

(2009) 07 MAD CK 0191

In the Madras High Court

Case No : Criminal R.C. No. 867 of 2007

Dittakavi Anantha Padmanabhamoorthy, Kandhukuri Saibaba
(alias) K. Saibaba and Kandhukuri Ramasubramaniam (alias)
K. Ramasubramaniam rep. by their Power of Attorney K.V.
Sivaramprasad

APPELLANT

Vs

The Tahsildar and Executive Magistrate and Others

RESPONDENT

Date of Decision : 23-07-2009

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 145

Citation : (2009) 07 MAD CK 0191

Hon'ble Judges : M. Jeyapaul, J

Bench : Single Bench

Advocate : Ramesh for A.P.R. Associates, for the Appellant; N. Kumanan, Govt.
Advocate (Crl. Side) for RR. 1, 2 and 8 and V. Gopinath for Balakrishnan, for R.
3, for the Respondent

Final Decision : Allowed

Judgement

M. Jeyapaul, J.—The order passed by the Tahsildar cum Executive Magistrate,
Mambalam-Guindy Taluk u/s 145 of the Code of Criminal

Procedure is under challenge in this revision.

2. The third respondent-Vedha Arun Nagarajan, the fourth respondent-P.K. Ali
Akbar, the fifth respondent-S.Paramanandam, the sixth

respondent-M.S.Mani and one K.V. Sivaramprasad the power of attorney of the
petitioners herein lodged complaints with the second respondent

Inspector of Police, R3 Police Station, Ashok Nagar, Chennai 600 083 and the
same were registered by the second respondent police. As there

was scramble for possession of the property which may result in law and order
problem affecting peace in the locality, the aforesaid cases were

referred to the Tahsildar cum Executive Magistrate, Mambalam-Guindy Taluk to determine who actually was in possession of the property. The

Tahsildar cum Executive Magistrate, Mambalam-Guindy Taluk issued summons to the complainants and directed them to appear for hearing on

17.4.2007. The dispute relates to property bearing old door No. 97/1, Plot No. A/4A measuring 3 grounds 840 sqft in Block No. 24, Survey

No. 2 in Kodambakkam Village

3. The Tahsildar cum Executive Magistrate, Mambalam-Guindy Taluk, having recorded the statement of respondents 2 to 6, raised an issue as to

who actually could claim title to the property and determined that the third respondent Vedha Arun Nagarajan, the mortgagee under Mrs.

Periammal, who purchased the property from the legal heirs of Balakrishnan, the late second husband of the original owner late Mrs. Lakshmi Devi

has title to the property.

4. Learned Senior Counsel appearing for the petitioners would submit that the Tahsildar cum Executive Magistrate, Mambalam-Guindy Taluk,

instead of deciding who actually was in possession of the property, has chosen to decide the title to the property which is outside the scope of

Section 145 of the Code of Criminal Procedure. Never had he addressed the point in issue as to who was actually in possession and enjoyment of

the property. Third party has squatted upon the property after the proceedings u/s 145 of the Code of Criminal Procedure were initiated. The

Tahsildar cum Executive Magistrate, Mambalam-Guindy Taluk had simply ignored the relevant documents produced by the petitioners to establish

not only their title to the property but also the possession and enjoyment thereof. He has also chosen to completely give a go-by to the decision of

the City Civil Court and the High Court with respect to the possession of the petitioners. It is his further submission that the third respondent C.

Vedha Arun Nagarajan claims his right through Balakrishnan, whose claim for legal heirship to late Lakshmi Devi was rejected in the probate

proceedings initiated by the petitioners before this Court. Therefore, the illegal order will have to be set aside and the possession taken by the third

parties in the garb of the proceedings before the Tahsildar cum Executive Magistrate, Mambalam-Guindy Taluk will have to be restored to the

petitioners, it is further contended by him.

5. Learned Senior Counsel appearing for the third respondent would submit that the Tahsildar cum Executive Magistrate, Mambalam-Guindy

Taluk has rightly decided the actual possession of the property at the time when the dispute arose which culminated in lodging the complaints by

the respective parties. In the alleged proceedings initiated as against Balakrishnan and his legal heirs by the petitioners herein, the third respondent

C. Vedha Arun Nagarajan was not at all a party. Except the documents of title produced by the petitioners, they have not chosen to establish

actual possession. The sale deed and the mortgage deed produced by the third respondent C. Vedha Arun Nagarajan would establish that he was

in possession of the suit property at the time when the dispute arose between the parties. It is his further submission that the petitioners had not

gone into the box to depose before the Tahsildar cum Executive Magistrate, Mambalam-Guindy Taluk to speak about their actual possession. The

last submission made by the learned Senior Counsel appearing for the third respondent is that the provision u/s 145 of the Code of Criminal

Procedure cannot be used to evict a person.

