

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 29.01.2021

CORAM:

THE HON'BLE Mr. JUSTICE P.VELMURUGAN

Criminal Revision Case No.845 of 2020
and CrI.MP.No.5941 of 2020

Ramesh ... Petitioner

..vs..

1.The Revenue Divisional Officer,
Salem District,
District Collector Buildings,
Salem.

2.The Tahsildar,
Salem Taluk,
Salem District.

3.Prabu

...Respondents

Criminal Revision Case filed under Section 397 read with 401 Cr.P.C, to call for the entire records relating to Na.Ka.No.2632/2020/A2 dated 31.08.2020 on the file of the Revenue Divisional Officer, Salem, the respondent No.1 herein and to set aside the same.

For Petitioner : Mr.Y.Prakash

For Respondents: Mr.R.Surya Prakash
Government Advocate (CrI.Side)
for R1 and R2
Mr.V. Karthick Senior Counsel for
Mr.R. Kannan for R3.

O R D E R

The Revenue Divisional Officer, Salem, the first respondent herein initiated proceeding dated 31.08.2020 against the petitioner under Section 145 Cr.P.C. Aggrieved over the said proceedings, the petitioner has filed the present revision.

2.1 The case of the petitioner is that, he is in possession and enjoyment of a patta land in S.No.58/5B of Paramarathupatti Village along with other lands. He acquired title over the suit property by way of settlement deed from his mother and ever since he is in absolute possession and enjoyment of the said

property. The third respondent submitted a representation before the second respondent stating that the petitioner by putting up stones and superstructure with tin sheet obstructed the pathway and in view of that there is a likelihood of arising law and order problem. The second respondent in turn submitted a report to the first respondent, based on which, the first respondent initiated proceedings dated 31.08.2020 under Section 145 Cr.P.C. Though in the order passed by the first respondent indicated that the second respondent has pointed out the pendency of civil cases between the parties in O.S.No.214 of 2020 and O.S.No.269 of 2020, respectively, the first respondent without application of mind and without conducting any enquiry by affording opportunity to the petitioner, passed the impugned order and also directed the petitioner to remove the obstructions and to maintain the status quo till the disposal of O.S.No.214 of 2020.

2.2 Further, the case of the petitioner is that in his patta land there is no pathway and hence, the question of removal of obstacles does not arise. The first respondent has given a finding as if an extraordinary situation of law and order problem exists and in the guise of the same, the said order has been passed. However, absolutely, there is no law and order problem and even the third respondent has not lodged any complaint before the police. It is further stated that without furnishing a copy of the report to the petitioner, the second respondent submitted a report before the first respondent. Only under the guise of the complaint received from the third respondent as if there is an apprehension of breach of peace and disturbance to public tranquility in view of the alleged dispute between the parties, the first respondent initiated proceedings under Section 145 of Criminal Procedure Code. Further, the report of the second respondent has not even satisfied himself about its prima facie case and failed to pass a Preliminary Order under Section 145 Cr.P.C., on the other hand he passed a final order. The said order does not reflect the grounds of satisfaction of the first respondent for initiating the proceedings and pass final order, which is unsustainable either on facts or in law. If any right of pathway arises, the same would be pleaded and established before the Civil Court. However, the first respondent without taking note of the said fact and without issuing any notice to the petitioner, passed the final order. Hence, the order is against the principles of natural justice and the proceedings initiated by the first respondent is prejudiced to the interest of the petitioner.

3.The learned counsel for the petitioner would submit that Survey No.58/5B of Paramarathupatti Village is a patta land of the petitioner. The third respondent has demanded to purchase the land, but, the same was refused by the petitioner and hence,

the third respondent caused disturbance to the petitioner. Therefore, the petitioner filed a suit in O.S.No.214 of 2020 before the District Munsif, Salem against the third respondent and others. During the pendency of the said suit, the third respondent and their men filed a suit in O.S.No.269 of 2020 on the file of the District Munsif, Salem against the petitioner seeking for mandatory injunction and he has not able to obtain any interim order, hence, he approached the first respondent and obtained orders. The learned counsel would further submit that during the pendency of the civil suit, the first respondent has no power or jurisdiction to initiate proceedings and even assuming that he has got power and without issuing any notice and not even passing the preliminary order straight away initiated proceedings under Section 145 Cr.P.C., which is illegal and unsustainable and the same is liable to be set aside.

