



CrI.O.P.(MD)No.20033 of 2021

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 13.03.2023

Delivered on : **21.03.2023**

CORAM:

THE HONOURABLE MRS.JUSTICE **R.THARANI**

CrI.O.P.(MD) No.20033 of 2021

and

CrI.M.P.(MD)Nos.11286 of 2021 & 1058 of 2022

1.K.Chellammal

2.Valliammal

... Petitioners 1 &2/Respondents 4 & 5

3.N.Srimathi

4.Mayilathal

... Petitioners 3&4/Respondents 8 & 9

Vs.

1.The Revenue Divisional Officer,

Palani Division, Palani,

Dindigul District.

... 1st respondent

2.The Inspector of Police,

Oddanchatram Police Station,

Dindigul District.

... 2nd respondent

3.K.Vanchimuthu

... 3rd respondent/2nd Respondent

4.Sakthivel

... 4th respondent/3rd Respondent

5.K.Muthusamy

... 5th respondent/6th Respondent

6.M.Saraswathy

... 6th respondent/7th Respondent

7.Selvakumar

... 7th respondent/10th Respondent

8.Priya

... 8th respondent/11th Respondent



Crl.O.P.(MD)No.20033 of 2021

PRAYER: Criminal Original Petition is filed under Section 482 of Cr.P.C, to call for the records relating to order in Na.Ka.No. 4456/2021/A7, dated 02.12.2021 on the file of the SDM-Revenue Divisional Officer, Palani Division, Palani, the first respondent herein and to quash the same insofar as the petitioners are concerned.

For Petitioners : Mr.M.Joseph Thatheus Jerome

For Respondents : Mr.M.Sakthi Kumar
Government Advocate (Crl.Side) for R1 & R2

: No appearance for R6 to R8

: Mr.H.Lakshmi Shankar for R3 & R4

ORDER

This petition is filed to quash the order in Na.Ka.No.4456/2021/A7, dated 02.12.2021 on the file of the SDM-Revenue Divisional Officer, Palani Division, Palani.

2. The case of the petitioner is that the properties involved in the occurrence are the ancestral properties, that belonged to one Kumara Goundar., who is the husband of the first petitioner herein. The properties in Survey No.350/1B, 350/1C, 350/1D, 350/1E and 350/1F were settled



Crl.O.P.(MD)No.20033 of 2021

in favour of the first petitioner by her husband, through Document No. 2307/1999. With an intention to grab the property, her son - the fifth respondent herein-Muthusamy and her grandson - the seventh respondent herein- Selvakumar have created a settlement deed in the year 2012.

3. The first petitioner instituted a criminal case, as against the respondents 5, 7 and 8 herein, before the Land Grabbing Cell, District Crime Branch, Dindigul, in Crime No.120 of 2013, for an offence punishable under Sections 120B, 419, 465, 468, 471, 379 (NP) and 420 of I.P.C and the investigation is pending. This Court in Crl.O.P.No. 15413 of 2017 has directed the police to complete the investigation and a final report was filed before the Judicial Magistrate No.II, Dindigul, in Cr.M.P.No.6282 of 2020 and the same is pending.

4. The fourth petitioner - Mayilathal filed a suit for partition in O.S.No.11 of 2013, on the file of the Sub court, Palani and that suit is still pending. The third petitioner - Srimathi filed a suit in O.S.No.410 of 2014 before the Sub Court, Palani, for partition of the properties. An injunction order was granted in I.A.No.563 of 2014 in O.S.No.410 of 2014, dated 20.10.2014, restricting the fifth respondent from selling,



CrI.O.P.(MD)No.20033 of 2021

mortgaging, leasing or creating any encumbrance in the property. Against the injunction order, the fifth respondent settled a portion of the property, in which the third respondent and his mother-Chellammal were residing, in favour of his son. The third respondent tried to coerce the first petitioner to settle or sell the property. Hence, the first petitioner -Chellammal filed a complaint under the Maintenance and Welfare of Senior Citizens Act, before the Sub Divisional Magistrate, on 22.12.2015. The fifth respondent gave an undertaking to pay a sum of Rs.2,000/- till the investigation in Crime No.120 of 2013 is over.

