judicial authority, cannot be challenged indirectly also, in any other proceeding, at any other point of time.

10. The initiation of earlier proceedings under Section 145 of Cr.P.C., in M.C.No.2 of 1996 and subsequent thereto permitting the 'B' party to be in possession of the petition



premises and dismissal of the suit in O.S.No.837 of 1996 filed by the 'A' party/revision petitioner are not in dispute.

11. It is also submitted by both the parties that the earlier proceedings initiated under Section 145 of Cr.P.C., was ended in favour of 'B' party in M.C.No.2 of 1996 and the same become final. The subsequent suit filed in O.S.No.837 of 1996 before the learned District Munsif, Cuddalore, was dismissed as withdrawn with liberty to agitate the matter. Now, thereafter, it remains to be stated that since the date of the earlier order passed in M.C.No.2 of 1996, 'B' party is said to be in continuous possession of the same and the father of 'B' party has constructed a building on his own cost.

12. It appears that 'A' party has filed a suit seeking the relief of declaration to declare the necessary title of the plaintiff in O.S.No.2 of 2016 before the learned District Judge, Cuddalore and the same is still pending.

13. Thus, on summerising the above factual events, it appears that 'B' party was originally with the 'A' party and subsequently, there had been a split, resulted in dispute with regard to the possession of the petition property. In the said circumstances, the order in M.C.No.2 of 1996 came to be passed under Section 145 of Cr.P.C. in the year 1996 in respect of the very same property. It is not in dispute that possession was handed over to 'B' party with a direction to seek remedy as to the title through the competent Court. The civil suit in O.S.No.837 of 1996 filed by 'A' party was dismissed and since the date of order in M.C.No.2 of 1996, 'B' party is said to be in continuous peaceful possession and enjoyment of the property and the same appears to be uninterrupted. Since no suit has been filed to challenge the said order in M.C.No.2 of 1996 thereafter, in the absence of any other challenge to the order passed in M.C.No.2 of 1996, 'B' party appears to have been in continuous possession of the property as observed earlier.

14. Now, again there was a split between 'A' party and 'B' party and this time again, the very same dispute has erupted in. 'A' party should have filed a fresh suit for declaration of title and for recovery of possession which is now under the custody of 'B' party. On an earlier attempt, the civil suit filed by 'A' party in O.S.No.837 of 1996 was dismissed on 14.10.2003. Thereafter, no suit has been filed for the reasons best known to them. Both the learned counsel says that there had been merger and subsequent split between the parties.

15. Be that as it may, from the date of the order passed in M.C.No.2 of 1996, 'B' party is in uninterrupted continuous



peaceful possession and enjoyment of the property. Taking into consideration the earlier order passed in M.C.No.2 of 1996, the Revenue Divisional Officer has held that the petition property was continuous to be in possession of the 'B' party since from the date order of the Taluk Executive Magistrate in M.C.No.2 of 1996. 'A' party has not filed any document to show that the possession of the 'B' party was disrupted after the date of the order passed in M.C.No.2 of 1996 or handed over to 'A' party, assumes significance.

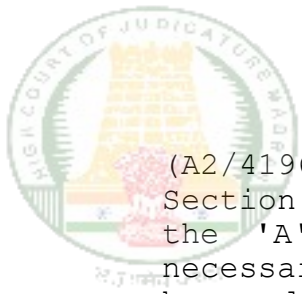
16. Sub Clause 4 of Section 145 of Cr.P.C. reads as follows:-

"145 (4). The Magistrate shall then, without, reference to the merits or the claims of any of the parties to a right to possess the subject of dispute, peruse the statements so put in, hear the parties, receive all such evidence as may be produced by them, take such further evidence, if any, as he thinks necessary, and, if possible, decide whether any and which of the parties was, at the date of the order made by him under sub- section (1), in possession of the subject of dispute:

Provided that if it appears to the Magistrate that any party has been forcibly and wrongfully dispossessed within two months next before the date on which the report of a police officer or other information was received by the Magistrate, or after that date and before the date of his order under sub- section (1), he may treat the party so dispossessed as if that party had been in possession on the date of his order under sub- section (1)."

17. Thus, in the absence of any evidence being placed by 'A' party before the Revenue Divisional Officer, the Revenue Divisional Officer has rightly come to the conclusion that 'B' party is in possession, since from the date of the order passed by the learned Executive Magistrate in M.C.No.2 of 1996. Furthermore, it is not the case of 'A' party that he was forcibly and wrongfully dispossessed the property within two months next before the date on which the report of a police officer or other information was received by the Magistrate.

