

Sri.Ramamoorthy vs Sub Divisional Magistrate (South)

Author: A.D.Jagadish Chandira

Bench: A.D.Jagadish Chandira

1

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 4.1.2022

Delivered on : 23.2.2022

CORAM

THE HON'BLE MR.JUSTICE A.D.JAGADISH CHANDIRA

Criminal Revision Case No.752 of 2021
and
Crl.M.P.No.11506 of 2021

1. Sri.Ramamoorthy
2. Saranraj
3. Muthukumaran

Petitioner

vs.

1. Sub Divisional Magistrate (South),
At Villianur,
Revenue Complex,
South Car Street,
Villianur, Puducherry 605 110.

2. Station House Officer,
Sedarapet Police Station,
Puducherry.

3. Rajeswari
4. Udayakumar
5. Subash

Respondent

Criminal Revision Case filed under Section 397 read with Section 401 Cr.P.C. to call for the records relating to the order dated 11.10.2021 passed in M.C.No.219 of 2021 I.R.No.39 of 2021 under Section 145 Cr.P.C. and set aside the same.

For Petitioner : Mr.R.Thiagarajan
For RR1 and 2 : Mr.V.Balamurugane, APP(Pondy)

<https://www.mhc.tn.gov.in/judis>

2

For R3 to R5 : Mr.K.Sasindran

ORDER

Challenging the order passed by the first respondent directing the petitioners/A party to vacate the premises taken by them on rental agreement from the owners of the property viz., the respondents/B party, the present Criminal Revision Case has been filed.

2. The sequence of events as could be seen from the Brief facts of the case are as under:-

(i) Based on a rental agreement dated 10.11.2012 for a period of five years, entered between the first petitioner, a practising Doctor and the first respondent for a period of three years, the first petitioner took possession of the disputed premises for running his Clinic which came to an end on 9.11.2017 and thereafter, on 8.5.2018, fresh agreements were entered between them for a period of three years which would expire by 7.5.2021.

(ii) Whiles, at the verge of expiry of such rental agreements, the respondents/B party had approached the first petitioner/A party seeking for eviction to which, it appears that the first petitioner/A party had refused and thereupon, the respondents/B party had blocked the entrance of the clinic using iron sheet and restrained the first <https://www.mhc.tn.gov.in/judis> petitioner and his patients from entering into the clinic.

(iii) As a consequence, the petitioners/A party had lodged a police complaint in Sedarapet Police Station against the respondents/B party for the offence of criminal intimidation which was registered in Crime No.26/2021.

(iv) Subsequently, the first petitioner/A party had filed O.S.No.1654 of 2021 and I.A.No.843 of 2021 before the Principal District Munsif, Puducherry seeking for a relief of permanent injunction and thereby revoking the status quo and restoring the original possession of A party.

(v) Whiles, the respondents/B party had also lodged a police complaint against the petitioners/a party to evict them from the premises, however, on some fear that she could not get the vacant possession immediately, the respondents/B party had blocked the entrance of the disputed premises on 28.6.2021.

(vi) The Sub Divisional Magistrate, the first respondent herein, who took cognizable of the dispute between the parties, after analysing the materials available on record, passed the impugned order directing the petitioners/A party to vacate the premises.

The Sub Divisional Magistrate had also instructed both the parties not to <https://www.mhc.tn.gov.in/judis> involve in activities disturbing breach of peace and tranquility in the area and directed them to approach the competent civil court to resolve the issues with respect to their rental agreement. Aggrieved against the same, the present Criminal Revision Case has been filed by the petitioners/A party.

3. Learned counsel appearing for the petitioners/A party would submit that the first respondent, Sub Divisional Magistrate had travelled beyond the scope of such authority in determining the title to the disputed premises and forcibly dispossessing the petitioners/A party from their lawful possession as tenant without considering the hidden object of the respondents/B party to use the proceedings under Section 145 Cr.PC. as a tool to get possession of the premises under the guise of breach of peace. He would further submit that the dispute is only between a landlord and a tenant, however, the proceedings under Section 145 Cr.P.C. has been used as a ruse to evict the petitioners/A party, who are lawful tenants and therefore, the impugned order passed by the Sub Division Magistrate is is not sustainable as it is beyond the jurisdiction under Section 145 Cr.P.C and it is liable to be set aside.