4.1 The learned counsel for the third respondent would submit that the third respondent and their family members have a right to use the pathway. However, the petitioner obstructed the same and hence, they made a complaint before the police. Subsequently, the second respondent/Tahsildar visited the disputed place and enquired the parties in and around place and submitted a report to the first respondent stating that there is a likelihood of law and order problem. Therefore, in order to avoid the law and order problem, the first respondent after applying his mind passed the order of status quo till the disposal of the civil suit in O.S.No.214 of 2020 and the same warrants no interference of this Court.

4.2 The learned counsel would further submit that the first respondent assuming that the order under challenge is a final order and contended that without passing of the preliminary order, final order has been issued, which is not illegal and there is no prejudice caused to the petitioner. Further, both the parties can maintain status quo as prevailing from the date of proceedings.

5. In support of his contention the learned counsel for the third respondent by placing reliance on the decision of the Hon'ble Full Bench of this Court in the case of A.Dhaveethu Vs. The District Collector and others [Crl.R.C.(MD).No.863 of 2011] submitted that the failure of an Executive Magistrate to pass a preliminary order under Section 145(1) Cr.P.C is a mere irregularity and will not affect his jurisdiction and considering the nature of power vested on the Executive Magistrate under Section 145 Cr.P.C, no prejudice will be caused to parties. Therefore, the contention raised by the learned counsel for the petitioner that the first respondent failed to issue preliminary order under Section 145 Cr.PC and passed the final order, even without conducting the enquiry and also directed the petitioner to remove the obstructions in his land and maintain status quo till the disposal of the suit is not

correct. Since it is not a final order, it is only a interim order i.e. till the disposal of the suit both the parties shall maintain status quo. Therefore, there is no illegality or infirmity in the order passed by the first respondent and hence, the same is liable to be dismissed.

6. Heard the learned counsel on either side and perused the materials available on record.

7. Admittedly, there is a civil dispute between the petitioner and the third respondent and others. According to the petitioner, the said disputed pathway is in his patta land in Survey No.58/5B of Paramarathupatti Village, but, the third respondent and their men tried to disturb them. Hence, the petitioner approached the Civil Court, whereas, the third respondent approached the police, but, there is no criminal case registered as against the petitioner. Subsequently, the third respondent and others filed a suit in O.S.No.269 of 2020 and the same is pending. It is also to be noted that both the parties have approached the Civil Court separately against each others. The first respondent without applying his mind and without any satisfactory materials passed the impugned order. Further, the third respondent not disputed the fact that the suit in O.S.No.214 of 2020 was filed against the third respondent and others and the third respondent has also filed a suit in O.S.No.269 of 2020 against the petitioner, which were pending before the Civil Court. Since the third respondent approached the police, the police approached the Tahsildar/2nd respondent herein and they filed the report before the first respondent. Based on which, the first respondent passed the impugned order.

8. It is well settled proposition of law, when a civil suit is pending before the Civil Court, the Revenue Divisional Officer has no jurisdiction to initiate proceedings under Section 145 Cr.P.C, even if, he has already proceeded. In this case, the parties have already disputed their respective possession before the Civil Court. Further, in the judgment cited supra also referred various decisions of the Hon'ble Supreme Court the relevant paragraphs are extracted hereunder :

'Cannot move forums parallelly:

36. In Ram Sumer Puri Mahant Vs. State of U.P. [1985 (1) SCC 427], the Supreme Court also held that after filing a civil suit, it is not open to the parties to initiate proceedings under Section 145 of the Code :-

