



CRL.O.P.(MD)No.5392 of 2011

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 26.04.2023

CORAM:

THE HONOURABLE MR.JUSTICE K.K.RAMAKRISHNAN

CRL.O.P.(MD)Nos.5392 of 2011 & 8279 of 2015

and

M.P.(MD)No.1 of 2011

CRL.O.P.(MD)No.5392 of 2011

Murugan

... Petitioner

-Vs-

1.The Sub Divisional Magistrate Cum
Revenue Divisional Officer,
Tenkasi, Tirunelveli District.

2.The Tahsildar,
Tenkasi Taluk, Tirunelveli District.

3.The Inspector of Police,
Pavoorchatram Police Station,
Pavoorchatram, Tirunelveli District.



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4.Alagu Duraichi (died)

5.Ravi

6.Raja

... Respondents

(R4 is impleaded as per the order of this Court dated 13.03.2014 made in M.P. (MD)No.1 of 2014)

(R5 and R6 are *suo-motu* impleaded as per the order of this Court dated 31.03.2023)

PRAYER: Criminal Original Petition is filed under Section 482 of Criminal Procedure Code, praying this Court to call for records pertaining to the impugned proceedings in Na.Ka.A2/1516/2011, dated 19.04.2011 on the file of the 1st respondent and quash the same.

For Petitioner : Mr.S.S.Thesigan

For R1 to R3 : Mr.M.Muthumanikkam

Government Advocate (Crl.Side)

For R4 to R6 : No Appearance

CRL.O.P.(MD)No.8279 of 2015

1.Alagu Duraichi (died)

2.Ravi

3.Raja

... Petitioners

(P2 and P3 are impleaded as per the order of this Court dated 31.03.2023)

-Vs-

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1.The Sub Divisional Magistrate Cum
Revenue Divisional Officer,
Tenkasi, Tirunelveli District.

2.The Tahsildar,
Tenkasi Taluk, Tirunelveli District.

3.The Inspector of Police,
Pavoor Chathiram Police Station,
Pavoor Chathiram, Tirunelveli District.

4.Murugan ... Respondents

PRAYER: Criminal Original Petition is filed under Section 482 of Criminal Procedure Code, praying this Court to call for records pertaining to the impugned order passed by the 1st respondent in his proceedings in Na.Ka.No.A2/1516/2011, dated 19.04.2011 and quash the same insofar as the observation that “Both the parties are prohibited from entering the property in Survey No.711/2B of Kulasekarapatti Village, Tenkasi Taluk, Tirunelveli District till establishing the right through Civil Court”.

For Petitioner	: No Appearance
For R1 to R3	: Mr.M.Muthumanikkam Government Advocate (Crl.Side)
For R4	: Mr.S.S.Thesigan



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COMMON ORDER

The petitioner filed this petition to quash the proceedings of the 1st respondent dated 19.04.2011 made in Na.Ka.A2/1516/2011.

2.The case of the prosecution is that the land in Survey No.711/2 to an extent of 1 Acre 50 Cents situated at Kulasekarapatti Village originally belonged to one Periya Ramaiah Nadar. After his death, his sons, namely, Arumuga Pandiya Nadar and Jeyabalan were in exclusive possession and enjoyment of the property and patta also issued in their favour. Subsequently, they divided the property between themselves by a registered partition deed. Since then they were in possession and enjoyment of their respective shares. Thereafter, the said Jeyabalan sold his share to the extent of 0.12.0 Hectare to one Chidambara Rathinasamy Nadar vide sale deed dated 11.06.1987 and thereafter, he was in possession and enjoyment of the property to the extent of 0.12.0 Hectate. After his death, his legal heirs were in possession and enjoyment of the property. Thereafter, they sold the property to the petitioner by a sale deed dated 10.03.2011 and since then the petitioner is in possession and enjoyment of the property and revenue mutation was also effected. The petitioner has also made construction in the property and regularly he is paying tax.



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3. When that being the position, the 4th respondent filed a suit in O.S.No.189 of 2004 on the file of the Additional District Munsif against nine persons including the petitioner's vendor. At that time, the petitioner's predecessor in title was not alive and instead of suing against his legal heirs, the dead person came to be arrayed as party. The said suit was dismissed and on appeal in A.S.No.8 of 2008, it was allowed, but dismissed against the petitioner's predecessor in title. Against which, the respondents therein preferred an appeal in S.A.(MD)No.421 of 2009 on the file of this Court, which is pending. Since there was no decree either against the petitioner or against the predecessor in title, the same is not binding on the petitioner.

4. While so, the 4th respondent filed another suit in O.S.No.204 of 2011 on the file of the Principal District Munsif Court, Tenkasi against the petitioner and others and the same is still pending. Since there was no interim order granted in favour of the 4th respondent, she approached the Pavoorchatram Police and the Revenue officials to remove the construction made by the petitioner. On the basis of the recommendation made by the 3rd respondent, the 1st respondent passed the impugned order under Section 145 Cr.P.C., stating that there was a possibility of



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caste problem and law and order problem and hence, restrained both the parties from entering into the premises and specifically directed the petitioner to remove the construction made by him, which is impugned in this petition.