4. Learned Additional Public Prosecutor appearing for <https://www.mhc.tn.gov.in/judis> respondents 1 and 2 would submit that considering the fact that the petitioners/A party had sought to overstay in the premises in dispute even after expiry of the rental agreement entered into by them with the respondents/B party, owner of the premises against which, the respondents/B party had reacted by blocking the entrance of the premises. He would also submit that the petitioners/A party have got support from one group of people and respondents/B party have got another group of people and as a result, breach of peace and tranquility in the area had occurred due to the dispute between the parties and thereby the first respondent was constrained to pass the impugned order. However, he would submit that on the basis of the interim orders passed by this court in this Criminal Revision Case, the possession of the petitioners/A party had been restored.

5. Learned counsel appearing for the respondents/B party would submit that the first petitioner/A party is a tenant in the disputed premises, however, he would submit that despite lapse of the tenancy agreement, the petitioner had failed to vacate and had created trouble and thereby it ended in the proceedings under Section 145 Cr.P.C.

6. Heard the learned counsel appearing for the parties and perused the materials available on record. <https://www.mhc.tn.gov.in/judis>

7. Admittedly, the disputed premises belongs to the respondents/B party and the first petitioner/A party is a tenant under the first respondent/B party and at the verge of expiry of the rental agreement, the first respondent/B party had approached the first petitioner/A party seeking for eviction of the premises. It appears that due to some misunderstanding and dispute between them, the first petitioner/A party refused to vacate the premises and thereupon, the first respondent/B party had blocked the premises and thereby prevented the first petitioner/A party to enter into the premises which added oil to the fire and the dispute between a landlord and a tenant had developed into one of group clash as both the parties have got their supporting people of that locality which

resulted in the proceedings under Section 145 Cr.P.C.

8. The Sub Divisional Magistrate, after following the procedure laid down under Section 145(1) Cr.P.C., had passed the impugned order under Section 145(4) Cr.P.C. ordering eviction of the petitioners/A party.

<https://www.mhc.tn.gov.in/judis>

9. Section 145(4) Cr.P.C. reads as under:-

"145. Procedure where dispute concerning land or water is likely to cause breach of peace.

.....

(4) The Magistrate shall then, without, reference to the merits or the claims of any of the parties to a right to possess the subject of dispute, peruse the statements so put in, hear the parties, receive all such evidence as may be produced by them, take such further evidence, if any, as he thinks necessary, and, if possible, decide whether any and which of the parties was, at the date of the order made by him under sub- section (1), in possession of the subject of dispute: Provided that if it appears to the Magistrate 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), he may treat the <https://www.mhc.tn.gov.in/judis> party so dispossessed as if that party had been in possession on the date of his order under sub-

section (1)."

10. A bare reading of the above provision makes it clear that the Magistrate has to decide as to which of the parties was, at the date of the order made by him under sub-section (1), in possession of the subject of dispute, without reference to the merits or the claims of any of the parties to a right to possess the subject of dispute after following due process of law. Further, it is clear that if the Magistrate finds 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), 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). Therefore, the Magistrate is not supposed to go into the title of the parties and the scope of the Magistrate is to take a decision with regard to possession of the property and if there were any forcible dispossession by any party.

<https://www.mhc.tn.gov.in/judis>

11. A perusal of the impugned order passed by the Sub Divisional Magistrate shows that the Authority has observed as under:-

"And Whereas, based on the hearings conducted by the undersigned and after perusing all the evidences putforth by both the parties and based on the field inspection conducted by the undersigned, I am satisfied to hold that A party is forcibly and wrongfully continuing their possession of the disputed premises even after the expiry of their rental agreement and thereby causing disturbances and breach of peace and tranquility in Sedarapet and its surrounding area. Further, the B party should have adopted a legal recourse to get necessary relief in their favour and had no right to block the access to the premises thereby causing law and order problem in the locality."

