



Crl.R.C.No.1643 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 2/12/2024

C O R A M

THE HONOURABLE Mr.JUSTICE SUNDER MOHAN

Criminal Revision Case No.1643 of 2023

a n d

Crl.M.P.No.15493 of 2023

1. Saroja @ Chandrabanu
2. Gayathiri
3. Prithiviraj ... Petitioners

Vs

1. The Sub-Divisional Executive Magistrate
-cum-Sub-Collector
Pollachi
Coimbatore District.
2. The Tahsildar
Anamalai
Pollachi.
3. The Inspector of Police
Anamalai Police Station
Pollachi.
4. The Sub-Inspector of Police
Kottur Police Station
Anaimalai Taluk.



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5. The Deputy Superintendent of Police
Valparai.

6. Vijayamohan

7. Jayaseelan

8. Naveenan

9. Sivaprakash ... Respondents

PRAYER: Revision filed under Section 397 r/w. 401 of the Indian Penal Code, against the impugned order dated 9//2023 made in M.C.No.16/2022/A1 on the file of the first respondent.

For Petitioner ... Mr.S.Lakshmi Narayanan

For respondents ... Mr.V.J.Priyadarsana
Government Advocate
for R.R.1 to 5.

Mr.L.Mouli
for R.R.6 to 9

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ORDER

This Civil Revision Petition challenges the order dated 9/9/2023 passed by the first respondent, in M.C.No.16/2022/A1, under Section 145 of the Code of Criminal Procedure.



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2. The first respondent, after conducting preliminary enquiry, directed the petitioners, who are shown as 'B' party and the respondents 6 to 9 as 'A' party not to enter the disputed property.

3. The learned counsel appearing for the petitioners would submit that the impugned order directing both 'A' and 'B' parties not to enter the property in question is beyond the scope of Section 145 of Cr.P.C., and therefore, is liable to be set aside.

4. The learned counsel further submitted that the suit in O.S.No.243 of 2020 filed by the petitioners which is pending adjudication and hence, impugned order is liable to be set aside.

5. The learned counsel appearing for the respondents 6 to 9 submitted that the suit is pending and that the impugned order directing both the parties not to enter the property is contrary to the settled position of law.

6. Heard the learned Government Advocate (Criminal Side) for the respondents 1 to 5.



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7. By the impugned order, first respondent had observed that the suit in O.S.No.243 of 2020 is pending between the parties and had also directed the parties to await the Court's decision in the matter. However, first respondent had directed both the parties to refrain from entering the property in question. It is well settled that such a restraint order, directing both the parties not to enter upon the property is beyond the scope of 145 of the Code of Criminal Procedure. This Court in the case reported in CDJ 2010 MHC – 3774 C.JEYAPPAUL Vs. THE SUB-DIVISIONAL MAGISTRATE & REVENUE DIVISIONAL OFFICER, THENI DISTRICT & OTHERS, wherein it is held as follows:-

“5. It is not in dispute that there is a civil dispute pending between the parties in O.S.345 of 2005. As held by this Hon'ble Court in the judgment reported in 1990 M.L.J (Criminal) 149 (Karthikeyan and others Vs. State by Inspector of Police (I & O), and others) in a proceedings initiated under Section 145 (1) of the Code of Criminal Procedure, the Sub-Divisional Magistrate cannot restrain both the parties from entering into the



property. This Hon'ble Court after referring to the earlier judgments has observed as follows:-

19. P.K.Sethuraman,J., in Janakari Ramachandran's case, 1988 M.L.J (Crl.) 33: 1988 L.W (Crl.) 147, was referred to the view expressed by Maheswaran,J., on this aspect of the case.

20. Janarthanam,J., in Venkatakrishnar and others Vs. State of Tamil Nadu and Others (1989) 1 Crimes 236, expressed his opinion that the order passed by the Magistrate prohibiting both the parties from entering into the property in dispute, was totally without jurisdiction, calling for the setting aside of such an order.

21. This infirmity of restraining both the parties from entering into the subject matter of the dispute is a serious infirmity sufficient to



vitiate the preliminary order in the impugned proceedings.

6. Similar view has been taken by this Court in the judgment reported in 1994 M.L.J (Criminal) 155 (N.S.Nanjundasamy and another Vs. N.Venkatachalam and others), wherein it has been held as under:-

6. In Sundarasamy Vs. Shanmugham and others 1992-L.W (CrI) 79, in the preliminary order under Section 145 (1), Cr.P.C., the Executive Magistrate directed both the parties not to enter upon the disputed premises pending enquiry and until a decision is taken and final orders are pronounced. Arunachalam,J has held that there is no scope whatsoever under Section 145 (1), Criminal Procedure Code, to direct both the parties to the proceedings not to enter upon the disputed premises. It is therefore, seen that the impugned order is not sustainable on this ground also.”



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8. Further, admittedly, a suit is also pending. Hence, the impugned order which directs both the parties not to enter upon the disputed property cannot be sustained.

9. In view of the above, this Criminal Revision is allowed and impugned order dated 9/9/2023 passed in M.C.No.16/2022/A1 is set aside. Consequently, the connected Criminal Miscellaneous Petition No.15493 of 2023 is closed.

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mvs.

Index : Yes / No

Neutral Citation: Yes/No

To

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