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Crl.R.C.No.192 of 2024

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 15.10.2024
PRONOUNCED ON : 31.01.2025

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

**Crl.R.C.No.192 of 2024
and
CRLM.P.No.1637 of 2024**

Late K.Devamani
Rep.by his son
D.Prabakaran

... Petitioner / Counter Petitioner
B-I Party

Vs.

1.The Sub Divisional Magistrate,
Karaikal

... 1st Respondent

2.The Station House Officer,
Thirunallar Police Station,
Karaikal

... 2nd Respondent

3.A.R.Chandramouliswarar

....3rd Respondent

PRAYER: Criminal Revision Petition filed under Section 397 r/w 401 of Cr.P.C., to set aside the order dated 25.01.2024 passed by the 1st Respondent under Sections 145, 145(i), 146 & 146(i) of Cr.P.C., by declaring the 3rd respondent is entitled to retain the possession rights in respect of the land in R.S.No.48/3A/1/A of No.21, Thirunallar Revenue Village, measuring an extent of 00.53.57 H:A:Ca



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Crl.R.C.No.192 of 2024

For Petitioner : Mr.K.S.Viswanathan,
Senior Counsel
For Mr.Rajmohan

For R1 & R2 : Mr.K.S.Mohandass
Public Prosecutor

For R3 : Mr.V.Chandrasekaran

ORDER

Challenging the order dated 25.01.2024, passed by the 1st Respondent, under Sections 145, 145(i), 146 & 146(i) of Cr.P.C., by declaring that the 3rd respondent is entitled to retain the possession rights in respect of the land in R.S.No.48/3A/1/A of No.21, Thirunallar Revenue Village, measuring an extent of 00.53.57 H:A:Ca., the Petitioner / B-Party has filed the present Criminal Revision Case.

2. The gist of the case is that the 2nd Respondent apprehending breach of peace and public tranquillity due to dispute over the possession and title right claimed by the Petitioner / B party and 3rd respondent / A Party in R.S.No.48/3A/1, Patta No.484 extent of 00.53.57 H:A:Ca. of Thirunallar Revenue Village. The 3rd respondent lodged a complaint that someone has illegally occupied the said property, put up a thatched hut, obtained House Tax receipts fraudulently from the Tirunallar Panchayat and applied for Electricity Service Connection. According to the 3rd



Respondent / A Party, it is a family property and the property was settled by his grandmother Janaki Ammal W/o.Ayyasami Iyer, in favour of his mother Mallika and his brother Santosh Gopalakrishnan, Jayakumar, Seetharaman and the 3rd respondent. The Petitioner / B Party denied the same and submitted that a portion of the said land to an extent of 45 00-10-45 Ha.Ca in R.S.No.48/3 in Thirunallar Village was taken into possession by him after paying the entire sale consideration to the power agent Semia @ Sathanantham, proprietor of Karaikal Balamurugan Finance on 20.08.2007, by way of an unregistered sale agreement. This being so, the 3rd respondent / A Party objecting to the Petitioner's right and enjoyment of the property and hence, a complaint has been lodged by both parties to the 2nd respondent, Tirunallar Police, who sent a Report, No.5692 dated 23.07.2021 to the 1st respondent on the basis of the information. Further, a report was also obtained from the Tahsildar, Tirunallar. Both the petitioner as well as the 3rd respondent summoned for enquiry with relevant documents. The 3rd respondent / A party presented a copy of cancellation of House Tax and Water Tax permits cancelled by the Commissioner of Panchayat, Tirunallar and a copy of the FIR in Crime No.70/2007 for trespassing into the private land bearing R.S.No.48/3 in Tirunallar.



