



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 10.06.2022

CORAM :

THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

CRL.R.C.NO.138 OF 2022

1. Nedunchezhiyan
2. Thamayanthi

... Petitioners

Versus

1. The Revenue Divisional Officer-cum-Sub Divisional Executive Magistrate, Chidambaram, Cuddalore District.
2. Moorthy
3. Shanthi

... Respondents

Prayer: Criminal Revision Case is filed under Section 397 r/w 401 of Cr.P.C., to call for the records relating to order, dated 03.01.2022 passed in Na.Ka.No.A3/4770/2021 on the file of the 1st respondent-Revenue Divisional Officer-cum-Sub Divisional Executive Magistrate, Chidambaram, Cuddalore District and set aside the same as illegal and allow the Criminal Revision Petition.

For Petitioners	:	Mr.R.Venkatesulu
For Respondents	:	Mr.S.Vinoth Kumar Government Advocate (Crl. Side) for R1 Mr.G.Pugazhenth for R2 and R3

ORDER

This Revision is filed challenging the impugned order, dated 03.01.2022 passed by the first respondent in exercise of powers under Section 145 of Code of Criminal Procedure.

2. It is seen from the records that there was earlier civil proceedings between the parties, whereby, the petitioners filed a suit for permanent injunction, which was dismissed and the



first appeal, having been dismissed, they approached this Court by way of Second Appeal No.906 of 2009. By a judgment, dated 06.09.2019, this Court had held that the possession claimed by the petitioners on the strength of unregistered usufructuary mortgage cannot be a legal possession and held it to be an illegal possession and refused the order of injunction.

3. Therefore, it is clear that the petitioners are in defacto possession of the property. The respondents, however, cannot resort to their eviction by way of Section 145 of Cr.P.C., proceedings and the impugned order is passed restraining the petitioners from entering into the property. Therefore, to that extent, the exercise of power by the first respondent is unsustainable and the proper remedy available to the respondents 2 and 3 is to file a Civil Suit and get the petitioners evicted.

4. In that view of the matter, this Criminal Revision Case is allowed and the impugned order passed by the first respondent, dated 03.01.2022 is set aside. However, the respondents 2 and 3 shall workout their remedy to evict the petitioners in the manner known to law. Consequently, CrI.M.P.No.1286 of 2022 is closed.

Sd/-

Assistant Registrar(CS-IV)

//True Copy//

Sub Assistant Registrar

grs

To

1. The Revenue Divisional Officer-cum-Sub Divisional Executive Magistrate, Chidambaram, Cuddalore District.
2. The Public Prosecutor, High Court of Madras.

+1cc to M/s.G.Pugazhenthii, Advocate, S.R.No.34348

+1cc to M/s.Usha Ramman, Advocate, S.R.No.34352

CrI.R.C.No.138 of 2022

SSD(CO)

RLP(20/06/2022)