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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 14.12.2021

Pronounced on : 20.12.2021

CORAM :

THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY
Crl.R.C.No.812 of 2014
and
M.P.No.1 of 2014

1.N.Rukmani

2.N.Jayaprakash

... Petitioners

Versus

1.The Sub-Divisional Magistrate/
Revenue Divisional Officer,
Erode,
Erode District.

2.S.Prema

... Respondents

Prayer: Criminal Revision Petition is filed under Section 397 r/w 401 of Criminal Procedure Code, to call for the records pertaining to the order dated 04.08.2014 made in Na.Ka.1543/2014/A2 passed by the 1st respondent, set aside the same by allowing this Revision Petition.

For Petitioners : Mr.R.T. Vishnu,
for Mr.N.Manokaran

For Respondent : Mr.L.Baskaran, (for R1)
Govt., Advocate (crl.side)

: Mr.V.S.Kesavan (for R2)

ORDER

A. The Revision Petition :

This Criminal Revision Case is filed against the order of the Learned Divisional Magistrate-cum-Revenue Divisional Magistrate, Erode, dated 04.08.2014 in Na.Ka.No.1543/2014/A2 being an order passed under Section 145 of Code of Criminal Procedure, thereby, restraining the petitioners from in any manner entering into the disputed property viz., Punchai lands of Acs.0.23 cents in Perundurai Village, Thoppupalayam Taluk in Survey Nos.882-4, 883/11 and 883/12 of Erode District.



B. The brief facts leading to the passing of the order :

2.The second respondent viz., S.Prema, submitted a petition to the first respondent viz., Divisional Magistrate, stating that she is the owner of the property mentioned above and the petitioners herein viz., Rukmani and Jaya Parkash are trying to illegally trespass into the property and attempting to grab the property. The second respondent/Prema, claimed in the petition that by virtue of settlement deed dated 01.08.2013 registered as document No.3741 of 2013, she is the owner of the property and that the petitioners herein are attempting to enter into the property and grab her property. Based on the petition, the first respondent conducted an enquiry under Section 145 of Code of Criminal Procedure and issued summons to both sides. However, the petitioner in the petition/Prema appeared on 16.06.2014 for enquiry and also submitted the documents in her favour. The petitioners herein did not appear for the enquiry to prove their claim. The Learned Divisional Magistrate, considered the title documents submitted by the second respondent herein, and the change of Patta order issued by the Deputy Regional Tahsildhar on 02.09.2013 and confirmed the order of Deputy Tahsildhar, changing the Patta dated 02.09.2013 and passed the order under Section 145 of Code of Criminal Procedure, prohibiting the petitioners herein from entering into the disputed property, until the decision is rendered in O.S.No.29 of 2014 on the file of the Subordinate Court, Perundurai.

C. The civil proceedings between the parties :

3.The second respondent/Prema had filed the suit in O.S.No.29 of 2014 for permanent injunction, restraining the petitioners herein their men, agent or servants not to make in any manner disturbances or trespass into the suit property, affecting the plaintiff's peaceful enjoyment and possession of the suit property. The suit was filed on 20.02.2014. The petitioners herein along with one Indhumathy, have filed a suit in O.S.No.33 of 2014 for declaration and consequential permanent injunction claiming title under Will. The said suit was filed on 03.03.2014. It is submitted across the bar that in both suits there is no interim injunction granted and the trial is almost complete and the matter is in an advance stage.

D. The Submissions :

4.The Learned Counsel for the petitioner, would submit that when the matter is pending in the Civil Court, unable to secure an ad-interim order by proving the prima facie possession, the second respondent/Prema has resorted to the filing of the petition under Section 145 of Code of Criminal Procedure. When the suits were already pending, the first respondent herein, ought not to have entertained the petition. Further, the petitioners would contend that they were served a



summons for the enquiry on 09.06.2014, on which date they appeared. However, they were not informed about the subsequent hearings, more specifically, the hearing mentioned in the impugned order, i.e., on 16.06.2014. The order was passed without affording any opportunity to them. Therefore, they prayed this Court, in exercise of revisional jurisdiction, to interfere in the matter.

