



Crl.R.C.No.561 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 20.03.2023

CORAM

THE HONOURABLE MR. JUSTICE V.SIVAGNANAM

Crl.Rc.No.561 of 2022

1.Panner
2.Rangan
3.Prakash
4.Poovarasam
5.Kasthuri

... Petitioners

Vs.

1.The Sub Divisional Executive Magistrate/
Revenue Divisional Officer,
Harur, Dharmapuri District.

2.The Inspector of Police,
Bommidi Police Station,
Dharmapuri District.

3.Chinnadurai
4.Srinivasan

... Respondents

PRAYER: Criminal Revision Petition filed under Section 397 r/w 401 of Criminal Procedure Code, 1973 to call for the records pertaining to the order dated 28.02.2022 made in Mu.Mu.No.3856/2020/A3 passed by the



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first respondent under Section 145 Cr.PC, and to set aside the same.

For Petitioners : Mr.R.Prabakar

For Respondents : Mr.R.Vinothraja

Government Advocate (Crl.Side) for RR1 & 2
Mr.G.Mohan for RR3 & R4

ORDER

This Criminal Revision Petition has been filed to call for the records pertaining to the order dated 28.02.2022 made in Mu.Mu.No.3856/2020/A3 passed by the first respondent under Section 145 Cr.PC, and to set aside the same.

2.The case of the petitioners is that there is a dispute with regard to the property situated at Bommidi Village, Pappireddipatti Taluk, Dharmapuri District in S.No.195/1E to the extent of 1.08.50 extent in patta no.827. In this regard, a civil suit has been filed by the petitioners in O.S.No.252 of 2010 before the District Munsif Court, Pappireddipatti wherein, an I.A.No.499 of 2020 is also filed. While so, another suit is filed by the respondents 3 and 4 before the Subordinate Judge, Haroor in



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O.S.No.73 of 2021 and both suits are pertaining to the same land dispute.

The learned counsel submitted that the suit in O.S.No.252 of 2010 has been decreed vide judgment dated 27.04.2015 in favour of the petitioners. But the respondents 3rd and 4th started creating ruckus over the land and they restricted the petitioners from reaping the cultivated Tapico from the land. Only after the 2nd petitioner filed a complaint with the 2nd respondent/Bommidi Police Station vide CSR No.279 of 2015, they could be able to reap the Tapico crop. Thereafter, the 2nd respondent acting in favour of the 3rd and 4th respondents threatened the petitioners not to enter into the lands ignoring the civil Court decree. Since the police is acting against the civil Court decree and did all kinds of mischief, the petitioners filed Criminal O.P No. 18358 of 2020 seeking not to interfere with the civil dispute. While disposing of the said O.P., this Court directed the petitioners to work out their remedy before the civil Court for enforcing the decree. Without challenging the judgment and decree, the 3rd and 4th respondents have filed the suit in O.S.No.73 of 2021. Later, after 10 years from the date of filing of the suit and 5 years from the date of date of decree in O.S.No. 252



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of 2010, the 1st respondent herein initiated the proceedings on the instructions of the 2nd respondent who have registered a case in Crime no. 717 of 2020 under 145 Cr.P.C on 19.12.2020. Under these circumstances, the Revenue Divisional Officer, Haroor passed the impugned order, prohibiting both the parties not to enter into the subject property till the disposal of the civil suit, which is unsustainable and within the scope of Section 145 Cr.PC. Hence, the petitioners have come forward with the present Revision, seeking to aside the impugned order.

3. Resisting the petition, the learned counsel for the respondents contended that the respondents are not entering into the disputed property and admittedly, civil suits are pending. He contended that the suit filed by the petitioners came to be decreed only *ex parte* and the respondents have taken steps to set aside the *ex parte* decree. The impugned order has been rightly passed by the first respondent after taking into consideration the facts and circumstances prevailing at the time of enquiry, which requires no interference.



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4.Heard the learned counsel appearing for the petitioners and the learned Government Advocate (Crl.Side) appearing for the respondents 1 & 2 and Mr.G.Mohan, learned counsel for the respondents 3 & 4 and perused the materials placed on record.

5.A perusal of the records and the impugned order, it is revealed that the first respondent, upon report of the 2nd respondent police and after issuance of notice to the concerned parties, conducted an enquiry on 25.02.2020 in crime no.717 of 2020 under Section 145 Cr.PC. It is further revealed that there is a dispute between two rival parties with regard to the subject property situated at Bommidi Village, Pappireddipatti Taluk, Dharmapuri District in S.No.195/1E to an extent of 2.65 acres. Both the parties are claiming right over the title and possession of the subject property. In this regard, a suit has been filed before the District Munsif, Haroor in O.S.No.252 of 2010 by the petitioners herein, which was initially decreed *ex parte*. Hence, an application to condone the delay has been filed



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to file the petition seeking to set aside the *ex parte* decree and the same is pending. It is further revealed that the suit in O.S.No.73 of 2021 was also filed by the respondents 3 and 4 before the Subordinate Judge, Haroor and the same is pending.

6. During pendency of the suit, the first respondent without deciding who is in possession of the subject property at the time of enquiry, passed orders under Section 145(4), prohibiting both the parties not to enter into the disputed property. It is against the scope of Section 145(4) Cr.PC.

Section 145(4) Cr.PC reads as follows:

"Section 145(4) The Magistrate shall then, without, reference to the merits or the claims of any of the parties to a right to possess the subject of dispute, peruse the statements so put in, hear the parties, receive all such evidence as may be produced by them, take such further evidence, if any, as he thinks necessary, and, if possible, decide whether any and which of the parties was, at the date of the order made by him under sub- section (1), in possession of the subject of dispute:

Provided that if it appears to the Magistrate that any party has been forcibly and wrongfully dispossessed within two months next before the date on which the report of a police officer or other information was received by the Magistrate, or after that date and before the date of his order under sub-section (1), he may treat the party so dispossessed as if that party had been in possession on the date of his order under sub- section (1).

7. Therefore, the first respondent, without reference to the merits or



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the claims of the parties to a right to possess over the subject of dispute, consider the statements or any evidence produced by the parties, shall decide which of the parties was in possession of the subject property at the date of the order being made by him. However, if the first respondent comes to the conclusion that any party has been forcibly and wrongfully dispossessed within two months next before the date on which the report of a police officer or other information was received by him, or after that date and before the date of his order under sub- section (1), he may treat the party so dispossessed as if that party had been in possession on the date of his order under sub- section (1). While so, in the present case, without resorting to the procedure contemplated under Section 145(4) Cr.P.C., the first respondent passed the impugned order, prohibiting both the parties from entering into the disputed property based on the apprehension that there would be every likelihood of breach of peace and tranquillity, which in the opinion of this Court, is not sustainable and liable to be set aside.

8. Accordingly, this Criminal Revision Case is allowed and the



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impugned order dated 28.02.2022 is hereby set aside and this matter remitted back to the first respondent to conduct fresh enquiry after issuing notices to both parties and conduct enquiry without reference to the merits or claims of the parties, if possible decide who is in possession of the subject property at the date of the order being made by him. If the first respondent finds that the party in possession has been forcefully or wrongfully dispossessed within two months before the date on which the report of the police officer or other information was received by the first respondent, then he can pass suitable orders on merits within two months from the date of receipt of a copy of this order.

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Index: Yes/No
Internet: Yes/No
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V.SIVAGNANAM, J.,

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