



Crl.RC(MD)No.320 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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Dated: 15/02/2023

CORAM

The Hon'ble Mr.Justice **G.ILANGO VAN**

Crl.RC(MD)No.320 of 2022

1.Raja Pandi
2.Vimala
3.Thathathiyar Pandi : Revision Petitioners/
'B' Party

Vs.

1.The Sub Divisional Magistrate-cum-
Divisional Officer,
Madurai.
2.The Inspector of Police,
South Gate Police Station,
Madurai. : R1 and R2/Complainants
3.Prasath : R3/A-Party
4.Kaleeswaran
5.Muthu Pandi
6.Meenakshi : R4 to R6/C-Party

Prayer:- This Criminal Revision has been filed under section 397 r/w 401 of the Criminal Procedure Code, to call for the records pertaining to the order, dated 17/02/2022 passed in Muu.Mu.3204/2021/C by the Sub-Divisional Magistrate-cum-Revenue Divisional Officer, Madurai District and set aside the same as illegal and pass any other order or further orders



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For Petitioner : Mr.SMA.Jinnah
For R1 and R2 : Mr.B.Nambiselvan
Additional Pubic Prosecutor
For 3rd Respondent : Mr.S.Thangaraj
For R4 to R6 : Mr.R.L.Dhilipan Pandian

O R D E R

Challenging the order passed by the Revenue Divisional Officer, as per the proceedings undertaken under section 145 Cr.P.C, this revision has been preferred by the petitioners who were shown as 'B' party in the proceedings.

2.The facts in brief:-

Originally the property under dispute along with other properties belong to one Pandi. He received the property by way of a partition that took place in 1948. The above said Pandi was also married to one Nachammal. Through Nachammal, he had three children namely Marammal @ Subbulakshmi, Akkanan and Cinnasamy. Nachammal died some years prior to the date of settlement deed i.e., 19/01/1960. He proposed to marry Kuluvayee and in the event of the above said marriage, on behalf of himself as



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well as the above said three minor children born through the first wife, a joint settlement deed in his favour and prospective bride namely Kuluvayee was made stating that the property are settled in his favour as well as the above said Kuluvayee.

3.As usual trouble arose between the children of two wives. The second wife gave birth to one Rajapandi. Subsequent events took place because of the above said issue between two groups of people. Treating the property absolutely belongs to her, she and the son of Kuluvayee namely Rajapandi, who is also the petitioner herein leased out the property to one Sarojani Ammal. Dispute arose between them over the non payment of the rent. So Kuluvayee filed RCOP No.16 of 2003 for evicting Sarojani Ammal. In the meantime, Marammal @ Subbu Lakhshmi Ammal executed a settlement deed in respect of the above said properties in the name of her husband namely Krishnamoorthy, who in turn sold the property to one Velusamy. Another portion of the property was leased out by the son of Akkannan in favour of one Kaleeswari. But the above said Krishnamoorthy on the basis of the above



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said settlement deed in respect of a portion of the property filed interlocutory application in I.A No.33 of 2013 in RCOP No.16 of 2003 seeking title over the property. That was dismissed. Thereafter, he filed a suit in O.S No.585 of 2015 against Kuluvayammal and others. The further particulars with regard to the above said suit is not available on record.

4.Kuluvayammal filed EP No.209 of 2012 in RCOP No. 16 of 2003 to execute the order of eviction passed in the above said RCOP No.16 of 2003. Delivery was ordered. Against which, the tenant filed CRP(MD)No.1978 of 2017. During the pendency of the above said revision, the above said Krishnamoorthy was also added as one of the parties. Finding that the above said Krishnamoorthy had no right over the property, the judgment debtor was directed to hand over the property. In pursuance of the above said order, the property was also delivered to Rajpandi group. This is the one side of the story.

5.Another story started by way of encumbering the properties, leasing out, extracted as said earlier. The



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details are available in O.S No.144 of 2022. The children of the first wife treated the property as their absolute property started encumbering, leasing out, etc and this took place in the following manner. One of the son namely Chinnasamy died unmarried. So the property was inherited by Maramaal @ Subulakshmi, Akanan. As Stated above they treated as their absolute property and orally divided the same. The property fell into her share and become the absolute owner. Later Maramaal @ Subulakshmi executed settlement deed as stated above in favour of her husband namely Krishnamoorthy in respect of the entire property namely 777 sq. feet in 2005. The above said settlement is disputed by the above said Akanan executed the sale deed in favour of the share to one Tharani on 20/06/2005. In the meantime the above said Krishnamoorthy also sold the adjacent property to the above said Tharani and later it was canceled. Krishnamoorthy executed the sale deed in favour of one Velusamy in respect of the property it was allotted to the share of the Maramaal @ Subbulakshmi. The above said Tharani filed the suit in O.S No.144 of 2022 for declaration. On the above said ground, the above said Tharani and Velusamy executed a rental agreement in