5. In support of his contention, the learned counsel appearing for the petitioners relied upon the Judgment of the Hon'ble Supreme Court of India, in Ranbir Singh Vs. Dalbir Singh and others. In paragraphs Nos.8 & 9 of the said Judgment, it has been held that when the suit between the parties, including the prayers for interim orders are pending for further consideration before the Civil Court, entertaining the petition filed under Section 145 of Code of Criminal Procedure, was improper. For the same proposition, the learned counsel relied upon the Judgment of the Hon'ble Supreme Court of India, in Mahar Jahan and Others Vs. State of Delhi and Others, by relying on paragraphs Nos.4 & 5 of the said Judgment, to state that it is only proper that the Civil Court suit should decide the issue relating to possession. The learned counsel for the petitioner also relied upon the Judgment of the Hon'ble Supreme Court of India, in Amershi Tiwari Vs. Lalita Prasad Dubey and another, by relying upon the paragraph No.12 of the Judgment to the effect that it is not necessary that the Civil Court should have decided the issue and it is enough, if the matters are pending in the Civil Court to oust the jurisdiction of the Learned Divisional Magistrate.

6. Mr. L. Baskaran, learned Government Advocate (Crl. side) appearing on behalf of the first respondent would submit that the enquiry was held on 09.06.2014, 16.06.2014, 03.07.2014 and notices for the enquiry were duly served. After the hearing on the first occasion, the petitioners failed to turn up for enquiry for the reasons best known to them and therefore they must be precluded from making contentions to the contrary before this Court. It is his further submissions that only apprehending the breach of peace, until the Judgment of the Civil Court pronounced, the first respondent had passed an order and therefore, there is no infirmity in the order impugned in the revision.

7. Mr. V. S. Kesavan, learned counsel appearing for the second respondent would submit that the second respondent had her title and also was in possession of the property. The action of the petitioners was high handed and illegal. The question raised in the grounds of the revision regarding the passing of preliminary order has already been answered by the Full Bench of this Court in A. Dhavethu and Ors. Vs. The District Collector,



Sivagangai District and Ors, whereby, it has been authoritatively pronounced by this Court that in the absence of the preliminary order is only an irregularity and will not affect the jurisdiction to pass the order under Section 145 of Code of Criminal Procedure and no prejudice is caused on account of the absence of the preliminary order. And, the aggrieved parties can move the very same authority for reviewing its decision or the competent Civil Court for an appropriate relief either regarding the title or regarding possession. Without doing so the action of the respondent in filing the present revision before this Court cannot be countenanced.

E. The Questions :

8.I have perused the materials on record and considered the rival submissions made on behalf of the parties. Upon consideration thereof, the following questions arise in this revision:

i) Whether or not, the first respondent/Divisional Magistrate is right in entertaining the petition under Section 145 of Cr.P.C., after the filing of the suit before the Civil Court by the parties for reliefs regarding title and the possession of the property ?

ii) Whether or not, the impugned order passed by the first respondent/Divisional Magistrate based on the title and Patta documents of the second respondent herein alone is sustainable in law ?

iii) Whether or not, the present revision case is maintainable, in view of the Full Bench decision of this Court in the case of A. Dhaveethu and Ors. Vs. The District Collector, Sivagangai District and Ors, reported in (2016) 4 CTC 12?

Question No.(i):

9.The answers to the above questions are no longer res integra as the Constitution Bench of the Hon'ble Supreme Court of India, in the latest decision in M. Siddiq (D) thr. L.Rs.(RAM JANMABUMI TEMPLE CASE)Vs. Mahant Suresh Das and Ors, in paragraphs Nos.293 to 301 have in detail dealt with every aspect as to the nature and scope of the proceedings under Section 145 of Code of Criminal Procedure. In respect of the above question, the answer lies in paragraphs Nos.299, 299(1), 299(2) and 300 of the said Judgment and the same is useful to reproduce hereunder:-

" 299. Where a suit is instituted for possession or for declaration of title before a competent civil court, the proceedings under Section 145 should not



continue. This Court has analysed the above proposition of law in the following cases:

299.1. In *Amresh Tiwari v. Lalta Prasad Dubey* [Amresh Tiwari v. Lalta Prasad Dubey, reported in (2000) 4 SCC 440 : 2000 SCC (Cri) 806, S.N. Variava, J. speaking for a three-Judge Bench of this Court held thus : (SCC p. 445, para 12)

"12. ... The law on this subject-matter has been settled by the decision of this Court in *Ram Sumer Puri Mahant v. State of U.P.* [*Ram Sumer Puri Mahant v. State of U.P.*, (1985) 1 SCC 427 : 1985 SCC (Cri) 98] In this case it has been held as follows : (SCC pp. 428-29, para 2)

'2. ... 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. ... parallel proceedings 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 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. We are, therefore, satisfied that parallel proceedings should not continue...' "