3. Mr.K.S.Viswanathan, the learned Senior Counsel appearing for the Petitioner would submit that the disputed property is situated in R.S.No.48/3A/1, Patta No.484, an extent of 00-10-75 (H.A.Ca) of Tirunallar Village. The Superintendent of Police, Karaikal was ordered to take possession of the property and to keep the portion of the property under lock and key till decree or order of competent Court determining the rights of the properties are obtained. The Petitioner / B Party filed Crl.R.C.No.561/2021, which is pending before this Court. In the meanwhile, the 3rd respondent obtained an order for correction of extent in the above said land vide No.No.639/Sett/KKL/Sec.23/2022, dated 16.12.2022 issued by the Settlement Officer, Karaikal, wherein it is recorded that missing extent of 00-10-75 H.A.Ca available on the ground as per the survey report shall be added with the existing extent of 00.42.82 Ha Ca for the property comprised in R.S.No.48/3A/1/A, No.21 of Tirunallar Revenue Village. Accordingly, 00.53.57 H.A.Ca has been fixed in R.S.No.48/3A/1A. Hence, the 1st Respondent finding that the Revenue Records have been corrected and the excess extent of land of 00.10.75 H.A.Ca has been incorporated in the Patta No.484, which stands the name of the Janaki Ammal, the 3rd Respondent / A Party's grandmother. In view of the above, the 3rd respondent had sought for revocation of the attachment order.



4. The learned Senior Counsel further submitted that the 2nd respondent filed a Report dated 24.01.2024 informing that there is no law and order issue that has been prevailing since the time of attachment order, which was issued by the Authority on 24.08.2021. Further, in view of the Settlement Officer's Order, dated 16.12.2022, the 1st respondent found the necessity of enforcement of attachment order is no longer required and revoked the same. Further, the 3rd respondent / A party is declared as party entitled to retain the possession right in the property compromised in R.S.No.48 of Tirunallar Village. Further, the 3rd respondent was declared entitled to claim portion of the property, from the Superintendent of Police, Karaikal and the 2nd respondent, SHO Tirunallar was directed to provide adequate Police protection to the 3rd respondent. Since the order passed is in gross violation of the ambit and powers under Sections 145(1) and 146 of Cr.P.C., the same is challenged.

5. The learned Senior counsel submitted that without any authority the 1st respondent passed the impugned order, which is in gross violation of the Rules and Procedures. Hence, the same is to be set aside. Further, the learned Senior Counsel for the petitioner submitted that the petitioner is no more, which is not in dispute, which is recorded in yet another



proceedings by the 2nd respondent. In such circumstances, the legal heirs of the petitioner ought to be impleaded, which has not been done. Without notice and hearing, the impugned order cannot be passed. Further, referring to para 18 of the impugned order submitted that the 1st respondent directed withdrawal and revocation of the earlier order of attachment, dated 24.08.2021, which is already pending adjudication before this Court in Crl.R.C.No.561/2021. The Settlement Officer, without any notice to the petitioner passed an order affecting the petitioner's right and further directed the 2nd respondent to give police protection to the 3rd respondent to take over the property is not proper. The 3rd respondent and others given a general power of attorney to one Semia @ Sathanantham to sell the entire extent of 00.59.66 H.A.Ca., who converted the said land into layout and formed 23 plots, sold out all the plots including the common pathway of the layout. As per the document, the remaining extent of 00.10.75 H.A.Ca is available in the said property. The power agent is no more and hence, taking advantage of the same, the 3rd respondent claims the remaining land belongs to Janaki Ammal and thus termed the petitioner, as encroacher.

6. The learned Senior Counsel further submitted that according to the petitioner, the petitioner taken possession of the land in Sy.No.48/3 to



an extent of 00.10.45 Hac by paying the entire sale consideration to one Semia @ Sathanantham, proprietor of Karaikal Balamurugan Finance on 20.08.2007 through an unregistered sale deed and from then on, he is in enjoyment and possession of the property. The said extent was fenced by barbed wire and kept under his possession from the date of sale agreement. The said Semia @ Sathanantham handed over all the original registered documents including the power of attorney pertaining to the entire filed. Semi @ Sathanantham is no more. The "Will" of the Janaki Ammal is that, 'if any property which has not mentioned in the 'Will' will be shared by his two sons, Venkataraman and Muthukrishnan', and hence, the 3rd respondent or his family members have no right over the property. This being so, by manipulation and gaining over the Revenue Authorities behind the back of the petitioner corrections have been made and based on the correction in the Revenue Records even without any notice to the petitioner, the 3rd respondent is claiming right over the property and the 1st respondent taking note of the correction by the Settlement Officer and passing of the impugned order is not proper, violation of principles of natural justice and further failed to consider the admission by the 3rd respondent that there is an encroachment put up by way of thatched hut, which has been assessed by the Revenue Authorities.



