

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 05.01.2021

CORAM:

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

Crl.RC.No.976 of 2020 and

Crl.M.P.No.6846 of 2020

1. Viraputhiran @ Murali
2. Babu @ Kannappan
3. Naguesvary
4. Kanagam
5. Senbgavalli
6. Kaliki
7. Kalaiselvi ... Petitioners

Vs.

1. The Sub Divisional Magistrate (North),
Saram, Puducherry.
2. Mahakrishnan ... Respondents

PRAYER : Criminal Revision Case filed under Section 397 and 401 Cr.P.C. to call for the records of the entire proceedings in M.C.No.33 of 2020 order dated 07.10.2020, on the file of Sub Divisional Magistrate (North), Puducherry and set aside

For Petitioners :Mr.D.Senthil Kumar

For Respondents :Mr.Bharatha Chakaravarthy (R1)
Public Prosecutor

O R D E R

Challenging the order dated 07.10.2020 passed by the learned Sub Divisional Magistrate (North), Puducherry, in M.C.No.33 of 2020 the petitioners are before this Court by way of the Civil Revision.

2. The learned counsel for the petitioner would submit that the suit properties originally belonged to one Thandavaraya Gounder and he purchased the same from one Arumugapillai, son of Gopalasamy Pillai on 13.01.1916 and thereafter, he executed a gift deed in favour of his children and the petitioners are the grandchildren of Thandavaraya Gounder. It is further submitted that the petitioners filed a suit for partition in O.S.No. 343 of 1995 before the learned Principal Sub Court, Pondicherry and got the preliminary decree. Thereafter, they filed an application in I.A.No. 2276 of 1999 for appointment of an Advocate Commissioner to measure the said property and for passing of final decree and during the pendency of the final decree application, the second respondent and his brother filed two applications one in I.A.No.3035 of 2001 for impleading them as necessary parties and another application in I.A.No. 3036 of 2001 to stay of operation of the preliminary decree and I.A.No.3035 of 2001 was returned as infructuous and I.A.No.3036 of 2001 was dismissed on merits and no appeal was filed against the said order in respect of the applications till date. It is further submitted that subsequently the suit was transferred from the Sub Court to the I Additional District Munsiff at Pondicherry and renumbered as O.S.No.1291 of 2007 and based on the Advocate Commissioner's report final decree was passed on 20.12.2007. It is further contended that the second respondent filed suit in O.S.No.917 of 2020, before the II Additional District Munsiff Court, Pondicherry for permanent injunction and pending disposal of the same, the second respondent filed I.A.No.94 of 2020 for interim injunction and as no interim order is granted they filed an application before the Sub Divisional Magistrate (North) in M.C.No.33 of 2020 under Section 145 of Cr.P.C. seeking to take action against the petitioners herein and to pass an order to stop illegal construction made by the petitioners, wherein a detailed counter along with 17 documents have been filed by the petitioners, but the learned Sub Divisional Magistrate failed to consider the same and passed the final order on 07.10.2020 by ordering status-quo in respect of the disputed site until further orders from the competent civil court and other directions. The learned counsel for the petitioner would further contend that the learned Sub Divisional Magistrate failed to consider the final decree passed in favour of the petitioners and also the fact that application filed by the second respondent for impleading was returned and the stay application was dismissed and no challenge was made as against the said orders. It is further contended that though the Judgment passed in O.S.No.917 of 2020 is final, the second respondent filed another suit in O.S.No.917 of 2020 and the same is also pending, the learned Sub Divisional Magistrate (North), Puducherry has passed an order without any jurisdiction which warrants interference.

3.Mr.Bharatha Chakaravarthy, the learned Public Prosecutor (Pondicherry) appearing for the first respondent would submit that the petitioners have not filed the Judgment and decree passed by the Civil Court before the Sub Divisional Magistrate and since the petitioners tried to encroach the property wherein the second respondent and his brother were residing, in order to maintain law and order, the learned Sub Divisional Magistrate has disposed of the M.C. filed before him. However, if the learned Sub Divisional Magistrate was aware of the final decree passed by the Civil Court, he would not have passed the said order.

4. Mr.K.S.Ilangovan, learned counsel appearing for the second respondent would submit that the second respondent is also one of the owners of the disputed property and petitioners without obtaining any permission from the authorities as required under Town and Country Planning Act has started the construction in the disputed property and therefore the Puducherry Planning Authority issued stop work notice and without obeying the said order the petitioners constructed the building and therefore in order to maintain the law and order in the Society, the learned Sub Divisional Magistrate (North) have taken the application filed by the second respondent and passed the order and therefore the order passed by the learned Magistrate need not be interfered with.

5. Heard both sides. Perused the records.

6. Admittedly, the petitioner filed a suit in O.S.No.343 of 1995 and got the preliminary decree and subsequently got the final decree. Further, the application filed by the second respondent to implead him in the suit was returned as infructuous and the application filed for stay was dismissed. But, without challenging the orders passed in these applications, the second respondent filed a suit in O.S.No.917 of 2020 before the II Additional District Munsiff Court and the learned II Additional District Munsif has not passed any interim order. Subsequently during the pendency of the said suit, the second respondent approached the Sub Divisional Magistrate in M.C.No.33 of 2020, wherein the learned Sub Divisional Magistrate passed the order dated 07.10.2020, which is impugned in this revision.

7. On a perusal of the entire records available before this Court, it is seen that after filing the suit before the Civil Court having failed to get interim order, the second respondent has approached the Sub Divisional Magistrate to get favourable order. It is well settled proposition of law that Sub Divisional Magistrate is not the competent authority to decide the title and further when the suit is pending before the civil court, the learned Sub Divisional Magistrate has no authority to deal with the matter.

Further, a careful reading of the order passed by the learned Sub Divisional Magistrate would go to show that learned Sub Divisional Magistrate has exceeded his jurisdiction which warrants interference. Therefore, the impugned order passed in M.C.No.33 of 2020 dated 07.10.2020 is set aside and this Criminal Revision Petition is allowed. The parties are directed to work out their remedies in the Civil Court. However, if at all any violation regarding approval or construction, the authority concerned is at liberty to take action in accordance with law and rules as prevailing in the Union territory of Pondicherry. Consequently, connected Miscellaneous Petition is closed.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

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To

1 The Sub Divisional Magistrate (North),
Puducherry.

2 The Public Prosecutor,
High Court, Chennai.

+2 CC to Mr.D.Senthil Kumar, Advocate Sr.No.221

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Cr1.RC.No.976 of 2020

PA(CO)
KP(12/02/2021)

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