299.2. The Court in *Amresh Tiwari* [Amresh Tiwari v. Lalta Prasad Dubey, (2000) 4 SCC 440 : 2000 SCC (Cri) 806] rejected the submission that the principle in *Ram Sumer Puri Mahant v. State of U.P.* [*Ram Sumer Puri Mahant v. State of U.P.*, (1985) 1 SCC 427 : 1985 SCC (Cri) 98] will apply only after the civil court has adjudicated on the issue : (SCC p. 445, para 13)

"13. We are unable to accept the submission that the principles laid down in *Ram Sumer* case



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[Ram Sumer Puri Mahant v. State of U.P., (1985) 1 SCC 427 : 1985 SCC (Cri) 98] 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 case [Ram Sumer Puri Mahant v. State of U.P., (1985) 1 SCC 427 : 1985 SCC (Cri) 98] 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."

300. Dealing with the issue as to when the proceedings under Section 145 should not be pursued any further on the institution of a suit for adjudication, this Court in Amresh Tiwari [Amresh Tiwari v. Lalta Prasad Dubey, (2000) 4 SCC 440 : 2000 SCC (Cri) 806] held : (SCC p. 446, para 14)

"14. Reliance has been placed on the case of Jhummal v. State of M.P. [Jhummal v. State of M.P., (1988) 4 SCC 452 : 1988 SCC (Cri) 974] It is submitted that this authority lays down that merely because a civil suit is pending does not mean that proceedings under Section 145 of the Criminal Procedure Code should be set at naught. In our view this authority does not lay down any such broad proposition. In this case the proceedings under Section 145 of the Criminal Procedure Code had resulted in a concluded order. Thereafter the party, who had lost, filed civil proceedings. After filing the civil proceedings he prayed that the final order passed in the Section 145 proceedings be quashed. It is in that context that this Court held that merely because a civil suit had been filed did not mean that the concluded order under Section 145 of the Criminal Procedure Code should be quashed. This is entirely a different situation. In this case the civil suit had been filed first. An order of status quo had already been passed by the competent civil court. Thereafter Section 145 proceedings were commenced. No final order had been passed in the proceedings under Section 145. In our



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view on the facts of the present case the ratio laid down in Ram Sumer case [Ram Sumer Puri Mahant v. State of U.P., (1985) 1 SCC 427 : 1985 SCC (Cri) 98] fully applies. 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. (Emphasis supplied)" "

Therefore when the matter was already pending before the Civil Court regarding title and possession by way of two suits, in spite of the fact there were no interim or final orders passed, the Learned Divisional Magistrate ought not to have entertained the petition of the second respondent the proceedings under Section 145 of Cr.P.C., therefore, this Court answer question No.1 in favour of the petitioners.

Question No.(ii) :

10.Regarding the second question, on perusal of the impugned order, it is clear that the Learned Divisional Magistrate has not whispered anything about the breach of peace in the entire order and he went into the aspect only on the basis of the title document and Patta. Thereafter, the impugned order states that the petitioners did not produce any document in their favour in proof of their title or possession and passed the impugned prohibitory order. This is also answered in paragraph No.295 of the Ram Janmabumi Case, and it is useful to extract the same as follows:-

" 295. Section 145 is recognised to be a branch of the preventive jurisdiction of the Magistrate. [Commentary on the Criminal Procedure Code by Ratanlal and Dhirajlal, 20th Edn. (2016) at p. 426.] Section 145(1) can be invoked on the satisfaction of the Magistrate that "a dispute likely to cause a breach of the peace exists...". The provision relates to disputes regarding possession of land or water or its boundaries which may result in breach of the peace. The function of the Magistrate is not to go into questions of title, but to meet the urgency of the situation by maintaining the party in possession. The Magistrate is empowered to call upon



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the parties to put in written statements in support of their claim to "actual possession". Such an order is to be served as a summons upon the parties. The Magistrate is to peruse the statements, hear the parties and weigh the evidence, in order to ascertain who was in possession at the date of the order. The Magistrate may make that determination "if possible" to do so. Moreover, the determination is about the factum of possession on the date of the order "without reference to the merits of the claim of any of such parties to a right to possess the subject of the dispute". These words indicate that the Magistrate does not decide or adjudicate upon the contesting rights to possess or the merits of conflicting claims. The Magistrate is concerned with determining only who was in possession on the date of the order. If possession has been wrongfully taken within two months of the order, the person so dispossessed is to be taken as the person in possession. In cases of emergency, the Magistrate can attach the subject of the dispute, pending decision. The action ultimately contemplated under Section 145 is not punitive, but preventive, and for that purpose is provisional only till a final or formal adjudication of rights is done by a competent court in the due course of law. Thus, nothing affecting the past, present and future rights of parties is contemplated under the provision." (Emphasis Supplied)

There is not a mention about breach of peace, much less the subjective satisfaction. Therefore, in the absence of any apprehension of breach of peace or any satisfaction that there is likely to be a situation of breach of peace exists, the impugned order is totally unsustainable.