<https://www.mhc.tn.gov.in/judis>

12. Having accepted the tenancy of the first petitioner/A party and observed that the B party should have adopted a legal recourse to get necessary relief in their favour and had no right to block the access to the premises thereby causing law and order problem in the locality, the Authority had taken a 'U' turn and passed the impugned order directing eviction of 'A' party under the guise of breach of peace and tranquility. Further, it appears that the Authority has given a wrong interpretation to the terms "forcible and wrongful dispossession"

and muddled its content with the terms "forcible and wrongful continuity" and attributing the same to the first petitioner/A party, had erred in ordering for eviction of the petitioners/A party.

13. It is not as if the petitioners/A party had entered into the premises without any right over the same. Having entered into a rental agreement, they derived their right of tenancy, but, some dispute between the tenant and the landlord alone had created the fuss. Therefore, there is no question of forcible and wrongful continuity also. To resolve a civil dispute, the parties have to approach appropriate civil forum and such a right of the parties is not at all taken away and the petitioners/A party had rightly availed the <https://www.mhc.tn.gov.in/judis> same by filing a Civil Suit, but, the respondents/B party had taken the law into their hands and as a tricky method, they had created the hindrance to the petitioners/A party to enter into the premises and invited the proceedings under Section 145 Cr.P.C.

14. Regarding the nature of the order passed by the Executive Magistrate under Section 145 of the Code, the Supreme court had the following to say in its judgment in Chandu Naik v. Sitaram B. Naik (1978) 1 SCC 210):— "In substance and in effect a proceeding under Section 145 of the Code is, not for the purpose of evicting any person from any land but is primarily concerned with the prevention of the breach of the peace by declaring the party found in possession to be entitled to remain in possession until evicted therefrom in due course of law? Although the party who forcibly and wrongfully dispossessed the other party attracting the application of the proviso to Sub-Section (4) of Section 145 of the Code has to be factually and physically evicted from the

<https://www.mhc.tn.gov.in/judis> property, by a legal fiction it is only for the purpose of treating him in possession on the date of the preliminary order.”

15. It is relevant to see what prevails in law on the issue on hand. In *Ram Sumer Puri Mahant v. State of U.P.* [(1985) 1 SCC 427], the Supreme Court also held that after filing a civil suit, it is not open to the parties to initiate proceedings under Section 145 of the Code:— “When a civil litigation is pending for the property wherein the question of possession is involved and has been adjudicated, we see hardly any justification for initiating a parallel criminal proceeding under Section 145 of the Code. There is no scope to doubt or dispute the position that the decree of the Civil Court is binding on the criminal court in a matter like the one before us. Counsel for respondents 2-5 was not in a position to challenge the proposition that parallel proceeding should not be permitted to continue and in the event of a decree of the Civil <https://www.mhc.tn.gov.in/judis> Court, the criminal court should not be allowed to invoke its jurisdiction particularly when possession is being examined by the civil court and parties are in a position to approach the civil court for interim orders such as injunction or appointment of receiver for adequate protection of the property during dependency of the dispute. Multiplicity of litigation is not in the interest of the parties nor should public time be allowed to be wasted over meaningless litigation. We are, therefore, satisfied that parallel proceedings should not continue and the order of the learned Magistrate should be quashed. We accordingly allow the appeal and quash the order of the learned Magistrate by which the proceeding under Section 145 of the Code has been initiated and the property in dispute has been attached. We leave it open to either party to move the appellate judge in the civil litigation for appropriate interim orders, if so advised, in the event of dispute relating to possession.” <https://www.mhc.tn.gov.in/judis>

16. The Supreme Court expressed vide judgment in *Ranbir Singh v. Dalbir Singh* (2002) 3 SCC 700) that in these proceedings, the court is concerned with actual possession and not about other issues and observed in para 8 as under:

“The Court, while dealing with a proceeding under Section 145 Cr.P.C., is mainly concerned with possession of the property in dispute on the date of the preliminary order and dispossession, if any, within two months prior to that date; the Court is not required to decide either title to the property or right of possession of the same.”