5. The respondents 5 and 7 attempted to sell the undivided ancestral property, in which the first respondent is residing and she issued a paper notification giving a warning to the public not to deal with the property in any manner. The respondents 3 and 4, having full knowledge about the injunction order granted in O.S.No.410 of 2014, have purchased the undivided property in the year 2020. The petitioners herein have filed an Appeal on 23.09.2020 before the District Collector against the transfer of patta granted in favour of the respondents 6 and 7.



6. Pending investigation in Crime No.120 of 2013, by using the thumb impression of the first petitioner, the seventh respondent - Selvakumar in collusion with the fifth respondent - Muthusamy has instituted a suit in O.S.No.4 of 2013 on the file of the District Munsif, Oddanchatram, in her name, but, without her knowledge.

7. The first petitioner filed a suit before the Additional District Court, Palani, in O.S.No.213 of 2020 against the respondents 3 to 8 for cancellation of all the deeds and to set aside the fraudulent decree obtained by the respondents 5 and 7, the Court passed an ad-interim injunction order then made the injunction order absolute on 26.04.2021.

8. As the respondents 3 and 4 tried to dispossess the petitioner and tried to trespass into the undivided property, the first petitioner made an online complaint, the servant of the third respondent was warned not to interfere in the property dispute. However, the third respondent instigated his servant-Ramesh to file a case under the P.C.R Act, on 14.09.2020 and that case is pending, before the Special PCR Court, Dindigul.



9. The third petitioner issued a contempt notice on 28.07.2021 against the respondents 3 to 6 for violating the injunction order in I.A.No.563 of 2014 in O.S.No.410 of 2014, on the file of the Sub court, Palani. Suppressing all these facts, the fourth respondent filed a complaint on 22.06.2021 with the help of his servant-Ramesh and he made another complaint on 07.07.2021. They attempted to murder the first petitioner, committed life threat to her other daughters, damaged the CCTV surveillance camera, took away the Hard Disc box and destroyed the house hold articles and took away the things that belonged to the first petitioner.

10. On the side of the petitioners, it is stated that the petitioners 1 to 3 filed an online complaint on 07.07.2021, again, on 08.07.2021 to the Superintendent of Police and thereafter the first petitioner filed a complaint before the Collector on 09.07.2021 and on 12.07.2021 under Rule 20 of the Maintenance and Welfare of Parents and Senior Citizen Act and Rules and that the first petitioner filed a writ petition in W.P. (MD)No.14550 of 2021 as against the respondents 3 to 5 for an order of mandamus, directing the District Collector and the Superintendent of Police, to provide protection under Rule 22 (2) (1) of the Maintenance



Crl.O.P.(MD)No.20033 of 2021

and Welfare of Parents and Senior Citizens Act. The complaint was numbered as 43 of 2021.

11. It is further stated that F.I.R in Crime No.370 of 2021 was registered under Section 145 of Cr.P.C against the petitioners and their family members and that the second respondent referred the matter to the first respondent under Section 145 Cr.P.C.

12. On the side of the petitioners, it is stated that without taking cognizance and without considering the petitioners' complaint and the pendency of the civil suits and other cases, the Revenue Divisional Officer summoned all the parties for enquiry and that the respondents 3 to 8 were abusing the process of law, by suppressing all the documents and the injunction orders, which are still in force. The first respondent conducted the proceedings under Section 145 Cr.P.C, in an arbitrary manner, and she passed an order in Na.Ka.No.4456/21/A7, dated 02.12.2021, which is contrary to law and the same is to be quashed.

13. On the side of the petitioners, it is stated that the Revenue Divisional Officer, failed to consider that there was an injunction order in



CrI.O.P.(MD)No.20033 of 2021

I.A.No.563 of 2014. The Revenue Divisional Officer failed to consider that the Court has granted injunction order against the respondents 3 and 4 and that the respondents 3 to 8 cannot encumber the property and that they cannot take forcible possession from the first respondent and that a false case was registered on the complaint filed by the third respondent.

