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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED :12.07.2023

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THE HONOURABLE MR.JUSTICE P.DHANABAL

Crl.R.C(MD) No.319 of 2019

and

Crl.M.P(MD) No.4674 of 2019

1. Pitchaivel
2. C.Jeyabalan
3. K.Mathivanan
4. S.Palanivel
5. T.Annadurai
6. V.Murugaiyan

... Petitioners

-Vs-

1. The Revenue Divisional Officer/
Sub Divisional Magistrate,
Thanjavur District.
2. The Inspector of Police
Orathanadu Police Station,
Thanjavur District
3. S.D.Dharmarajan
4. V.Palanivel
5. C.Nagarajan
6. A.Dhanapalan
7. A.Natarajan
8. G.Samikannu

... Respondents

PRAYER:- Criminal Revision Petition is filed under section 397 and 401 of Cr.P.C to set aside the final order dated 26.04.2019 made in Na.Ka. No.39/2017/A3 on the file of the respondent.



For Petitioners : Mr.S.Venkatesan
For R1 and R2 : Mr.M.Sakthikumar
Government Advocate(Crl.Side)
For R3 to R8 : No appearance

ORDER

This Criminal Revision Petition has been filed to set aside the final order dated 26.04.2019 made in Na.Ka. No.39/2017/A3 on the file of the respondent

2. The petitioners are challenging the order of the first respondent on the following grounds:

a) The order passed by the first respondent is illegal, arbitrary and unsustainable before eye of law.

b) Without following any procedure laid in Cr.P.C., the first respondent has passed the final order

c) The first respondent has passed the final order without issuing proper notice to the petitioner.

d) The first respondent has passed the final order exceeding his powers stipulated in the Cr.P.C.

e) The first respondent ought not to have passed the final order by deciding the rights of the parties, since the civil court is the competent court to decide the rights of the parties and there are so many other facts mentioned in the petition.



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3. The learned counsel for the petitioners contended that without any notice to the petitioners the first respondent has passed order and in the order he has stated that based on the report on the Village Administrative Officer he has passed the order. The Village Administrative Officer has not properly enquired the matter and the report of the Village Administrative Officer cannot be taken for final disposal of this petition and hence the order passed by the first respondent is liable to be set aside.

4. The learned Government Advocate(Crl.Side) appearing for the respondents 1 and 2 would contend that already ample chances given to both parties and the 'A' party appeared for enquiry and the 'B' party did not appear for enquiry before the first respondent and thereby the first respondent has passed the order and in the order itself he has clearly mentioned about the notice issued to both parties. Therefore already ample of chances given to both parties and thereby the petition is liable to be dismissed.

5. Heard both sides and perused the materials available on record.



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6. On perusal of the records, it is observed that the order was passed by the first respondent on 26.04.2019. On perusal of the same it is revealed that earlier both the parties appeared before him for enquiry and both the parties are claiming right over the property and therefore on 04.03.2019 summons was issued to both parties and 'A' party was present and 'B' party was not present. In the order itself the first respondent has stated that he had issued notice to both parties on 04.03.2019 but 'B' party failed to appear before him and hence he has passed the order. Further on perusal of the counter filed by the first respondent, it is revealed that he had already conducted meeting with both parties and therefore he passed order in the absence of 'B' party. Therefore the contention of the petitioner that no opportunity was given to them is not acceptable. Further in the impugned order itself he has stated that 'A' party can worship the temple with statue and 'B' party without claiming right can have worship in the disputed property. The petitioners in the grounds itself stated that the first respondent ought not to have passed final orders deciding the rights of the parties since the civil Court is the competent court to decide the rights of the parties and the first respondent has no power to pass order under section 107 of Cr.P.C . While so, remedy is available to the petitioners to establish their rights through civil court. Therefore this



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Court is of the opinion that there is no warrant to interfere with the order passed by the first respondent. The petitioners can work out their remedy through civil court for establishing their rights, if any aggrieved.

7. With the above observation this Criminal Original Petition is closed. Consequently connected miscellaneous petition is closed.

12.07.2023

Index : Yes/No
Internet : Yes/No
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To

1. The Revenue Divisional Officer/
Sub Divisional Magistrate,
Thanjavur District.
2. The Inspector of Police
Orathanadu Police Station,
Thanjavur District
3. The Additional Public Prosecutor
Madurai Bench of Madras High Court,
Madurai



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P.DHANABAL, J.

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