Question No.(iii) :

11.As far as the third question is concerned, even though in this case, a preliminary order was not passed, the said ground was argued by the learned counsel for the petitioners. Therefore, to consider the argument advanced by the counsel for the learned counsel of the second respondent that a review is to be filed or the civil court to be moved, it is necessary to extract the four questions framed by the Full Bench of this Court in A. Dhaveethu and Ors. Vs. The District Collector, Sivagangai District and Ors, (2016) 4 CTC 12, in paragraph No.9 which are as follows:-

"9. Four questions were referred by the learned Judge for the consideration of this Full Bench and they are as follows:



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"(i) Whether the absence of a preliminary order under Sub-section (1) of Section 145 of the Code would affect the very jurisdiction of the Executive Magistrate to proceed further and to pass final order under Section 145 of the Code?

(ii) Whether the failure of the Executive Magistrate to pass a preliminary order under Section 145(1) of the Code is a mere irregularity or is it an illegality, affecting the very jurisdiction of the Magistrate?

(iii) If it is answered that it is only an irregularity, whether such irregularity would vitiate the final order automatically, even in the absence of any prejudice or miscarriage of justice to the parties?

(iv) If it is answered that the absence of a preliminary order is only an irregularity, whether the party aggrieved is required to raise objection at the earliest point of time or is it suffice if such an objection is raised at any stage subsequently?"

The questions were answered in paragraph 63 as follows :

63. In the light of the above discussion, we answer the questions posed by the learned Judge as follows:-

1. Though the Executive Magistrate is required to pass a preliminary order under Section 145(1), the absence of the same will not vitiate his final order under Section 145(4) of the Code.
2. The failure of an Executive Magistrate to pass a preliminary order under Section 145(1) of the Code is a mere irregularity and will not affect his jurisdiction
3. Considering the nature of power vested on the Executive Magistrate under Section 145 of the Code, no prejudice will be caused to parties.
4. The aggrieved parties are empowered to move the very same Authority for reviewing his decision or in its absence, move the competent civil court for an appropriate relief either regarding the title or regarding the right to possession. In rare cases,



they can move this Court for a judicial review either under Section 397 of the Code or under Article 226/227 of The Constitution".

Thus it may be seen that the directives of the Full Bench that the aggrieved parties to apply for review of the decision or to move to the competent Civil Court is in specific answer to the question 4, about the absence of the preliminary order. As a matter of fact, even though such a ground exists, the ground of irregularity it is not even pressed in this case in view of other basic grounds of illegality being present. Thus, this is a case complaining illegality of the impugned order and not mere irregularity. The order of the first respondent under Section 145 of Cr.P.C., deciding the upon the rights of the parties and finally disposing of the complaint under Section 145 of Cr.P.C., and therefore, it is revisable order under Section 145 of Cr.P.C., and therefore, the present revision is maintainable.

12. Therefore, in view of the answer to the questions framed above, the above revision succeeds and accordingly, it is allowed. The order dated 04.08.2014 passed in Na.Ka.1543/2014/A2, by the first respondent/Divisional Magistrate cum Revenue Divisional Magistrate is set aside. As made clear in Ram Janmabumi case, none of the findings of the Divisional Magistrate in the proceedings under Section 145 Cr.P.C are binding on the civil court. The parties are at liberty to agitate their rights before the civil court and the civil court will consider interim or final reliefs on their own merits. Consequently, the connected miscellaneous petition is closed.

Sd/-

Assistant Registrar(CS-IX)

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Sub Assistant Registrar

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To

1.The Sub-Divisional Magistrate/Revenue Divisional Officer,
Erode, Erode District.

2.The Public Prosecutor, High Court of Madras.

+1cc to Mr.N.Manokaran, Advocate, S.R.No.68530

Cr1.R.C.No.812 of 2014
and
M.P.No.1 of 2014

PM(CO)
SB(03/01/2022)