'When a civil litigation is pending for the property wherein the question of possession is involved and has been adjudicated, we see hardly any

justification for initiating a parallel criminal proceeding under Section 145 of the Code. There is no scope to doubt or dispute the position that the decree of the Civil Court is binding on the criminal court in a matter like the one before us. Counsel for respondents 2-5 was not in a position to challenge the proposition that parallel proceeding should not be permitted to continue and in the event of a decree of the Civil Court, the criminal court should not be allowed to invoke its jurisdiction particularly when possession is being examined by the civil court and parties are in a position to approach the civil court for interim orders such as injunction or appointment of receiver for adequate protection of the property during dependency of the dispute. Multiplicity of litigation is not in the interest of the parties nor should public time be allowed to be wasted over meaningless litigation. We are, therefore, satisfied that parallel proceedings should not continue and the order of the learned Magistrate should be quashed. We accordingly allow the appeal and quash the order of the learned Magistrate by which the proceeding under Section 145 of the Code has been initiated and the property in dispute has been attached. We leave it open to either party to move the appellate judge in the civil litigation for appropriate interim orders, if so advised, in the event of dispute relating to possession.''

37. In *Prakash Chand Sachdeva Vs. State* [1994 (1) SCC 471], the Supreme Court held that if the party asserting possession or title moves a civil court, then normally, that party is precluded from moving the Executive Magistrate under Section 145 of the Code. It was held as follows:-

'A suit or remedy in civil court for possession or injunction normally prevents a person from invoking jurisdiction of the criminal court as

observed by this Court in Ram Sumer Puri Mahant Vs. State of U.P. particularly when possession is being examined by the civil court and parties are in a position to approach the civil court for interim orders such as injunction or appointment of receiver for adequate protection of the property during pendency of the dispute. Multiplicity of litigation is not in the interest of the parties nor should public time be allowed to be wasted over meaningless litigation'. The normal rule is as stated by the Court in Puri case. But that was a suit based on title. And that could be decided by civil court only. That ratio cannot apply where there is no dispute about title. When claim or title are not in dispute and the parties on their own showing are co-owners and there is no partition one cannot be permitted to act forcibly and unlawfully and ask the other to act in accordance with law. Where the dispute is not on the right to possession but on the question of possession the Magistrate is empowered to take cognizance under Section 145 Cr.P.C."

38. In Amresh Tiwari Vs. Lalita Prasad Dubey {2000 (4) SCC 440}, the Supreme court once again considered Ram Sumer Puri Mahant and observed as under:-

"We are unable to accept the submission that the principles laid down in Ram Sumer's case would only apply if the civil Court has already adjudicated on the dispute regarding the property and given a finding. In our view Ram Sumer's case is laying down that multiplicity of litigation should be avoided as it is not in the interest of the parties and public time would be wasted over meaningless litigation. On this principle it has been held that when possession is being examined by the civil Court and parties are in a position to approach

the civil Court for adequate protection of the property during the pendency of the dispute, the parallel proceedings i.e. Section 145 proceedings should not continue."

"We clarify that we are not stating that in every case where a civil suit is filed, Section 145 proceedings would never lie. It is only in cases where civil suit is for possession or for declaration of title in respect of the same property and where reliefs regarding protection of the property concerned can be applied for and granted by the civil court that proceedings under Section 145 should not be allowed to continue. This is because the civil court is competent to decide the question of title as well as possession between the parties and the orders of the civil Court would be binding on the Magistrate."

39. Even in its subsequent decision in *Mahar Jahan Vs.State of Delhi* {2004 (13) SCC 421}, the Supreme Court made a similar observation, which is as follows:-

"4. It is not disputed by the learned counsel for the parties that this very property, which is the subject-matter of these criminal proceedings, is also the subject-matter of the civil suit pending in the civil court. The question as to possession over the property or entitlement to possession would be determined by the civil court. The criminal proceedings have remained pending for about a decade. We do not find any propriety behind allowing these proceedings to continue in view of the parties having already approached the civil court. Whichever way proceedings under Section 145 Cr.P.C., may terminate, the order of the criminal court would always be subject to decision by the civil court. In as much as the parties are already before the civil court, we deem it proper to let the civil suit be decided

and therein appropriate interim order be passed taking care of the grievances of the parties by making such arrangement as may remain in operation during the hearing of the civil suit."