14. The report of the Tahsildar was not a fully perfect report and that the report ought to have been rejected. Copy of the report filed by the Village Administrative Officer was not furnished to the petitioner. When a civil case is pending and when an interim order is there, there cannot be a parallel criminal proceeding under 145 Cr.P.C. The revenue divisional officer failed to give any findings as to the possession of the parties on the date of order. Under Section 52 of the transfer of property Act, alienation will be hit by the doctrine of *lis pendens* and that except the family members third parties cannot participate in a partition suit. The respondents 3 and 4 as third party purchasers cannot claim title or possession. The Revenue Divisional Officer exceeded her jurisdiction in directing the petitioner not to interfere in the right of the third party purchasers pending the suit.



15. On the side of the petitioners, a judgment of this Court made in Crl.R.C.No.1032 of 2013, dated 25.03.2014, is cited, wherein, it is stated as follows:-

“The learned Brother Judge of our High court, in 2002-2-LW (Crl) 695 by following the same view, held that when once the civil court had taken note of the dispute between the parties with reference to the declaration or possession, then it is not open to the Executive Authority to entertain any application and to invoke Section 145 Cr.P.C. Even otherwise there should be a report from the competent police officer alleging that there was any threat to law and order or there is any possibility of breach of peace in that area, where the immovable property is located.”

16. On the side of the prosecution, it is stated that both the parties are continuously quarrelling with each other and that resulted in law and order problems. Hence, the police referred the matter to the R.D.O under Section 145 Cr.P.C. Both the parties were filing somany complaints against each other. In this situation, to maintain peace and to avoid law and order problems, the R.D.O after due enquiry, has passed the impugned order.



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17. On the side of the respondents 3 and 4, it is stated that the first petitioner is the mother, the second and third petitioners are her daughters. The first petitioner executed a gift deed in favour of her grand son. The grand son gifted the property to his wife and the wife sold the property to third party, who are the respondents 3 and 4 herein. The first petitioner and her grand son (seventh respondent) have filed a suit in O.S.No.4 of 2013 for a prayer of declaration and injunction.

18. On the side of the respondents 3 and 4, it is stated that the fourth petitioner filed a suit in O.S.No.11 of 2013 seeking partition, against the first petitioner and others, wherein, she claimed the properties as ancestral properties and that the first petitioner was not having any individual right in the property. In that suit the residence of the first petitioner was mentioned as Tirupur and not the suit property.

19. On the side of the respondents 3 & 4, it is stated that the third petitioner has filed a suit in O.S.No.410 of 2014, seeking partition, wherein, she has claimed the property as the ancestral property and that the first petitioner was not having any individual right in that property.



The first petitioner herein was mentioned as a defendant. The residence of the first petitioner was mentioned as Ganapathypalayam, Palladam, Tirupur, which is not the suit property.

20. The first petitioner filed a suit in O.S.No.213 of 2020 against the respondents 3 to 5, 7 & 8 for cancellation of documents and for recovery of possession, in that suit, the address of the first petitioner was mentioned as Thangachiyammapatti. By filing a case for recovery of possession, the first petitioner has admitted that she was not in possession of the suit property.

21. On the side of the respondents, it is further stated that the first petitioner gave an online complaint and she misrepresented before the Collector regarding the injunction order. The suit property is an agricultural land with a Farm house and that a servant of the respondents 3 and 4 is residing in the Farm house. On the side of the respondents, it is stated that the petitioners interfered in the possession of the servant of the respondents, a case was given by the employee of the respondents under the P.C.R.Act.