7. Adding further, the learned Senior Counsel submitted that in this case, the 1st respondent cannot look into the title or right over the property it is only the possession which is to be considered. The admitted portion of the 3rd respondent is that his possession encroached by the petitioner. In such circumstances, the 3rd respondent ought to have directed the 3rd respondent to approach the civil Court to seek remedy and not to pass an order of attachment by the Superintendent of Police and thereafter revoking the attachment and handing over the property to the 3rd respondent is nothing but a coloured exercise, thereby, the procedures established by law is not followed and an arbitrary order has been passed. The learned Senior Counsel, in support of his contention, has produced the Settlement Deed of Janaki Ammal; Sale Deed executed in the name of Somasundaram; Power of Attorney in favour of Semia Sathanantham; Copy of the Patta; Sale Agreement in the name Petitioner's father Sathanantham; Sale Deed in the name of Maheswari; Property Tax Assessment in the name of Karthikeyan; Complaint given by the 3rd respondent; Explanation given by the petitioner's father to the District Collector; Report of the Tahsildar; Death Certificate of Petitioner's father; Order passed by the Settlement Officer and the Appeal filed against the order of Settlement Officer. Further, the petitioner has



produced the photographs to show that the property is in possession of the petitioner. The Police by force attempting to evict the petitioner from the possession.

8. The learned Senior Counsel, in support of his contentions, has relied upon the Judgment of the Apex Court in ***Ashok Kumar Vs. State of Uttarakhand and Others*** reported in ***(2013) 3 SCC 366*** for the point that SDM can invoke the power under Section 146(1) Cr.P.C., and pass an order of attachment of the subject of dispute, if it be a case of emergency, or if he decides that none of the parties was in such possession, or he cannot decide as to which of them was in possession. In this case, the admitted position by the 3rd respondent / A party is that the property has been encroached and according to the petitioner, the petitioner was in possession of the property and the property was also assessed House Tax. Hence, prayed for setting aside the impugned order.

9. Mr.V.Chandrasekaran, the learned counsel appearing for the 3rd respondent submitted that on the complaint of the 3rd respondent on 07.07.2021 that there is an encroachment and thatched house in his property in R.S.No.48/3/A/1, an extent of 00-44-52 HAC of Tirunallar Village had been constructed by the intruders, obtained House Tax



receipts and applied for Electricity Service Connection. This has been done by the petitioner. Thereafter, the Report was also obtained from the Tahsildar, Tirunallar on 28.07.2021, based on which, an enquiry was conducted on 09.08.2021. The petitioner with muscle power trespassed into the property and deterring and keeping away the 3rd respondent from enjoyment of the property and there was complaint and counter complaint and there was likelihood of breakage of peace and tranquillity, law and order issue, the 2nd respondent referred the matter to the 1st respondent, who caused an enquiry both A and B parties and on perusal of the documents and materials submitted by both parties, the initial attachment order passed under Section 146 Cr.P.C., to the Police to seal the property, no more exist, and peace prevailing and attachment order has been lifted not arbitrarily only after the Settlement Officer Report confirming that excess land to an extent of 00-10-75 H.A.Ca in R.S.No.48/3/A/1 has not been properly recorded in the Revenue Records, which has been latter incorporated by proceedings, dated 16.12.2022, by the Settlement Officer, Karaikal, and which proved the fact that the 3rd respondent and his mother Mallika adversely dispossessed from the rightful inherited property from their ancestors namely Late Janaki Ammal, who is the grandmother of the 3rd respondent.