6. The learned Government Advocate (Criminal Side) appearing for respondents 1, 2 and 8 would submit that the order passed by the first

respondent is not tainted by impropriety or illegality. Therefore, he would submit that no interference with the order passed by the first respondent

is warranted.

7. The petitioners have produced the letters of administration granted in O.P. No. 752 of 1993 dated 11.2.1994 to establish that the subject

property was bequeathed in favour of the petitioners by late Lakshmi Devi who passed away on 19.10.1973 under the registered Will dated

15.10.1973 and the administration of the estate of Lakshmi Devi was granted to them. One Balakrishnan claiming himself as the second husband

of Lakshmi Devi produced a death certificate as though Lakshmi Devi died on 5.9.1979 and the legal heirship certificate dated 7.5.1990 issued by

the Tahsildar as the sole legal heir of the deceased Lakshmi Devi and filed Application Nos. 320 and 321 of 2001 before this Court praying to

revoke the letters of administration granted in favour of the petitioners in O.P. No. 752 of 1993. Those two applications filed by Balakrishnan

were dismissed by Honourable Mr. Justice A.K. Rajan (as he then was) with

exemplary cost. He was also pleased to issue contempt proceedings as against the said Balakrishnan for production of false death certificate and legal heirship certificate. Balakrishnan preferred an appeal in O.S.A. No. 396 of 2002 as against the said order passed by this Court in A. Nos. 320 and 321 of 2001. But, the said O.S.A was rejected and the order passed by the learned Single Judge was confirmed by the Division Bench of this Court. The attitude of the said Balakrishnan seeking revocation of the letters of administration granted to the petitioners for producing false certificates were deprecated by the Bench of this Court. Thereafter, the said Balakrishnan passed away on 22.1.2004 before ever facing contempt of court.

8. The records produced by the petitioners would go to establish that the petitioners, who obtained letters of administration, filed a suit in the Original Side of this Court in C.S. No. 1038 of 1984 against five persons including the said Balakrishnan seeking a declaration that the property in dispute measuring 3 grounds and 840 sqft was owned by the petitioners and also for permanent injunction restraining the aforesaid defendants including the said Balakrishnan from interfering with their peaceful possession and enjoyment of the said property. The pecuniary jurisdiction of the City Civil Court was enhanced and as a result of which, the civil suit in C.S. No. 1038 of 1994 was transferred to the file of the II Additional City Civil Court, Chennai and was re-numbered as C.S. No. 4681 of 1997. It is demonstrated that the order of injunction was in force throughout the proceedings in C.S. No. 1038 of 1994 on the file of this Court and later on transferred and re-numbered as C.S. No. 4681 of 1997 on the file of the II Additional City City Court, Chennai till the same was decreed by the latter on 23.1.2004. The suit filed by the petitioners was decreed as prayed for and as a result of which, the petitioners herein were declared as owners of the suit property and the defendants in the said suit including the said Balakrishnan were restrained from interfering with the peaceful possession and enjoyment of the petitioners, who were found to be in possession of the suit property.

9. The heirs of Balakrishnan preferred an appeal in A.S. No. 981 of 2004 and obtained an order of ex parte stay of the operation of the said decree passed in O.S. No. 4681 of 1997 in C.M.P. No. 15530 of 2004 on

27.9.2004 and the same was vacated by the orders of the Bench of this Court in C.M.P. No. 867 of 2005 on 29.3.2005.

10. The aforesaid documents produced by the petitioners would go to show prima facie that they being the owners of the suit properties have been in possession and enjoyment of the same. The court below as well as this Court have also recognized the possession and enjoyment of the suit property by the petitioners herein. In fact the appeal in A.S. No. 981 of 2004 filed by the legal heirs of the said Balakrishnan is still pending disposal. But, unfortunately, the heirs of Balakrishnan, claiming right under the deceased Balakrishnan, whose right to the property was completely negated by this Court, sold away the subject property to one Periammal on 9.6.2006. The third respondent is none other than the mortgagee under the mortgage deed dated 7.2.1997 executed by the said Periammal with respect to the subject property.

11. It is demonstrated by the petitioners that when the claim of Balakrishnan as the sole legal heir of Lakshmi Devi was completely negated by the court below and this Court, his legal heirs chose to alienate the suit property in favour of Periammal under the sale deed dated 9.6.2006.

Thereafter, a mortgage deed in the name of the third respondent Vedha Arun Nagarajan was also executed by Periammal on 7.2.2007. Of course, these two self-serving documents would speak about possession of Periammal and the delivery of possession by Periammal to Vedha Arun

Nagarajan. When the petitioners have established prima facie their right to the property and their possession thereof, the documents created by the legal heirs of Balakrishnan who have no semblance of right to the property on 9.6.2006, will not clothe any right on the purchaser of the property.

In order to knock off the right of the petitioners with respect to the suit property, these documents have been created by the heirs of Balakrishnan.

