



Crl.R.C.No.1209 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 14.03.2023

PRONOUNCED ON: 03.04.2023

CORAM

THE HONOURABLE MR. JUSTICE V.SIVAGNANAM

Crl.R.C.No.1209 of 2022

and

Crl.M.P.No.13292 of 2022

Dr.G.P.Sekar

...

Petitioner

/vs/

- 1.The Sub-Division Magistrate cum
Revenue Divisional Officer,
Cuddalore Revenue Division,
Cuddalore – 607 001.
- 2.The Deputy Superintendent of Police
Cuddalore NT
Cuddalore – 607 001.
- 3.The Inspector of Police,
Cuddalore NT Police Station,
Cuddalore – 607 001.

4.Dr.D.Sulochana

5.Dr.Sucharita Sekar

...

Respondents



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PRAYER : Criminal Revision Case has been filed under Section 397 of Code of Criminal Procedure to call for the proceedings of the 1st respondent made in Pa.Mu.No.4500/2021/A2 dated 22.06.2022 and to set aside the same as invalid and not sustainable under law.

For Petitioner	...	Mr.S.Thirumavalavan
For Respondent Nos.1 to 3	...	Mr.R.Vinothraja Govt. Advocate (Crl.side)
For Respondent Nos.4 & 5	...	Mr.P.Dinesh Kumar

ORDER

Challenging the impugned proceedings of the 1st respondent in Pa.Mu.No.4500/2021/A2 dated 22.06.2022, this criminal revision case has been filed.

2.The fact of the case is that the petitioner is a Medical Practitioner and Senior Surgeon. The fourth respondent Dr.D.Sulochana is his wife and the fifth respondent Dr.Sucharita Sekar is a daughter of the petitioner and the fourth respondent. The petitioner purchased a land along with old building in the year 1980 and constructed a hospital in the name and style of Sujatha Hospital at Cuddalore Town in the year 1985. He availed loan in



the name of his wife, the fourth respondent. Further, he executed a settlement deed dated 23.12.1991 in her favour during the year 1991. The building and hospital's front and rear block, ground and the first floor used for hospital purpose and the second floor in both blocks used for residential purpose. The rear block has direct access to the Nethaji road through the front block. As there is some difference of opinion between the petitioner and his wife the fourth respondent, he cancelled the settlement deed executed by him in the year 1991, which was registered on 01.03.2010. After the cancellation of the settlement deed, his wife the fourth respondent had filed a suit in O.S.No.135 of 2010 on the file of the first Additional Sub-Court, Cuddalore for declaration of title in respect of the front block of the hospital and for consequential injunction.

3.During the pendency of the suit, they entered into a compromise and the fourth respondent has agreed to withdraw the suit by considering the marriage of the fifth respondent, who is the second daughter of them. Believing her words, the petitioner requested his counsel not to pursue the case in view of the withdrawal. Thereafter, the petitioner and the fourth



respondent lived peacefully without any problem till 03.02.2021. The fourth respondent had difference of opinion with her elder daughter, again problem started between them. In respect of the same, the fourth respondent filed a police complaint against the petitioner and her elder daughter. After that, the petitioner came to know that the fourth respondent was not withdrawing the suit in O.S.No.135 of 2010 and got exparte decree in her favour. Therefore, the petitioner filed another suit in O.S.No.242 of 2021 before the Sub-Court Cuddalore seeking declaration of title over the front portion of the Hospital and consequential injunction, which is pending. On 10.07.2021, the fifth respondent had driven her husband's car in a rash and negligent manner and attempted to kill the elder daughter of the petitioner. In this regard, police complaint has been given by the elder daughter of the petitioner on 10.07.2021. Thereafter, the fourth respondent filed a complaint before the second respondent as against her elder daughter.

4.In this situation, the first respondent issued notice dated 18.11.2021 directing the petitioner and his both daughters and the fourth



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respondent to appear before him for enquiry under Section 145 of the Criminal Procedure Code. In consequence, the petitioner has enquired on what basis the first respondent issued notice to them and noticed that the second respondent directed the third respondent Inspector of police to register a case in Crime No.767 of 2021 dated 04.11.2021 against all the parties and the same was forwarded to the first respondent for enquiry. In this regard, the first respondent based upon the FIR, without considering the fact that a civil suit in O.S.No.242 of 2021 is pending on the file of the Sub-Court Cuddalore, issued notice to the parties. The petitioner participated in the enquiry before the first respondent on 31.01.2022 and on that date, the first respondent, without conducting any preliminary enquiry, passed an order under Section 145(1) Cr.P.C on 22.06.2022 which is under challenge.

5.The learned counsel for the petitioner submitted that the first respondent has no power to adjudicate a civil dispute pending between the parties before the Sub-Court Cuddalore. Further, the first respondent has not passed the preliminary order as required under Section 145(1) Cr.P.C.



