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Crl.R.C.No.242 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.242 of 2024
and
CRLM.P.No.2201 of 2024**

D.Prabakaran

... Petitioner / Counter Petitioner
A Party

Vs.

1.The Sub Divisional Magistrate,
Karaikal

... 1st Respondent

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

... 2nd Respondent

3.G.Rajendiran

... 3rd Respondent

PRAYER: Criminal Revision Petition filed under Section 397 r/w 401 of Cr.P.C., to set aside the order dated 20.01.2024 passed by the 1st Respondent in M.C.No.55/2023 to uphold the rights of possession and enjoyment of the petition mentioned property to counter Petitioner-B Party.



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Crl.R.C.No.242 of 2024

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

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

For R3 : Mr.V.Chandrasekaran

ORDER

The Petitioner / A Party in M.C.No.55/2023 challenging the order passed by the 1st respondent, dated 08.08.2023 has filed the present Revision.

2. The brief facts of the case is that the 1st respondent received a report from the 2nd respondent vide I.R.No.24/2023, dated 06.08.2023; that a complaint has been received from the 3rd respondent / B party; that the petitioner / A party has stopped and challenge the 3rd respondent from redoing the fencing of the land and that the petitioner's father Late Ganesan was enjoying the property in Survey No.22/2A of Sellur Village, Karaikal, measuring an extent of 00:02:75 H.A.Ca. When the petitioner /A party went to the land to carryout fence earlier, he was obstructed, there was a dispute in demarking the concrete post for fencing the above said



property. Earlier too, there was a damage to the fencing and lastly the damage was done on 06.08.2023 in the evening hours. Since the dispute had a history and it has been regular and there has been use of muscle power aggressiveness, trespass and to avert disturbance to public peace and tranquillity, the 1st respondent ordered Notice under Section 145(1) Cr.P.C., calling upon the petitioner / A party, 3rd respondent / B party to appear, with supporting documents. A report was also received from the Village Administrative Officer of Sellur Revenue Village, countersigned by the Revenue Inspector concerned and after gathering information found that already a proceedings under Section 145 Cr.P.C., in M.C.No.133/2016 was initiated and finding that the possession right is with the 3rd respondent's father Ganesan. It was a dispute of pathway in M.C.No.60/2013 and it was held that the pathway was accepted for the use by 3rd respondent / B party and the dispute arose now since fencing was attempted to put up by the petitioner / A party. The 1st respondent after hearing both parties and on perusal of the materials produced upheld the the rights of possession and enjoyment of the petition mentioned property in favour of the 3rd respondent and ordered the petitioner not to interfere in the possession, right of the 3rd respondent in any manner and to stay away from fencing work undertaken by the 3rd respondent / B party to protect the boundaries of the petition mentioned



property and also issued appropriate orders to the Tahsildar, Revenue Officials and the 2nd respondent jurisdiction police. Against which the above petition.

3. Mr.K.S.Viswanathan, the learned Senior Counsel appearing for the petitioner would submit that the land in R.S.No.22/2 of Sellur Village, measuring to an extent of 00.02.75 He.Ca was originally belonged to one Mr.Viswanatha Pathar and after his demise, his wife namely, Amalorpavamari, become the owner of the said property. On 17.10.2012, the said Amalorpavamari transferred possessory right in favour of one Sivalingam. Subsequently, on 30.03.2013, the petitioner's father Devamani purchased the above said land, for valuable consideration from the said Sivalingam, by way of transfer of possessory right deed duly executed before Notary Public. From the date of purchase, the petitioner's father was in absolute possession and enjoyment of the said land. The 3rd respondent's father viz.,Ganesan started trouble to the petitioner's father by claiming right over the said land and earlier, he gave a complaint to the 1st Respondent and after conducting enquiry, the said complaint was dismissed. Thereafter too, the 3rd respondent's father was continuously disturbed the petitioner's father's possession.



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4. The learned Senior Counsel would further submit that petitioner's father filed a Suit against the said Ganesan, before the learned Principal District Munsif, Karakal in O.S.No.242/2016 for permanent injunction. Pending the suit, the 3rd respondent father Ganesan passed away and thereafter, there has been no disturbance. The petitioner's father left the suit as such, the said suit was dismissed for default. The petitioner was in possession and enjoyment of the said property. On 22.10.2021, the petitioner's father was murdered and after his death, the petitioner is in possession and enjoyment of the land. This being so, the 3rd respondent after coming to know about the death of the petitioner's father and dismissal of the civil suit during May 2022, attempted to trespass in the said land, which was resisted by the petitioner. The petitioner lodged a complaint to the 2nd respondent, the 2nd respondent enquired and closed the same as civil in nature. Thereafter, the petitioner filed a civil suit against the 3rd respondent seeking permanent injunction in O.S.No.56/2022 and the same is pending adjudication.

5. The learned Senior Counsel further submitted that the 3rd respondent, as a counter blast to the dispute, has filed a false complaint



against the petitioner and others under the Provisions of SC/ST Atrocities Act and threatened the petitioner to deliver vacant possession of the property. The Superintendent of Police, South, started harassing the petitioner to settle the issue. The petitioner, on 17.11.2022 gave representation to the DGP, Puducherry and also filed a Writ Petition in W.P.No.31105/2022 and the same is also pending for adjudication. On 06.08.2023, the 3rd respondent attempted to fence the above said land, which was resisted by the petitioner and also lodged a complaint to the 2nd respondent. A counter complaint was received from the 3rd respondent and the 2nd respondent referred the matter to the 1st respondent, who issued summons. Challenging the same, the petitioner earlier filed Crl.O.P.No.25100/2023 and this Court on 02.11.2023 dismissed the same, since it is only a Notice and it is a premature stage. On 20.01.2024, the 1st respondent passed the impugned order declaring the 3rd respondent / B party is entitled to retain possession of the land under Section 145 Cr.P.C. The impugned order is against the facts and Law. The 1st respondent on coming to know that there is a civil Suit in O.S.No.56 of 2022 pending ought not to have proceeded further under Section 145 Cr.P.C., and ought to have advised the party to approach the civil Court. The impugned order is against the order of the Hon'ble Apex Court in ***Mohd Abid & Ors Vs. Ravi Naresh and Ors*** in **Special Leave**



to Appeal (Crl.) No. (s) 5444/2022, on 01.11.2022, declaring the possessory right in favour of the 3rd respondent / party is beyond the scope of Section 145 Cr.P.C., Hence, the above petition.