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22. It is further that that the order in I.A.No.563 of 2014 in O.S.No.410 of 2014, dated 20.10.2014 was against the fifth respondent “not to alienate or to encumber the property”. There was no injunction order against the respondents 7 and 8. The injunction order is applicable only with regard to alienating and creating encumbrance. It is further stated that when the first petitioner herself has filed a suit for recovery of possession, it is a clear admission that possession is with the respondents 3 and 4 and that the petitioners are not in possession.

23. On the side of the respondents 3 and 4, it is stated that in the order of the R.D.O, it is clearly stated that the water tax, house tax, EB charges were paid by the respondents 3 and 4 and that their servant – Ramesh is residing in the Farm house. After filing a suit, for recovery the first petitioner is now creating a new story as if she is in possession. In the two cases filed by the two daughters (third and fourth petitioners) the first petitioner was placed as a defendant. Now, all the three persons colluded together and they filed this Criminal Original Petition.



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24. On the side of the respondents 5 and 6, it is stated that the first petitioner executed a settlement deed and various transaction have taken place on the basis of the settlement deed and the respondents 3 and 4 are innocent purchasers and their right should not be affected.

25. On the side of the petitioners, by way of reply, it is stated that an F.I.R was registered against the fifth and seventh respondents, in Crime No.120 of 2013, on 06.12.2013 when the F.I.R is pending, the seventh respondent filed a case in O.S.No.4 of 2013, using the thumb impression of the first petitioner and without the knowledge of the first petitioner and that fraudulent decree, is to be cancelled and the fraudulent gift deeds and sale deeds are to be declared as null and void and hence, a suit in O.S.No.213 of 2020 was filed by the first petitioner.

26. On the side of the petitioners, it is further stated that technically a prayer for possession was added in the suit and the same cannot be taken as a ground for denying the possession of the first petitioner.



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27. It is seen that the first petitioner's husband – Kumara Gounder was the original owner of the property. It is stated that the property was gifted to the first petitioner by her husband on 03.11.1999. On the same date, husband of the first petitioner executed another settlement deed in favour of the fifth respondent. The case of the respondents 3 and 4 is that the first petitioner executed a settlement deed in favour of the seventh respondent on 30.11.2012. On the basis of the settlement deed, the seventh respondent executed a settlement deed in favour of his wife- eighth respondent herein on 29.04.2013. The fifth respondent executed a settlement deed in favour of his wife - Saraswathi, on 21.05.2015. The eighth respondent and Saraswati executed three sale deed, (i) on 27.02.2020 (ii) on 28.05.2020 and on 06.02.2013 in favour of the respondents 3 and 4.

28. The third respondent filed a suit in O.S.No.410 of 2014 and the fourth respondent filed a suit in O.S.No.11 of 2013, both the suits are for partition. The seventh respondent filed a suit in O.S.No.4 of 2013 and the first petitioner has filed a suit in O.S.No.213 of 2020. Totally four civil suits are pending between the parties.



29. The title of the property can be decided only by the Civil Court. Regarding title both the parties can work out their remedy before the Civil court.

30. A perusal of the records reveals that in the two original suits filed by the petitioners 3 and 4, the first petitioner was shown as a defendant. Now, all the three petitioners joint together and they filed this petition before this Court.

31. In O.S.No.4 of 2013, the residence of the first petitioner was mentioned as Vadaparuthiyur. In the original suit in O.S.No.410 of 2014, filed by the third petitioner, the address of the first petitioner was mentioned as Ganapathypalayam, Palladam and the address of the third petitioner was mentioned as Chinnamandavaadi. In both O.S.Nos.410 of 2014 and 213 of 2020, the address of the third respondent was mentioned as Balamarathu Thottam, Thangachiyammapatti.

32. A perusal of the order in I.A.No.563 of 2014 in O.S.No.410 of 2014, Sub Court, Palani, reveals that an injunction order was passed on 20.10.2014 against the first petitioner herein and the fifth respondent



CrI.O.P.(MD)No.20033 of 2021

herein, directing them not to alienate the property or to encumber the property. The disputed gift deed in favour of the seventh respondent was executed on 30.11.2012 and the settlement deed executed by the seventh respondent in favour of the eighth respondent was executed on 29.04.2013 that is prior to the injunction order. The father of the fifth respondent has settled some property in the name of the fifth respondent. There is a settlement deed in favour of the sixth respondent executed by the fifth respondent, dated 21.05.2015. The validity of this deeds has to be decided only by the Civil Court.