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favour of Kaleeswaran in respect of the the total extent of 777 sq. feet on 21/03/2018. From that onwards, the above said Kaleeswaran running the shop. Since the dispute arose between them, the above said Kaleeswaran filed a suit in O.S No.460 of 2019 on the file of the Additional District Judge, Madurai, for permanent injunction.

6.Subsequently trouble has arisen, over which the Kaleeswaran lodged a complaint against Rajapandi and his wife and sons which was also registered in Crime No.268 of 2021. That was also filed on 24/02/2020 stating that his right is interfered. Similarly on the basis of the complaint given by Rajapandi, a case in Crime No.279 of 2021 was registered against Kaleeswaran and others.

7.Finding that there is group fighting over the possession and right, on the basis of the recommendation made by the Inspector of Police, South Gate Police Station, Madurai, Proceedings under section 145 Cr.P.C was initiated by the Revenue Divisional Officer, Madurai.



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8. During the course of enquiry, Revenue Divisional Officer, found that the above said Kaleeswaran was in possession of the property as tenant. So he was permitted continuing to occupy the property, till the disposal of the suit in O.S No.460 of 2019 filed by the above said Kaleeswaran. Over which, the present revision has been preferred.

9. Heard the learned counsels on either side and the learned Additional Public Prosecutor was also heard.

10. A Preliminary objection was made by the learned counsel for the petitioner to the effect that no preliminary order was passed by the respondent before passing the final order, which according to him, is not valid and legal. But this position has been clarified by the Honourable Full Bench of this Court in the case of ***A.Dhaveethu Vs. The District Collector, Sivagangai District, Sivagangai*** reported in ***(2016) 2 MLJ (Crl.) 641 (FB)***. There is no necessity for the Revenue Officials to pass a preliminary order. So this preliminary objection cannot be entertained.



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11.The second preliminary objection is that the first respondent has not recorded any subjective satisfaction with regard to the apprehension of breach of peace. For that purpose, he would rely upon the judgments, which was referred in ***Crl.O.P. (MD) .Nos.29207 & 31180 of 2019, dated 02.03.2020*** and we will deal about this point in the final portion of the order.

12.He would also contend that the first respondent ought to have pass an order to restore the possession to him, since he was dispossessed subsequent to the delivery and for that purpose, he would rely upon the judgment of the Honourable Supreme Court in the case of ***R.H.Bhutani Vs. Miss Mani J.Desai & Others*** reported in ***1968 AIR 1444***. We will deal this issue also in the course of the discussion.

13.The learned counsel for the petitioner would submit that in pursuance of the order of delivery, possession was taken by the first petitioner and till now they were in possession and running a shop. The rental



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agreement was created by the respondent and some factual errors have been committed by the first respondent while narrating the facts. The private respondents would submit that actually the above said Pandi executed settlement deed in favour of only three children; two collusive suits were filed and both are pending. Based upon the report submitted by the police only the Revenue Divisional Officer, has recorded the finding that the fourth respondent is in possession of the property. Even prior to the complaint, he started a fancy store in the above said shop. In reply to the above said argument, the learned counsel for the petitioner would submit that the above said Koluvayammal is the sole beneficiary of the settlement.

14.The Revenue Divisional Officer did not consider the complaint given by this petitioner; Dispossession was taken place and that was not considered by the Revenue Divisional Officer; He ought to have ordered restoration of the property; The sale deed executed by Krishnamoorthy was subsequently cancelled by the District Registrar; within 6 days from the date of dispossession

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action was initiated by the petitioner. Apart from that he has also contended that before initiating action, the first respondent did not pass any preliminary order and no subjective satisfaction was also recorded. Again in reply to the above said argument, the third respondent would submit that the writ petition in W.P.(MD).No.2315 of 2022 was filed, challenging the above said cancellation of the sale deed and suit filed by the third respondent is also pending; As per Section 145 Cr.P.C., the petitioner ought to have proved that within two months prior to the initiation of the proceedings, he was in possession.