No document has been produced apart from those two self-serving documents to establish possession of the suit property by the third respondent

Vedha Arun Nagarajan. It is to be noted at this juncture that the suit property is a vacant site. No document was also perused by the first

respondent Tahsildar cum Executive Magistrate, Mambalam-Guindy Taluk to satisfy himself that on the date when the complaint was given by the

respective parties, Vedha Arun Nagarajan was in possession and enjoyment of

the suit property.

12. This Court has heavily come down upon the claim by Balakrishnan so far as the death certificate of Lakshmi Devi and the legal heirship

certificate obtained by him that on the demise of Lakshmi Devi on 5.9.1979 and not on 19.10.1973 he became the sole heir. But, the Tahsildar

cum Executive Magistrate, Mambalam-Guindy Taluk, having thrown to wind the rejection of the above plea of Balakrishnan, arrived at a

conclusion that he was the legal heir of Lakshmi Devi. It appears that the Tahsildar cum Executive Magistrate had refused to refer to the order

passed by this Court in Application Nos. 320 and 321 of 2001 filed by Balakrishnan to revoke the letters of administration and the order passed

by the Bench in O.S.A. No. 396 of 2002 preferred by the said Balakrishnan. This Court had clearly observed that the said Balakrishnan seeks to

revoke the letters of administration producing false certificate of death of Lakshmi Devi and Legal Heirship certificate saying that he was the sole

heir.

13. The petitioners have claimed right over the property under the Will executed by Lakshmi Devi, but, quite unfortunately, the Tahsildar cum

Executive Magistrate, Mambalam-Guindy Taluk has chosen to observe that the petitioners did not produce any sale deed executed by Lakshmi

Devi in their favour. He has completely misdirected himself and has addressed the issue which falls outside the scope of the proceedings u/s 145 of

the Code of Criminal Procedure .

14. The petitioners have obtained the declaratory decree and also a decree for permanent injunction restraining the legal heirs of Balakrishnan from

interfering with their possession and enjoyment of the subject property. As the stay granted in the appeal preferred by the legal heirs of

Balakrishnan was vacated, the declaratory decree and decree for permanent injunction are in operation. There is no finding as to when the third

respondent came into possession of the property.

15. The learned Senior Counsel appearing for the third respondent cited a ratio laid down by this Court in Thayammal v. Krishna Chetty 1978 LW

Crl. 128 wherein it has been held as follows:

In the instant case, even though the petitioners have obtained a decree for partition and separate possession, that has no bearing on the question of

present possession. In such circumstances, it cannot be said that the Criminal Court has no jurisdiction to entertain a petition u/s 145, Cr.P.C

which is mainly for avoiding breach of peace. This petition, therefore, fails and stands dismissed.

16. That was a case where in a partition suit, a preliminary decree for partition was granted by the court. This Court observed in the aforesaid

judgment that such a decree may not have much bearing on the factual position on the date when the dispute arose between the parties which

culminated in the proceedings u/s 145 of the Code of Criminal Procedure . But, here is a case where the competent court has not only declared the

title to the property but also granted permanent injunction as against the legal heirs of the deceased Balakrishnan. Claiming that the mortgagor of

the third respondent purchased the property from one of the legal heirs of the said Balakrishnan, the complaint has been lodged which culminated

in proceedings u/s 145 of the Code of Criminal Procedure. Only to circumvent the decree passed as against the legal heirs of Balakrishnan, such

documents have been created. In view of the above, the aforesaid decision does not apply to the facts and circumstances of the case.

17. Yet another decision in Shri Chandu Naik v. Shri Sitaram B. Naik 1978 LW Crl. 126 was cited by the learned Senior Counsel appearing for

the third respondent. It has been held therein,

... in substance and in effect a proceeding u/s 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.

18. Nothing has been shown by the third respondent that he has been in possession and enjoyment of the suit property except the self serving sale

deed in the name of the mortgagor and the mortgage deed in the name of the third respondent. Those documents have come into existence when

the order of injunction as against the legal heirs of Balakrishnan is very much in force. Therefore, the aforesaid ratio is not applicable to the facts

and circumstances of this case.

19. In view of the above facts and circumstances, the court finds that it is only the petitioners who have been in possession and enjoyment of the

suit property by virtue of the Will executed by Lakshmi Devi, the letters of administration granted by this Court, the decree for declaration and also

for permanent injunction obtained by them as against Balakrishnan and others, on the date when the dispute was taken up for consideration.

20. The order passed by the Tahsildar cum Executive Magistrate, Mambalam-Guindy Taluk is found to be perverse and is tainted by illegality and

impropriety. Therefore, revision of such an order is mandated. Accordingly, the revision stands allowed. The encroachment made by third

respondent or any third party in the subject premises shall be removed by the Commissioner of Police, Greater Chennai within two weeks from the

date of receipt of this order. The connected Miscellaneous Petitions stand closed.