17. In *Shanti Kumar Panda v. Shakuntala Devi* (2004) 1 SCC 438), the Supreme court observed in paras 10, 11 and 12 as follows:

“Possession is nine points in law. One purpose of the enforcement of the laws is to maintain peace and order in society. The disputes relating to property should be settled in a civilized manner by having recourse to law and not by taking the law <https://www.mhc.tn.gov.in/judis> in own hands by members of society. A dispute relating to any land etc. as defined in Sub-Section (2) of Section 145 having arisen, causing a likelihood of a breach of the peace, Section 145 of the Code authorizes the Executive Magistrate to take cognizance of the dispute and settle the same by holding an enquiry into possession as distinguished from right to possession or title. The

proceedings under Sections 145/146 of the Code have been held to be quasi-civil, quasi-criminal in nature or an executive on police action. The purpose of the provisions is to provide a speedy and summary remedy so as to prevent a breach of the peace by submitting the dispute to the Executive Magistrate for resolution as between the parties disputing the question of possession over the property. The Magistrate having taken cognizance of the dispute would confine himself to ascertaining which of the disputing parties was in possession by reference to the date of the <https://www.mhc.tn.gov.in/judis> preliminary order or within two months next before the said date, as referred to in proviso to Sub-Section (4) of Section 145, and maintain the status quo as to possession until the entitlement to possession was determined by a court, having competence to enter into adjudication of civil rights, which an Executive Magistrate cannot. The Executive Magistrate would not take cognizance of the dispute if it is referable only to ownership or right to possession and is not over possession simpliciter; so also the Executive Magistrate would refuse to interfere if there is no likelihood of breach of the peace or if the likelihood of breach of peace though existed at a previous point of time, had ceased to exist by the time he was called upon to pronounce the final order so far as he was concerned."

18. In Ashok Kumar vs. State of Uttarakhand and others ((2013) 3 SCC 366, a Division Bench of the Apex Court, having observed that when reports indicate that one of the parties is in <https://www.mhc.tn.gov.in/judis> possession rightly or wrongly, the Magistrate cannot pass an order of attachment on the ground of emergency and when a civil suit seeking injunction restraining the opposite party from interfering with the possession of a person, who was in possession and an Application for interim injunction were already pending, it would be for the civil court to decide as to who was in possession and the Civil Court being already seized of the matter and in the absence of anything to show existence of emergency, the Magistrate had erred in passing the order of attachment, has held as under:-

"6. We are of the view that the SDM has not properly appreciated the scope of Sections 145 and 146(1) CrPC. The object of Section 145 CrPC is merely to maintain law and order and to prevent breach of peace by maintaining one or other of the parties in possession, and not for evicting any person from possession. The scope of enquiry under Section 145 is in respect of actual possession without reference to the merits or claim of any of the parties to a right to possess the subject of dispute."

<https://www.mhc.tn.gov.in/judis>

19. In the case on hand, the Sub Divisional Magistrate, having held that the petitioners are lawful tenants, and having rendered a finding that they were in possession on the date of his order under sub- section (1), ought to have restored the possession of the petitioners/A party and directed the respondents/B party to approach the Civil Court concerned to resolve their dispute, however, the Authority had exercised his power vice versa.

20. The impugned order passed by the Sub Divisional Magistrate is not sustainable in law and hence, it is liable to be set aside. Accordingly, it is set aside. The Criminal Revision Case is allowed. The possession of the petitioners/A party shall be restored, if not already done. The connected Criminal Miscellaneous Petition is closed.

23.2.2022.

Index: Yes.

Internet: Yes.

ssk.

To

1. Sub Divisional Magistrate (South), At Villianur, Revenue Complex, South Car Street, Villianur, Puducherry 605 110.

<https://www.mhc.tn.gov.in/judis>

2. Station House Officer, Sedarapet Police Station, Puducherry.

3. Public Prosecutor, High Court, Madras.

<https://www.mhc.tn.gov.in/judis> A.D.JAGADISH CHANDIRA, J.

ssk.

P.D. ORDER IN Criminal Revision Case No.752 of 2021 Delivered on 23.2.2022.

<https://www.mhc.tn.gov.in/judis>