18. Hence, viewing from any angle, the order passed by the learned Sub-Divisional Executive Magistrate and Revenue Divisional Officer, Cuddalore, in M.C.No.248 of 2014



(A2/4196/2014), dated 08.05.2015, is perfectly in order as per Section 145(4) of Cr.P.C. as extracted supra and it is open to the 'A' party to pursue the civil proceedings and to seek necessary relief from the Civil Court and as mentioned, they have also filed a suit in O.S.No.2 of 2016 before the learned District Judge, Cuddalore.

19. After the preliminary order, the property was sealed and after the impugned order, the RDO has directed for de-sealing of the building and handed over possession to 'B' party, who was in continuous possession. After the earlier first round of litigation, proceedings under Section 145 of Cr.P.C., which has culminated in passing of an order in M.C.No.2 of 1996, 'A' party appears to have filed the suit in O.S.No.837 of 1996, which was dismissed for default. It is also pleaded in the counter statement filed before the Revenue Divisional Officer [which is available from the office file of RDO] that O.S.No.390 of 2000 filed by the 'B' party was also dismissed and the Appeal filed in A.S.No.73 of 2003 was allowed and remanded for fresh trial. After remand, the suit is reported to be dismissed.

20. Be that as it may, one suit filed by 'A' party was dismissed so also the suit filed by the 'B' party was dismissed and in view of the earlier order passed in M.C.No.2 of 1996, from the date of the order passed in M.C.No.2 of 1996 onwards, 'B' party was in possession and such possession was given in recognition of an earlier proceedings in the petition property. In other words, taking into consideration the earlier possession of the 'B' party, an order confirming the possession of 'B' party was recognised and granted in M.C.No.2 of 1996 and no document has been filed by the 'A' party to show that 'B' party, on his possession, dislodged and dispossessed from the petition property. When that being the case, the Revenue Divisional Officer has rightly taken note of the fact that right from the year 1996 till the year 2014, 'B' party was uninterrupted continuous peaceful possession and enjoyment of the property.

21. Accordingly, recognized such a possession as provided under Section 145 (4) of Cr.P.C. and granted to pass an order which is in conformity with the said provision. Hence, I find that the order passed by the Revenue Divisional Officer is just and proper.

22. The decision relied on by the learned Senior Counsel for the petitioner reported in 2004 (1) L.W. (CrI.) 22 [M.Krishnamoorthy Vs. P.M.Neelamegham & others] that the absence of preliminary order passed under Section 145(1) of Cr.P.C. vitiates the entire proceedings. However, the said proposition of law is no longer holds good, in view of the Full Bench judgment of the Madurai Bench of this Court reported in 2016 (2)



L.W. (Crl.) 1, [A.Dhaveethu Vs. The District Collector, Sivagangai District, Sivagangai and others], wherein, the Full Bench of the Madurai Bench of this Court has held that the failure of an Executive Magistrate to pass a preliminary order under Section 145 sub Clause (1) of Cr.P.C. is a mere irregularity and will not affect his jurisdiction. Aggrieved party is permitted to move the same authority for review or in his absence to move the competent Civil Court.

23. In this view of the matter, I do not find any error in the order passed by the learned Sub-Divisional Executive Magistrate and Revenue Divisional Officer, Cuddalore, in M.C.No.248 of 2014 (A2/4196/2014), dated 08.05.2015 and hence, this criminal revision case is liable to be dismissed.

24. In the result, this Criminal Revision Case is dismissed and the order passed by the learned Sub-Divisional Executive Magistrate and Revenue Divisional Officer, Cuddalore, in M.C.No.248 of 2014 (A2/4196/2014), dated 08.05.2015, is confirmed. The connected miscellaneous petition is also dismissed.

Sd/-
Assistant Registrar

//True Copy//

Jrl Sub Assistant Registrar

To

1. The Sub-Divisional Executive Magistrate and Revenue Divisional Officer, Cuddalore.
2. The Inspector of Police, Cuddalore New Town Police Station, Cuddalore.
3. The Public Prosecutor, High Court, Madras.

Copy To

The Section Officer, Criminal Section, High Court, Madras.

+1cc to Mr.S.Ramesh Kumar, Advocate, S.R.No.51101
+1cc to Mr.C.A.Anburaja, Advocate, S.R.No.51462

Crl.R.C.No.461 of 2015

RSI (CO)
PM/25/10/2021