5.The learned counsel for the petitioner submits that the suit filed by the 4th respondent in O.S.No.189 of 2004 on the file of Additional District Munsif Court, Tenkasi for a declaration and injunction against the petitioner's vendor's predecessor was dismissed. Against which, appeal suit in A.S.No.8 of 2008 was filed before the Principal Sub Court, Tenkasi, and the same was also dismissed. Further, the fourth respondent filed another suit in O.S.No.204 of 2011 on the file of Principal District Munsif Court, Tenkasi, for a declaration and injunction restraining the petitioner and the other persons from interfering the possession of the property. In the said suit, she filed Interlocutory Application under Order XXXVIII Rule 1 of CPC and in the said Interlocutory Application, there was no order passed in favour of the fourth respondent. Hence, she made an application to the first respondent and the first respondent without jurisdiction, passed the impugned order restraining the petitioner from entering into the suit schedule property and also directed to remove the shed that has been put up by him.



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Further, the first respondent without any material on assumption stated in the impugned order that there is a likelihood of breach of peace and hence, the petitioner seeks indulgence of this Court, to quash the impugned proceeding.

6.During the pendency of the Criminal Original Petition, the fourth respondent died. Hence, the counsel representing the said fourth respondent filed a memo of withdrawal of appearance and hence, this Court impleaded the legal heirs of the fourth respondent and caused notice of hearing of the above case and the same was served upon the legal heirs, but they did not appear either through counsel or in person. Hence, this Court perused the entire records and also considered the submissions made by the learned counsel for the petitioner and the learned Government Advocate (Crl.Side) for the official respondents.

7.From the records, it is clear that the fourth respondent namely, Alaguduraichi, filed a suit in O.S.No.189 of 2004 on the file of learned Additional District Munsif Court, Tenkasi, for a declaration and for injunction against the petitioner's vendor's predecessor. At the time of suit, the petitioner's vendor's predecessor was not alive. The fourth respondent willfully without arraying



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proper party, filed a suit against the dead person. In spite of that, the Trial Court has dismissed the suit by appreciating the oral and documentary evidence holding the fourth respondent's claim of possessory right has not established. Against which, an appeal suit filed in A.S.No.8 of 2008 and the same was also dismissed in favour of the petitioner's vendor. In the said circumstances, the fourth respondent filed another suit for very same relief before the Principal District Munsif Court, Tenkasi along with an Interlocutory Application under Order XXXVIII Rule 1 of CPC restraining the petitioner and his vendor from interfering the possession of the fourth respondent in the suit schedule property and there was no order was passed in the said injunction application. So, she filed a petition before the first respondent and the first respondent without jurisdiction and without considering the factual circumstances, passed the impugned order. Even in the impugned order, the first respondent has not discussed about the lack of materials to prove the possession of the fourth respondent which is material requirements to invoke the proceedings under Section 145 Cr.P.C and passed the impugned order erroneously. Further, there was no material to prove any likelihood of breach of peace.



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8. In the said circumstances, it is relevant to note the following principles held by the Hon'ble Supreme Court,

“8.1. In *Ram Sumer Puri Mahant Vs. State of U.P.* [1985 (1) SCC 427], the Hon'ble 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 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.



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8.2. In *Prakash Chand Sachdeva Vs. State* [1994 (1) SCC 471], the Hon'ble 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 pendency 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'. 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.

8.3. In *Amresh Tiwari Vs. Lalta Prasad Dubey* {2000 (4) SCC 440}, the Hon'ble 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



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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 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.”

9. In this case, the first respondent passed the order without considering the pendency of the civil suit, lack of evidence to prove the possession of the fourth respondent, and without any material to prove the likelihood of breach of peace passed the impugned order, that too when the pendency of the Interlocutory Application for the temporary injunction under order XXXIX Rule 1 & 2 CPC in



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O.S.No.204 of 2011 and hence, the impugned order is not legally sustained on the following reasons stated below:-

i) In the absence of any material to prove the possession of the fourth respondent and pending suit without any injunction order, the first respondent passed the impugned order restraining the petitioner from entering the property is not at all legally correct.

ii) Apart from that, there is no evidence to prove that the fourth respondent was illegally dispossessed from the property prior to the invoking the 145 Cr.P.C Proceedings.

iii) Further, the reasoning of the first respondent that there was a possibility of caste problem is imaginary one and without any material.

10.Hence, in all aspects, the impugned order is not legally sustained. So, the impugned order is liable to be set aside.

11.Accordingly, the impugned order passed by the first respondent in Na.Ka.A2/1516/2011, dated 19.04.2011, is quashed insofar as the petitioner in CrI.OP(MD)No.5392 of 2011 is concerned and CrI.OP(MD)No.5392 of 2011 is allowed. Consequently, connected miscellaneous petition is closed.

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12.In view of the order passed in Crl.O.P.(MD)No.5392 of 2011, no further adjudication is necessary in Crl.OP(MD)No.8279 of 2015. Therefore, Crl.OP(MD)No.8279 of 2015 is dismissed.

26.04.2023

NCC : Yes / No
Internet : Yes / No
Index : Yes / No

DSS

To:

- 1.The Sub Divisional Magistrate Cum
Revenue Divisional Officer,
Tenkasi, Tirunelveli District.
- 2.The Tahsildar,
Tenkasi Taluk, Tirunelveli District.
- 3.The Inspector of Police,
Pavoorchatram Police Station,
Pavoorchatram, Tirunelveli District.
- 4.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

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K.K.RAMAKRISHNAN, J

DSS

Order made in
CRL.O.P.(MD)Nos.5392 of 2011 & 8279 of 2015
and
M.P.(MD)No.1 of 2011

Dated:
26.04.2023