15.In the light of the above said rival submissions, the central point is interpretation of settlement deed executed by Pandi. A bare reading of the deed shows that the beneficiary as contended by the petitioner is Kuluvayammal and Pandi himself. But contrary is the interpretation sought to be given by the children of first wife. Which one is correct, is a matter for consideration by the competent civil court. But, I am not going into those aspects now. It is suffice to say

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that bare reading would show that the beneficiary are only Pandi himself and Kuluvayammal. With this factual background in mind, let us go further.

16.From the narration of the facts and circumstances, what emerges is that the children of both wives of Pandi claims right over the subject matter of the proceedings undertaken by the first respondent. The first respondent has thoroughly narrated the events and history of the dispute and has also understood the issue and thereafter, only he has passed the above said order. But, in the course of the order an important fact was not taken into account. The dates and events are more important and relevant for disposing this petition; Without going into the rival right of parties and as well as the lease hold interest of the Kaleeswaran, who is the fourth respondent herein.

17.From the events narrated in the preamble portion, the date of delivery of the property to the first petitioner in E.P.No.209 of 2012 is 15.03.2018. So it is seen that on the above said date the property was



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delivered to the first petitioner namely Rajapandi and others. Of course, the judgment debtor was one Meenakumari, who was the legal heir of the Sarojiniammal, the tenant. But, the fourth respondent herein alleged to have been inducted as a tenant by Tharani and Veluchamy on 21.03.2018, much after the above said delivery. But, counter case has been registered in Crime No.268 of 2021 and 286 of 2021 against Muthu Pandi and Kaleeswaran groups, when trouble arisen between them over the possession of the shop. Now the petitioner would submit that ever since from the date of delivery of possession they are in possession. But, the fourth respondent only illegally tress passed. On the basis of the complaint given by the first petitioner, now he is illegally occupying the same. He wants the property to be restored to him, in pursuance of the above said delivery order.

18. But, however, the first respondent found that on the date of enquiry and the issue between them, Kaleeswaran was in possession as tenant. Over the above said tenancy issue also he has filed a suit in O.S.No.460 of 2019, seeking permanent injunction not to evict him,

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otherwise than under due process of law, which is also stated to be pending. After that only the above said suit in O.S.No.144 of 2022 was filed by Tharani against all persons.

19.How the above said Kaleeswaran entered into the property as tenant, when delivery was effected in favour of the first petitioner, even before the date of alleged tenancy agreement, is a matter for consideration by the competent civil Court, before which, the above said case is pending. Whether the lease granted in favour of the Kaleeswaran is also valid under law, is a matter for consideration by the Civil Court. In those circumstances, the first respondent has allowed the said Kaleeswaran to continue in possession till the disposal of the above said suit. The date on which the above said Kaleeswaran came into possession of the property is the point for consideration, since as per Section 145(4) of the Cr.P.C. without going into the merits of the case, the Revenue Divisional Officer may find out who was in possession of the property on the time of passing the order. But, if it was shown that within two months prior to the date of



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the report of the police, a party to the proceedings has been forcibly and wrongfully dispossessed, then, he can declared that persons as entitled to be in possession on the date of the order, So after making declaration, passed order stating that that person is entitled to be in possession until he is evicted by due process of law.

20.In the light of the above said rival claims the point that ought to have been considered by the Revenue Divisional Officer is whether there was any wrongful dispossession of the property subsequent to the delivery to the first petitioner. But that finding was not recorded and stated that the fourth respondent by paying the advance amount, conducting shop by incurring huge expenditure. So on that ground, he was permitted to continue in possession till the disposal of the suit.

21.Moreover, the basic ingredients for invoking Section 145 Cr.P.C. is apprehended breach of the peace. Absolutely, here it is a property dispute between three group of people over the ownership of the property and as well as the possession. Over which, the suit was also



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pending on the date of above said proceedings initiated by the fourth respondent. Without making any order, the first respondent ought to have referred the parties to settle their issue in the pending suit. Without resorting to such thing, he has simply permitted the fourth respondent to continue in possession, which is not proper. On the sole ground the above said order is liable to be set aside.

22. Accordingly, this revision petition is **allowed** and the order, dated 17/02/2022 passed in Muu.Mu. 3204/2021/C by the Sub-Divisional Magistrate-cum-Revenue Divisional Officer, Madurai District is hereby set aside. The parties have to workout their remedy in the pending civil proceedings.

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Index:Yes/No
Internet:Yes/No
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TO

- 1.The Sub Divisional Magistrate-cum-Divisional Officer,
Madurai.
- 2.The Inspector of Police, South Gate Police Station,
Madurai.

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