33. In I.A.No.118 of 2020 in O.S.No.213 of 2020 an ad-interim injunction order not to alienate or encumber the suit property was passed on 11.12.2020. The sale deeds in favour of the respondents 3 and 4 were executed by the respondents 6 and 8, on 27.02.2020 and on 28.05.2020, that was earlier to the ad-interim injunction order. Later, on 26.04.2021, the injunction order was made absolute.

34. On the side of the petitioners, it is stated that permitting a watchman to reside in the property amounts to creating encumbrance and that the respondents 3 and 4 have violated the injunction order.



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35. The injunction order in I.A.No.563 of 2014 in O.S.No.410 of 2014 and I.A.No.118 of 2020 in O.S.No.213 of 2020 was only not to alienate the property or to encumber the property. Engaging some one to do the agriculture work cannot be named as creating an encumbrance.

36. On the side of the respondents 3 and 4, it is stated that by filing a suit for recovery of possession, the first petitioner has admitted the possession of the respondents 3 and 4. On the side of the petitioners, it is stated that technically a prayer for possession was added in the prayer column in the case in O.S.No.213 of 2020.

37. Four civil suits, ie., O.S.No.4 of 2013, O.S.No.11 of 2013, O.S.No. 213 of 2020 and O.S.No.213 of 2020, are pending between the parties. The Revenue Divisional Officer, in her order, in Na.Ka.No. 4456/2021/A7, dated 02.12.2021, has not given any findings regarding the validity of the document or the right of ownership or title. Considering the pendency of the civil courts, it is decided that this Court need not go into the question of title or the validity of the title deeds.



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38. A Criminal case under the P.C.R. Act and Two F.I.Rs in Crime Nos.1008 of 2020 and 370 of 2021 and Criminal complaints in C.S.R.Nos.130 of 2020, 163 of 2020, 131 of 2021, 141 of 2021 and 142 of 2021 are pending between the parties. It is seen that online complaints were filed by the petitioners on 07.07.2021, 08.07.2021 and on 10.07.2021, regarding this dispute, hence, it is clear that there was law and order problem and the Revenue Divisional Officer is justified in taking proceedings under Section 145 of Cr.P.C.

39. In the order of the R.D.O, it is stated that the patta, water tax, house tax and E.B receipts were in the name of the respondents 3 and 4. Since civil cases are pending, The R.D.O has not given any decision as to the title or possession, which is reasonable. Copies of the revenue records were filed in the typed set. From the records it is clear that multi number of civil cases and criminal complaints filed by the petitioners and the respondents against each other are pending and hence to maintain law and order the steps taken by the R.D.O. is reasonable.

40. Considering that the residence of the respondents 3 and 4 as mentioned in O.S.No.213 of 2020 and considering the prayer for



CrI.O.P.(MD)No.20033 of 2021

recovery of possession and on considering that the Revenue records are in the name of the respondents 3 and 4, without prejudice to the civil cases, it is decided that the decision of the R.D.O is reasonable.

41. In the above circumstances, it is decided that there is nothing sufficient enough to interfere in the orders of the R.D.O. For the above reasons, this petition filed by the petitioners is dismissed. Consequently, connected Miscellaneous Petitions are closed.

NCC : Yes/No
Index : Yes/No
Internet : Yes/No
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21.03.2023

To

- 1.The Revenue Divisional Officer,
Palani Division, Palani,
Dindigul District.
- 2.The Inspector of Police,
Oddanchatram Police Station,
Dindigul District.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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Crl.O.P.(MD)No.20033 of 2021

R.THARANI. J.

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Pre-delivery order made in
Crl.O.P.(MD)No.20033 of 2021

21.03.2023