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10. The learned counsel further submitted that, since the Revenue Records have been rectified and found the 3rd respondent is the lawful owner, the petitioner evicted from the possession of the property and handed over to the 3rd respondent. The Petitioner B party coming to know that there is mistake crept in the revenue records, taking advantage of the same, using brute force, entered into the property, put up a thatched hut and also obtained House Tax Assessment by playing fraud. Fraud cannot be taken as defence and it cannot give a right to any party. The defects rectified, revenue records has been restored and the petitioner having no right over the property is attempting to disturb the peaceful possession and enjoyment of the 3rd respondent, which the 1st respondent had rightly by impugned order has safeguarded the right of possession and enjoyment of the 3rd respondent. The photographs of the petitioner would clearly show that the thatched hut put up is of a recent one and there is no dwelling. After the Settlement Order and finding that fraud has been committed and the documents obtained by fraud has now been set aside. He further submitted that with regard to the attachment of the property, the petitioner filed Crl.R.C.No.561 of 2021, which is pending before this Court, which is for a different relief.



11. Mr.K.Mohandoss, the learned Public Prosecutor, appearing for R1 and R2 submitted that in this case, on the complaint of both the Petitioner / B party and the 3rd Respondent / A party over the possession and enjoyment of the property in R.S.No.48/3A/1, Patta No.484, an extent of 00-10-75 (H.A.Ca) of Tirunallar Village, which is a prime location. The 2nd Respondent referred the issue to the 1st respondent, who took cognizance of the report No.5692, dated 23.07.2021. Thereafter, he collected report from the Tahsildar, Tirunallar, who conducted an enquiry and submitted a report. It is seen that there has been instances of showing of muscle power, aggressiveness, trespass into the property. Hence, it has necessitated to pass an order of attachment under Section 146(1) Cr.P.C., after notice and hearing, whereby the Superintendent of Police, South was directed to take possession of the property, sealed the same and keep away from the encroachers. The property has been sealed. Questioning the order of attachment, a Criminal Revision Case in Crl.R.C.No.561 of 2021 is filed and the same is pending before this Court.

12. The learned public prosecutor would further submit that in the meanwhile, the 3rd respondent obtained an order of correction of an extent in the above said land vide No.639/Sett/KKL/Sec.23/2022,, dated



16.12.2022 issued by the settlement Officer, Karaikal wherein the missing extent of 00-10-.75 (Ha.Ca) available on the grounds as per Survey Report added with existing extent of 0042.82 H.a.Ca for the property comprised in R.S.No.48/31/1/A of No.21, Tirunallar Revenue Village. Accordingly, 00.53.57 (H.A.Ca) has been fixed for R.S.No.48/3A/1A. The disputed property is the missing extent of land. It is an admitted position as to be seen from the complaint of the 3rd respondent / A party that there is an encroachment in the property, encroachment has been committed by the Late K.Devamani. The 1st respondent primarily proceeds on the order passed by the Settlement Officer on 16.12.2022. In the said order, it is seen that the name of the petitioner that is the 3rd respondent alone is recorded and on perusal of the same it is seen that nowhere it refers to the petitioner herein or to his legal heirs and on hearing the 3rd respondent alone, the Settlement Officer comes to a conclusion that the property originally an ancestral property belongs to Janakiammal W/o. Ayyasami Iyer, grandmother of 3rd respondent and in the year 1996, a portion to an extent has been settled in the joint names of the 3rd respondent and 4 others by Enam Settlement Deed No.680/1996.

13. I have heard the learned counsels appearing on either side and perused the materials available on record.



14. On perusal of the records it is seen that missing extent of 00-10.75 (H:A:Ca) found in the filed belongs to grandmother Janaki Ammal W/o. Ayyasami Iyer and hence, missing extent included in R.S.No.48/3A/1A is based on a Notorized affidavit dated 11.12.2022. These proceedings have been conducted when the enquiry was pending in M.C.No.448/2021. In all prudence, notice ought to have given to the petitioner and after his demise to the legal heirs and they have to be heard. In this case, which has not been done and against the order of Settlement Officer, a CRP has been filed before the Appellate Authority, the Director of Survey, Puducherry, which is pending. This has been filed as early as on 01.12.2023 much before the impugned order, dated 25.01.2024. The 1st respondent ought to have waited till the outcome of the CRP on the other hand on the report of the 2nd respondent, dated 24.01.2024 gives a finding that there is no law and order issue prevailing now and the attachment order issued under Section 146(1) on 24.08.2021 is no more required, is not proper. Further, the order of passing of attachment itself becomes a questionable one, since the very case of the 3rd respondent / A party is that in the property attached, thatched hut has been put, property has been assessed tax and attempt has been made to obtain electricity connection. The contention of the petitioner has not



