



Crl.R.C.No.418 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON :13.10.2022
PRONOUNCED ON :05.12.2022

CORAM:
THE HON'BLE Mr. JUSTICE P.VELMURUGAN

Criminal Revision Case No.418 of 2021 &
Crl.M.P.No.6761 of 2021

- 1.Vengatesan
- 2.M.Karunakaran
- 3.Santhanakrishnan
- 4.Gopalakrishnan
- 5.Megavarman

... Petitioners

Versus

- 1.The Executive Magistrate,
and Revenue Divisional Officer,
Tiruvallur.
- 2.The Inspector of Police,
T-16, Nasaratpet Police Station,
Chennai – 600 123
- 3.Mr.Rajamani
- 4.Egambaram
- 5.Devarajan
- 6.Nagendran

... Respondents

Criminal Revision Case filed under Section 397 read with 401 Criminal Procedure Code, to call for the records relating to the proceedings in Na.Ka.No.1224/2020/A1, dated 25.06.2021 on the file of the first respondent and set aside the same.



For Petitioner : Mr.R.Bharath Kumar

For Respondent : Mr.S.Sugendran APP for R1 & R2

Mr.R.John Sathyan for R3 to R5

ORDER

This Criminal Revision Case has been filed against the order dated 25.06.2021 passed in Na.Ka.1224/2020/A1 by the Executive Magistrate, and Revenue Divisional Officer, Tiruvallur.

2. According to the petitioners, the respondents 3, 4 and 6 and the petitioners are brothers and their grandfather, who was the absolute owner of the lands in Survey Nos.136/2, 137/3 and 138/4B situated at Chembarambakkam Village, Poonamallee Taluk, Tiruvallur District, measuring a total extent of 7 Acres 41 cents, has settled the same in favour his son T.Mohanarangam, who is father of the petitioners and the respondents 3, 4 and 6. Later, the said T.Mohanarangam due to old age related illness fell bed ridden and taking advantage of the same, the respondents 3 to 5 started digging the lands and selling the red soil to third parties illegally without the knowledge of any of the legal of heirs of the said T.Mohanarangam. Hence, the 2nd petitioner and 6th respondent jointly filed a suit in O.S.No.266 of 2019



before the learned Additional District Munsif, Poonamallee for various reliefs of permanent injunctions. During pendency of the Suit, T.Mohanarangam died intestate and at the time of his death, there were 80 loads of baked bricks, 50 loads of savudu sand and 3,00,000 nos. of unbaked bricks kept in the land worth Rs.15,00,000/- (Rupees Fifteen Lakhs only). The respondents 3 to 5 are illegally trying to occupy the entire properties and the goods available in the land and when the petitioners restrained them, they with the help of hooligans threatened with dire consequences. Thereafter the 1st petitioner lodged complaint before the 2nd respondent against the respondents 3 to 5. Countering the same, the 3rd respondent lodged complaint against the petitioners and the 2nd respondent conducted enquiry and advised to approach the Civil Court. However, again the respondents 3 to 5 have attempted to dispose the movable properties in the land and hence the 1st petitioner again lodged a complaint and the 2nd respondent warned the respondents 3 to 5 refraining their illegal acts over the properties, however, since they refused the same, the 2nd respondent registered a case in Crime No.667 of 2020 under Section 145 fo Cr.P.C. and forwarded the same to the 1st respondent for further proceedings. Pursuant to the same, the Tahsildar, Poonamallee had conducted an enquiry and based on his report, the 1st respondent passed the



order dated 29.09.2020, determining the rights unilaterally in favour of the respondents 3 to 5. Aggrieved against the same, Criminal Revision has been filed with a petition in Crl.M.P.6145 of 2020, seeking stay and this Court by order dated 09.10.2020, granted interim stay and at the time of final disposal, this Court by order dated 08.04.2021 set aside the order of the 1st respondent dated 29.09.2020 and remanded the matter back to the first respondent for fresh consideration in accordance with law and directed to complete the proceeding within a period of three months from the date of receipt of the order. Thereafter, both the petitioners and the respondents 3 to 5 have appeared before the 1st respondent and after enquiry, the 1st respondent passed the impugned order dated 25.06.2021, determining the rights in favour of the respondents 3 to 5, which warrants interference of this Court.

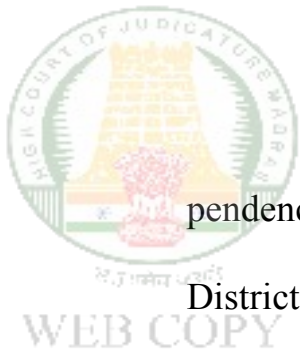
3. This Court, after hearing the learned counsel for the petitioner and the learned Additional Public Prosecutor, by order dated 09.07.2021 allowed the Criminal Revision Case and set aside the impugned order.