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and he has only issued summon to the petitioner on 18.11.2021 and after hearing the parties, he has passed the impugned order. The entire proceedings are vitiated for non compliance of sub Section 1 of 145 Cr.P.C. Initiation of parallel proceedings under Section 145 Cr.P.C. should not have been made, when a civil suit in O.S.No.242 of 2021 is pending on the file of the Sub-Court, Cuddalore. Hence, the impugned order passed by the first respondent is illegal and thus, pleaded to allow the criminal revision.

6.The learned Govt.Advocate (Crl.side) appearing for the respondents 1 to 3 and the learned counsel appearing for the respondents 4 & 5 supported the order of the first respondent and there is no illegality in this impugned order and no ground for interference, thus, pleaded to dismiss the criminal revision.

7.I have considered the matter in the light of the submissions made by both the parties.



8. In the present case, there is no dispute with regard to the fact that a civil case in O.S.No.242 of 2021 pending on the file of Sub-Court, Cuddalore, with a prayer for declaration of title and consequential injunction and also not disputed a civil suit in O.S.No.135 of 2010 filed before the first Additional Sub-Court Cuddalore for declaration of title in respect of the front block of the hospital and for consequential injunction, which was decreed as exparte in favour of the fourth respondent. Further, there is no dispute with regard to the fact that the first respondent Revenue Divisional Officer, Cuddalore, had not passed order under Sub-Section 1 of Section 145 Cr.P.C in the matter. Section 145 of The Criminal Procedure Code deals with the dispute concerning land or water and the relevant Sub-Sections are extracted below;

145. Procedure where dispute concerning land or water is likely to cause breach of peace.

— (1) Whenever an Executive Magistrate is satisfied from a report of a police officer or upon other information that a dispute likely to cause a breach of the peace exists concerning any land or water or the boundaries thereof, within his local jurisdiction, he shall make an order in writing, stating the grounds of his being so



satisfied, and requiring the parties concerned in such dispute to attend his Court in person or by pleader, on a specified date and time, and to put in written statements of their respective claims as respects the fact of actual possession of the subject of dispute.

(2) For the purposes of this section, the expression "land or water" includes buildings, markets, fisheries, crops or other produce of land, and the rents or profits of any such property.

(3) A copy of the order shall be served in the manner provided by this Code for the service of a summons upon such person or persons as the Magistrate may direct, and at least one copy shall be published by being affixed to some conspicuous place at or near the subject of dispute.

(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, persue 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).

(5) Nothing in this section shall preclude any party so required to attend, or any other person interested, from showing that no such dispute as aforesaid exists or has existed; and in such case the Magistrate shall cancel his said order, and all further proceedings thereon shall be stayed, but, subject to such cancellation, the



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order of the Magistrate under sub-section (1) shall be final.

(6) (a) If the Magistrate decides that one of the parties was, or should under the proviso to subsection (4) be treated as being, in such possession of the said subject, he shall issue an order declaring such party to be entitled to possession thereof until evicted therefrom in due course of law, and forbidding all disturbance of such possession until such eviction; and when he proceeds under the proviso to sub-section (4), may restore to possession the party forcibly and wrongfully dispossessed.

(b) The order made under this sub-section shall be served and published in the manner laid down in sub-section (3).

7.”

9. Further, on perusal of the materials on record, it is noticed that in the present case, the first respondent, Revenue Divisional Officer has not passed an order under Sub-Section 1 of Section 145 Cr.P.C. in the matter and he served notice to the parties for their appearance on 18.11.2021. The



proceedings has been initiated upon the complaint given by the petitioner's wife Dr.D.Sulochana, the fourth respondent and her daughter Dr.Sucharita Sekar, the fifth respondent based upon the requisition of the third respondent.

10.The power of the Executive Magistrate/Revenue Divisional Officer to pass an order under Sub-Section 1 is, at preliminary stage and the power to pass an order under Section 4 is, after enquiry namely in the final stage. Thus, the provision of making the order in writing after initial satisfaction and stating the grounds of his satisfaction are mandatory. In the absence of any preliminary order showing expressly the grounds of his being so satisfied, which are in the nature of conclusions arrived at by him, it would be impossible for the parties called upon to put in their claims before him, to predicate as to what had led the Executive Magistrate to pass such an order and to make their effective representations before him. Merely sending a notice is itself not sufficient to comply the mandatory requirements under Section 145(1) of Cr.P.C. where no preliminary order under Section 145(1) is passed and the entire proceedings would be



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initiated.

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11. In the result, the criminal revision case is allowed and the order of the first respondent dated 22.06.2022 in Pa.Mu.No.4500/2021/A2 is hereby set aside. Consequently, connected miscellaneous petition is closed.

Index : Yes/No

Internet : Yes/No

03.04.2023

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To

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Revenue Divisional Officer,
Cuddalore Revenue Division,
Cuddalore – 607 001.
- 2.The Deputy Superintendent of Police
Cuddalore NT
Cuddalore – 607 001.
- 3.The Inspector of Police,
Cuddalore NT Police Station,
Cuddalore – 607 001.
- 4.The Public Prosecutor,
High Court, Madras.

V.SIVAGNANAM,J.



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Pre-delivery order made in
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