been considered. The requirement under Section 145 Cr.P.C., is that to maintain public peace and tranquillity and to avoid breakage of law and order, prohibitory order to be issued and the requirement is that it is not the legal ownership of the land or property to be considered. In this case, the admitted position of the 3rd respondent is that the property is encroached by the petitioner. Whether it is a legal encroachment or not it has to be decided by the civil Court and the 1st respondent is not an Authority to decide.

15. The Hon'ble Apex Court in **Ashok Kumar's case** (cited supra) held that under Section 146(1) Cr.P.C., the Magistrate can pass an order of attachment of the subject of dispute, if it be a case of emergency, or if he decides that none of the parties was in such possession, or he cannot decide as to which of them was in possession. Sections 145 and 146 of Cr.P.C., together constitute a scheme for the resolution of the situation where there is likelihood of breach of peace and Section 146 cannot be separated from Section 145 Cr.P.C. If after enquiry under Section 145 Cr.P.C., the Magistrate is of the opinion that none of the party was in actual possession of subject of dispute at the time of order passed under Section 145(1) or is unable to decide which of the party was such possession he may attach the subject of the dispute till the competent



Court determine the right of the parties there to with regard to the person entitled to possession there of.

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16. In this case, already an attachment order was passed, which has been challenged by way of Crl.R.C.No.561/2021, which is pending before this Court. It is for this Court to decide the legality sustainability of such order in that proceedings. Now, the order of the Settlement Officer adding 00.10.75 H.A.Ca with the existing extent of 00.42.82 H for the property comprised at R.S.No.48/3A/1/A of No.21 Tirunallar Revenue Village and fixing 00.53.57 H:A:Ca in R.C.No.48/3A/1/A in No.639/Sett/KKL/Sec.23/2022, dated 16.12.2022 admittedly has been passed during the pendency of 145 Cr.P.C., proceedings. The Settlement Officer ought to have heard the said Devamoni or his legal heirs, since Devamoni is no more in the said proceedings, which has not been done so. Now, one D.Prabhakaran, S/o.Devamoni, has filed CRP before the Appellate Authority on 01.12.2023. In view of the same, the order passed by the Settlement Officer cannot be said to be final, in all prudence, ought to have waited till the outcome of the statutory appeal. Hence, this Court is inclined to set aside the impugned order, which is solely based on the Settlement Officer. Since already attachment of the property under dispute in Form 56 has been passed on 24.08.2021 and the photographs



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of the petitioner would clearly show that the thatched hut put up is of a recent one and there is no dwelling, the said attachment to continue, the 1st respondent after getting orders from the CRP or any direction from this Court in the Criminal Revision in Crl.R.C.No.561/2021, thereafter, to consider the contention of the petitioner and the 3rd respondent and pass orders, till such time, status quo to be maintained.

17. In the result, the order dated 25.01.2024, passed by the 1st Respondent, under Sections 145, 145(i), 146 & 146(i) of Cr.P.C., by declaring that the 3rd respondent is entitled to retain the possessory rights in respect of the land in R.S.No.48/3A/1/A of No.21, Thirunallar Revenue Village, measuring an extent of 00.53.57 H:A:Ca., the Petitioner / B-Party, is set aside, and the the Criminal Revision Case Stands allowed with the above direction.

31.01.2025

Index : Yes/No
Speaking Order/Non Speaking Order
Neutral Citation: Yes/No

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To

- 1.The Sub Divisional Magistrate,
Karaikal
- 2.The Station House Officer,
Thirunallar Police Station,
Karaikal
3. The Public Prosecutor,
High Court, Chennai.



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M.NIRMAL KUMAR, J.

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Pre-Delivery Order made in

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