



WEB COPY



W.P.No.18228 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.09.2025

CORAM

THE HONOURABLE MR.JUSTICE N.SATHISH KUMAR

W.P.No.18228 of 2025

and

W.M.P.Nos.20416 and 20419 of 2025

1. N.Saraswathi
 2. R.Balasubramanian
- ... Petitioners

versus

1. The Sub-Divisional Magistrate-cum-
Revenue Divisional Officer,
Tiruthani,
Tiruvallur District.
2. The Tahsildar,
Tiruthani Taluk,
Tiruvallur District.
3. The Inspector of Police,
D3-Kanakamma Chatram Station,
Tiruthani Taluk,
Tiruvallur District.
4. R.Rathinam

... Respondents

Writ Petition filed under Article 226 of Constitution of India, praying
to issue a Writ of Certiorari to call for the records relating to the order of the



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1st respondent Ref.Na.Ka.No.761/2025/A3 dated .03.2025 and to quash the same.

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For Petitioners : Mr.C.Vigneshwaran

For Respondents : Mr.K.M.D.Muhilan
Additional Public Prosecutor
for R1 to R3
No appearance for R4

ORDER

Challenge has been made against the order passed by first respondent-Sub-Divisional Magistrate-cum-Revenue Divisional Officer, Tiruthani, under Section 145 Cr.P.C./ Section 164 of BNSS.

2. According to the petitioners, the first petitioner is the owner of the property comprised in Old S.No.160/1, New S.No.160/1B1B to an extent of 0.14 cents in Gullur Village, Tiruttani Taluk, Tiruvallur District, purchased by him from the second petitioner herein by virtue of a registered sale deed dated 21.09.2023. Admittedly, the lands comprised in S.Nos.160/1 and 160/4 situated at Gullur Village, was larger extent and originally it belonged to one Kuppu Reddy. After the death of Kuppu Reddy, the said properties

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were partitioned among themselves. Thereafter, the legal heirs of Kuppu Reddy sold the share in S.No.160/1 and 160/4 in favour of G.N.Nagaraj, who in turn, sold the property in favour of the second petitioner herein measuring about 1 acre 6 cents. Subsequently, the second petitioner sold and conveyed a part in S.No.160/1 to an extent of 0.14 cents, which was subdivided as S.No.160/1B1B in favour of the first petitioner. While that being so, the fourth respondent herein filed a complaint to the third respondent-Police claiming the subject property as his ancestral property and the said complaint was referred to the first respondent Sub-Divisional Magistrate-cum-Revenue Divisional Officer, Tiruthani, under Section 164 of the BNSS. As there was no proper enquiry, the first respondent passed the impugned order, which is under challenge in this petition.

3. According to the private respondent, the property in S.No.160/1 measuring an extent of 1.44 acres is a joint family property and the same has not been partitioned and they are in possession of the property. Now, the petitioners have purchased the property and trying to make inroad into the said property. Based on the report of the third respondent, the first respondent has passed the impugned order restraining both the parties from

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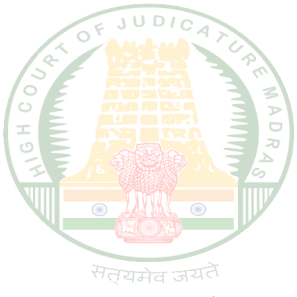


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entering into the property in S.No.160/1 of an extent of 1.44 acres.

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4. It is relevant to note when any order is passed under Section 164 of BNSS, the learned Magistrate has to satisfy himself with regard to the possession of the property on the date of order made by him. He should decide as to whether any and which of the parties, was, at the date of the order passed by him under sub-Section (1) of Section 164 of BNSS, in possession of the subject of the dispute. Similarly, if the learned Magistrate has satisfied that any party has been forcibly and wrongfully dispossessed within two months next before the date on which the report of a police officer or other information was received by the Magistrate, or after that date and before the date of his order under sub-Section (1) of Section 164 of BNSS, he may treat the party so dispossessed as if that party had been in possession on the date of his order under sub-Section (1) of Section 164 of BNSS. Similarly, under sub-Section (6) of Section 164 of BNSS, he can also pass the order declaring such party to be entitled to possession thereof, until evicted therefrom in due course of law, and forbidding all disturbance of such possession until eviction.



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5. From a careful perusal of the records and above provisions, the learned Magistrate has to decide as to who are in possession of the property or whether any other persons is/are dispossessed of the property. Without making any decision in that regard, merely on the basis of the submissions, the Magistrate cannot restrain the parties to enter into the property. It is also brought to the notice of this Court that a suit in O.S.No.147 of 2006 (District Munsif Court, Tiruttani) was already filed by the fourth respondent against the vendors of the petitioners herein in respect of the same property for the relief of declaration and permanent injunction. The said suit, after contest, was dismissed. Hence, this Court is of the view that as the rights of the parties have already been decided by a Civil Court, now, the first respondent - Sub-Divisional Magistrate-cum-Revenue Divisional Officer, Tiruthani, cannot decide the rights of the parties under Section 164 of BNSS and pass orders restraining both the parties and hence, the same cannot be sustained in the eye of law.

6. In view of the above, this writ petition is allowed and the impugned order dated .03.2025 passed by the Sub-Divisional Magistrate-cum-



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Revenue Divisional Officer, Tiruthani, is hereby set aside. Consequently,
connected miscellaneous petitions are closed.

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Index: Yes/No
Speaking Order : Yes/No
Neutral Citation Case : Yes/No
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To

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Tiruvallur District.
2. The Tahsildar,
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4. The Public Prosecutor,
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N.SATHISH KUMAR, J.

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