

(2011) 08 MAD CK 0176

Madras High Court

Case No: Writ Petition No. 20299 of 2008

M. Arumugam

APPELLANT

Vs

The Revenue Divisional Officer,
Mrs. A. Rajam and The Inspector
of Police

RESPONDENT

Date of Decision: Aug. 19, 2011

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 145

Hon'ble Judges: T. Raja, J

Bench: Single Bench

Advocate: P.R. Thiruneelakandan, for the Appellant; Lita Srinivasan, GA for R1 and R3 and S. Kalimuthu, for R2, for the Respondent

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

T. Raja, J.

The present writ petition is directed against the impugned proceedings dated 14.06.2008 passed by the first Respondent, in and by which, the first Respondent has declared the right of the second Respondent and also further directed the third Respondent to take possession of the land from the Petitioner and handover the same to the second Respondent.

2. Assailing the impugned order, learned Counsel appearing for the Petitioner submitted that the Petitioner's mother Late Paapathiammal, purchased the land in question covered in Survey No. 101/2 admeasuring 0.18.5 hectare and another extent of land about 0.32 hectare in Survey No. 101/4, Kottamettupatiti Village, Omalur Taluk, Salem District, by valid sale deed. After the demise of the Petitioner's mother, all six brothers including the Petitioner entered into a partition deed on 19.06.1974 and the same was also registered as Document No. 1584/74 at Omalur

Sub-Registrar Office, and as per the above partition deed, respective shares were given to all of them. Subsequently, in the year 1975, fourth elder brother of the Petitioner's family left from his native place and settled down at R.C. Plant, Veerakalpathur, till his death. At the time of leaving from his native place, he has leased out the above said land to the Petitioner by an oral agreement for a valuable consideration of Rs. 2 lacks and since then, the petitioner has been cultivating the above said land till date and just one week prior to his brother's death, the Petitioner was asked to make a registration expense to execute the sale deed of the above said disputed property in his favour. In the meanwhile, it is submitted that, fourth elder brother has received about a sum of Rs. 3 lacks with a promise to sell the above said land, but, subsequently, fourth elder brother was also died and thereafter, the Petitioner has been cultivating the above said land as a cultivating tenant even after the death of his brother.

3. While so, the second Respondent came to the Petitioner's land and informed him that she has purchased the disputed property by registered sale deed from his fourth elder brother and she demanded the handing over the possession of the property to her. Thereafter, on refusal to hand over the possession of the disputed property, the second Respondent gave a police complaint against the Petitioner to hand over the possession of the property to her and in turn, the Petitioner also gave a complaint against the second Respondent before the third Respondent, but the third Respondent, by registering a case in Crime No. 263 of 2008, asked the Petitioner to hand over the possession of the property to the second Respondent. The second Respondent, being a influenced person in that locality, influenced the third Respondent to refer the matter before the first Respondent/Revenue Divisional Officer and in turn, the first Respondent also issued a summon to hold an enquiry u/s 145 of the Code of Criminal Procedure, in respect of the dispute between the Petitioner and the second Respondent with regard to the aforesaid disputed land. Though the Petitioner appeared before the first Respondent and explained all the above facts, without considering the case of the Petitioner, the first Respondent passed an order on 14.06.2008, declaring the possession of the disputed land in favour of the second Respondent and directed the third Respondent to take possession of the property from the Petitioner and hand over the same to the second Respondent. Therefore, on that basis, it was contended that the impugned order passed by the first Respondent is without jurisdiction, since Section 145 of Code of Criminal Procedure. applies to decide actual possession of the disputed property in order to maintain peace. Again, it was contended that the first Respondent, by applying Section 145, erroneously decided the title and ownership of the property and therefore, such an exercise of the power by the first Respondent invoking Section 145 is liable to be quashed.

4. Learned Government Advocate appearing for the Respondents 1 and 3 submitted that when the Petitioner and the second Respondent have been frequently quarrelling by disturbing the peace in the locality, the third Respondent, having

come across the frequent quarrel between the Petitioner and the second Respondent and on receiving a complaints from them, has brought to the notice of the first Respondent to initiate proceedings u/s 145 of Code of Criminal Procedure Only on the complaint made by the third Respondent, in order to bring peace in the locality, the first Respondent has called for enquiry and in the enquiry, after satisfying himself that the second Respondent is the owner of the property, the first Respondent has directed the third Respondent to take possession of the land from the Petitioner so as to handover the same to the second Respondent and on that basis, she prayed for dismissal of the present writ petition.

5. Heard the learned Counsel appearing on either side and perused the materials available on record.

6. It is seen from the records that no counter affidavit has been filed on behalf of the Respondents. Admittedly, a claim made by the Petitioner is relating to an immovable property, that said to have been given to the Petitioner by his own fourth elder brother, namely, Marimuthu, by receiving a sum of Rs. 3 lacks. But, the Petitioner has not produced any evidence to show that his fourth elder brother has executed a sale deed in favour of him, by receiving the above mentioned amount as valuable consideration. Though a case has been made out by the Petitioner, that he has been cultivating the land as cultivating tenant on the basis of oral agreement entered between the Petitioner and his fourth brother, the issue, which is civil in nature, has to be delved only by the Civil Court, as to whether the Petitioner is the real owner or the second Respondent, since both of them fighting on the premise that the land in dispute belongs to them.

7. When the matter stands thus, the first Respondent, after noticing that the Petitioner and the second Respondent are fighting for the land in dispute, should have directed the parties to resolve the title and ownership of the land through the Civil Court. Without doing so, the first Respondent cannot direct the third Respondent to effect the possession of the disputed land in favour of the second Respondent. In that view of the matter, the impugned order passed by the first Respondent directing the third Respondent to evict the Petitioner from the disputed property and handover the same to the second Respondent, is unsustainable in law. However, the parties are directed to approach the Civil Court to establish their title and ownership of the land in dispute. Further, it is made clear that in the event of parties approaching the Civil Court by moving appropriate suit, the Civil Court is directed to dispose of the same in accordance with law without being influenced by the findings/observations made by the first Respondent.

8. With the above observation, the present writ petition is allowed, by setting aside the impugned order passed by the first Respondent. No Costs. Consequently, connected miscellaneous petitions are closed.