4. Aggrieved over the said order, the private respondents 3 to 5 preferred Special Leave Petition before the Hon'ble Supreme Court in SLP (Crl).No.5999 of 2021 by stating that the order was passed without notice to



the appellant/respondents 3 to 5 and therefore, the Hon'ble Supreme Court by order dated 11.04.2022, by disposing of the appeal, set aside the impugned order and remitted the matter back to this Court to be decided in accordance with law after hearing both sides. Therefore, the matter has been taken up for consideration.

5. The learned counsel appearing for the petitioner would submit that earlier this Court passed an order in Crl.R.C.No.918 of 2020 on the very same issue and held that an enquiry under Section 145 Cr.P.C., confined to the question of actual possession only and the Executive Magistrate cannot enquire into the rights of the parties and it is submitted that the first respondent instead of passing the preliminary order under Section 145(1) Cr.P.C., has straight away passed the final order, which is against the provisions of law, and after remitting also, the first respondent intentionally has determined the rights unilaterally in favour of one party, which is in clear violation of the findings rendered by this Court. Further the learned counsel would submit that the first respondent passed the order intentionally and without non-application of mind and also without taking into consideration of the facts and evidences putforth by the petitioners herein regarding the



pendency of two suits in O.S.No.266 of 2019, on the file of the Additional District Munsif, Poonamalle and O.S.No.35 of 2021, on the file of the Additional District Judge, Tiruvallur between the petitioners and the respondents 3 to 5 and their sisters. The learned counsel further would submit that the first respondent did not follow the procedures as contemplated under Section 145(1) Cr.P.C., and it is submitted that in terms of Section 145 Cr.P.C., the Executive Magistrate, the first respondent herein has to satisfy himself from the report of a police officer or upon the information that a dispute likely to cause a breach of peace over any land or water, should make an order in writing upon such satisfaction and require the parties to attend its Court and to put in written statements of their respective claims with regard to the dispute. However, in the present case, the first respondent without following the above mandate procedures has mechanically passed the impugned order.

6. The learned counsel further would submit that the impugned order is in violation of the principles of law formulated by the Hon'ble Apex Court in the case of *M/s.Kranti Associates Pvt., Ltd.& Anr., vs.Masood Ahmed Khan & Ors.*, reported in *2011 (273) ELT 345 (SC)*, wherein the Hon'ble Apex



Court formulated certain principles to be followed by the quasi-judicial authority with regard to recording of reasons in support of its conclusions while passing an order and the said principles formulated by the Hon'ble Apex Court has not been followed in this case, while passing the impugned order by the first respondent and the learned counsel has referred to the decision of this Court in the case of ***R.Thiagarajan vs. K.Angamuthu*** reported in ***1996-2-L.W.(Crl.) 615***, wherein it was held that while conducting enquiry under Section 145 Cr.P.C., mandatory provision of Section 145(1) of the Cr.P.C., has to be duly complied with by passing a preliminary order, giving out all the necessary details and reflecting the grounds of satisfaction arrived at by the Magistrate, otherwise the entire proceedings would be illegal.

7. Further, the learned counsel would submit that the power under Section 145 Cr.P.C., can be invoked only in case where there shall be a breach of peace and it is apparent from the FIR, the second respondent after conducting an enquiry has held that there has been no threat in between the petitioners and the respondents 3 to 5 herein. Initially, several complaints were lodged before the second respondent and CSR were also issued and



after due enquiry in each complaint, the second respondent advised and warned the rival parties to refrain from their illegal acts and to approach the Civil Court and the parties have approached Civil Court and several suits are pending. At that stage, the first respondent without following the mandatory procedures and also without applying her mind regarding the pendency of the Civil Suit exceeded her power and passed the impugned order and therefore, the order passed by the first respondent warrants interference.