9. In the present case, both the parties have already approached the Civil Court and they could not obtain any interim order, but, the third respondent utilizing the power of the police initiated proceedings under Section 145 Cr.P.C. As per the law laid down by the Hon'ble Supreme Court, once the matter is pending between the parties before the Civil Court, parallel proceedings cannot be conducted by the Executive Magistrate. Therefore, in this case, the third respondent instead of convincing the Civil Court and secure interim order, utilized the power of the police and got the impugned order from the Revenue Divisional Officer. The Hon'ble Supreme Court as well as this Court time and again reiterated the view that when the civil dispute is pending regarding title or possession before the Civil Court, the Executive Magistrate cannot interfere with the same. Even as per the decision of the Full Bench of this Court, parallel proceedings cannot be conducted with the Executive Magistrate, when the matter is pending before the Civil Court.

10. In the light of the above facts, this Court finds that the first respondent without applying his mind and also exceeded his power passed the order and hence, the proceeding in Na.Ka.No.2632/2020/A2, dated 31.08.2020 is liable to be set aside and accordingly the same is set aside. In fine, the Criminal Revision Case is allowed. Consequently, connected miscellaneous petition is closed.

s/d-
Assistant Registrar (CS VI)

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Sub-Assistant Registrar

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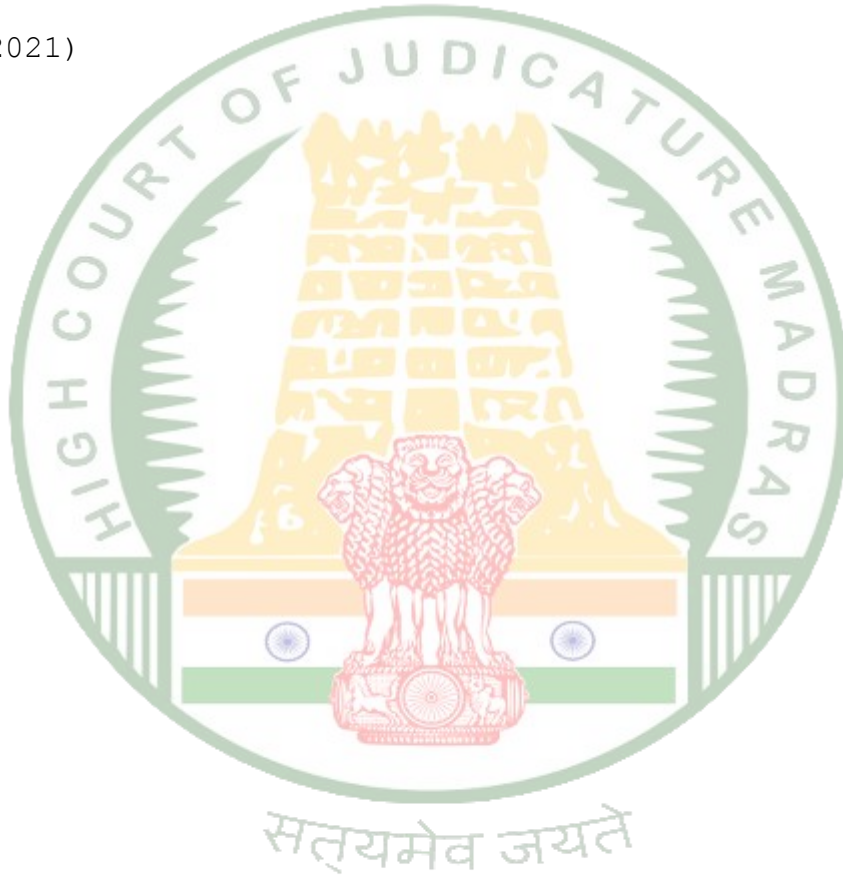
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+1 CC to Mr.R.Kannan, Advocate sr 4897
+1 CC to Mr.Jayaprakash, Advocate sr 4766.

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and
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AK (CO)
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