6. Mr.V.Chandrasekaran, the learned counsel for the 3rd respondent submitted that the petitioner in his own admission admits that the vendor to the petitioner's father Sivalingam had only obtained possessory right from Amalorpavamari and the said Sivalingam by way of transfer of possessary right executed the Deed in favour of the petitioner's father, which is an unregistered document. Using the said unregistered document, the petitioner cannot claim any possessary rights. The petitioner's father earlier attempted to encroach upon the property and also filed a civil Suit in O.S.No.242/2016 and it was dismissed for default. The petitioner filed a Suit seeking bare injunction, the civil Court finding that the petitioner has not made any *prima facie* case to show his possession and enjoyment of the property, refused to grant any protection order in favour of the petitioner, which would only clearly prove that the petitioner is not in possession and enjoyment of the property. In such circumstances, the petitioner objecting for the 3rd respondent in putting up the fence in his own property cannot be approved.



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7. The learned counsel would further submit that the petitioner earlier lodged a complaint to the respondent police on 05.05.2022 and 26.06.2022 and the respondent police found that the complaint to be false and closed the same. The 1st respondent, in the impugned order, has narrated the trajectory of the case and also obtained a report from the VAO of Sellur Revenue Village, who conducted a filed enquiry, given a report that as on 19.07.2013, the possession right is enjoyed by the petitioner's father Late.Ganesan, which succeeded by the petitioner. There was also an earlier 145 Cr.P.C., proceedings initiated in M.C.No.133/2016 which recognized, acknowledged and ordered possessionary right with the petitioner's father. The Tahsildar, Tirunallar, in M.C.No.16/2013 upheld the petitioner's father's possessionary right of the petitioner. The Deputy Surveyor, Taluk of Tirunallar given a report in favour of the petitioner's father stating that the petitioner's father already fenced the petitioned land with 16 number of pillars erected and he had also usufructuary trees and coconut trees in the said land. Thus, the 3rd respondent's father and after his demise, the 3rd respondent is in continuous possession and enjoyment of the property has been recognized, recorded in the Revenue Records, on considering all these aspects, the impugned order has been passed, which need no



interference.

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8. Mr.K.S.Mohandass, the learned Public Prosecutor would submit that on the Reference Report by the 2nd respondent Police in I.R.No.24/2023, dated 06.08.2023, the 1st respondent arrayed the petitioner as A party and the 3rd respondent as B party and issued Notice to both the parties for their appearance, explanations, and submission of records in their favour. He caused enquiry through Revenue Authorities viz., Village Administrative Officer, Tahsildar and Deputy Surveyor, Taluk Office. Field Inspection was also conducted and a report was submitted by the Revenue Officials. It has been found that the 3rd respondent's father is in possession of the petitioned land, as on 19.07.2013, as per the report of the VAO and earlier proceedings in M.C.No.133 of 2013 and M.C.No.16/2013 all held in favour of the 3rd respondent's father. After the demise of the 3rd respondent's father, the land measuring to an extent of 00.02.75 Ha.Ca. in Rs.No.22/2A is in possession and enjoyment of the 3rd respondent, who had earlier fenced the petitioned property with 16 numbers of pillars and this has been erected for fencing purpose usufructuary trees and coconut trees were already planted in the land. Thus, the 3rd respondent's father and the 3rd respondent is in continuous possession and enjoyment of the said property. The petitioner had only



encroached upon and attempted to fence the property which has been rightly held to be improper and illegal and the 1st respondent found the 3rd respondent's possessory right in R.S.No.22/2A measuring an extent of 00.02.75 Ha.Ca.of Sellur Village, Tirunallar Taluk. Further, ordered the petitioner not to interfere in the possessory rights of the 3rd respondent in any manner and stay away from the fencing work undertaken by the 3rd respondent. Further, directed the Tahsildar, to protect the boundaries of the petitioned mentioned property and the Station House Officer, Tirunallar also directed to give adequate Police protection. The impugned order is a detailed one, which needs no interference.

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

10. On perusal of the records it is seen that the 3rd respondent's father possessory right over the property in Survey No.00.02.75 of Sellur Village, Karaikal, has been established not once on three occasions. Earlier in M.C.No.60/2013; M.C.No.133/2016 and the Reports from the VAO, Tahsildar, and Deputy Surveyor, Taluk Office, Tirunallar confirming that the 3rd respondent's father was holding the possessory right of the property and is in enjoyment of the same after the demise of the 3rd



respondent's father, the 3rd respondent is in enjoyment of the property.

The petitioner is an aggressor, who attempted to disturb the 3rd respondent's peaceful possession and enjoyment of the property. The impugned order is a detailed one narrating all the sequence and giving a finding based on the statement and records, which needs no interference.

11. In the result, the Criminal Revision Case stands dismissed. Consequently, the connected miscellaneous petition is closed.

31.01.2025

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

vv2/mpk

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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31.01.2025