8. The learned counsel appearing for the private respondents 3 to 5 submitted that the petitioners and the private respondents are the brothers and originally the suit property and other properties belonged to their grandfather Thiru.Thulasignah Mudaliar and he executed the settlement deed in favour of Mr.T.Mohanaragam, (father of the petitioners and private respondents) on 09.02.1959 and the father of the petitioners and private respondents was running a brick-kiln business in the name and style of Venkateswara Industries and the said Mudaliar was the absolute owner of the lands in survey Nos.136/2, 137/3 and 138/4B to the extent of 7.41 acres and the said T.Mohanaragam purchased the property in survey No.136/1 to the extent of 5.25 acres from his self earned money from his brother Govindan and



subsequently to the said T.Mohanarangam, executed a registered will in favour of the third respondent herein dated 02.07.2019, document No.112 of 2019. It is further submitted that since the said T.Mohanarangam, attained the old age, he could not continue his brick-kiln business and the father let out the property with the business to and in favour of the third respondent on 06.03.2017 and based on the lease agreement, the third respondent has conducted the business and only he met out all the medical and family expenses from the income earned through the business and he also obtained the license and permission from the Government by waiving GST and also he put up a tin roof shed and thatched shed. After the demise of father Mohanarangam on 01.04.2020, all the brothers raised a dispute against the third respondent and therefore, they preferred a complaint before the second respondent Police. Since there was a law and order problem, the respondent Police have called both the parties and advised them to approach the Civil Court and for further proceedings, the complaint was forwarded to the first respondent, who in turn made an enquiry under Section 145 Cr.P.C., found out that the respondents 3 only doing business in the said property. The other brothers did not have any right in the brick-kiln business and the petitioners filed a Suit in O.S.No.98 of 2014 on the file of District Munsif



Court, Poonamallee and the said suit ended in favour of the respondents 3 to 5 and the said Suit was dismissed. Subsequently, another brother M.Karunakaran filed a suit in O.S.No.266 of 2019, against the respondents 3 to 5 and his father Mohanarangam on the file of the District Munsif, Poonamallee, and sought temporary injunction and the Court below refused to grant, but however, without the knowledge of the respondents 3 to 5, the said Suit ended, which would not bind the parties. Therefore the petitioners are in possession and during the life time of father Mohanarangam, the brick-kiln business was run by the respondents 3 and the petitioners did not dispute it, but they filed suits in which also they could not succeed it. Only after the demise of father, they disputed and the complaint has been lodged before the second respondent and the second respondent registered the FIR in Crime NO.667 of 2020 under Section 145 Cr.P.C., and forwarded a copy of the FIR to the first respondent for further proceedings. Further it is submitted that the first respondent after conducting an enquiry and considering the lease agreement, licence and permission granted by the State Government to brick-kiln business and the same was being run by the third respondent and he is owner of the business and all the bricks and other materials belonged to only the third respondent, passed the impugned order and therefore, the learned



counsel appearing for the private respondents submitted that the first respondent rightly passed the order and no interference is called for.

9. Heard the learned counsel appearing for the petitioners and the learned Government Advocate (Crl.Side) appearing for the respondents 1 & 2 and the learned counsel appearing for the respondents 3 to 5 (Appellants in Supreme Court).

10. Admittedly, there is a civil dispute between the petitioners and the respondents 3 to 6 regarding the land in question and the 80 loads of baked bricks, 50 loads of savudu sand and 3,00,000 nos. of unbaked bricks kept in the land. It is also to be noted that both the parties have approached the Civil Court separately against each others seeking right over the disputed land and the above said movable goods. The first respondent without applying his mind to the pendency of the civil Suits and without any satisfactory materials passed the impugned order.

11. 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. In this case, the parties have



already approached the Civil Court and disputed their respective possession.

Further, in the Full Bench judgment of this Court in the case of ***A.Dhaveethu vs. The District Collector & Ors.***, reported in ***2016 4 CTC 12*** have cited various decisions of the Hon'ble Supreme Court and 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



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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 dependency of the dispute. Multiplicity of litigation is



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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. Lalta 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



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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."

12 In the present case, both the parties have already approached the Civil Courts and they could not obtain any interim order. As per the law laid down by the Hon'ble Supreme Court, once the matter is pending before the Civil Court, parallel proceedings cannot be conducted by the Executive Magistrate. The Hon'ble Supreme Court as well as this Court have time and again reiterated the view that when the civil dispute is pending regarding title or possession, 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.

13. In the light of the above facts, this Court finds that the first



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respondent without applying her mind and also exceeding her power passed the order by declaring the rights and title over the properties to the parties and hence, the proceeding in Na.Ka.1224/2020/A1 dated 25.06.2021 is liable to be set aside and accordingly the same is set aside. In fine, the Criminal Revision Case is allowed. Consequently, the connected miscellaneous petition is closed.

05.12.2022

Index : Yes/No

Internet: Yes/No

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To

- 1.The Executive Magistrate,
and Revenue Divisional Officer,
Tiruvallur.
- 2.The Inspector of Police,
T-16, Nasaratpet Police Station,
Chennai – 600 123.
- 3.The Public Prosecutor,
High Court, Madras.



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P.VELMURUGAN, J.

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Pre-Delivery Order in
Criminal Revision Case No.418 of 2021

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