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**(2014) 12 MAD CK 0046**

**In the Madras High Court**

**Case No :** Criminal Revision Case (MD)No.477 of 2014 and M.P.(MD)No.1 of 2014

Mohamed Niyas

APPELLANT

Vs

The Revenue Divisional Officer, Aranthangi

RESPONDENT

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**Date of Decision :** 17-12-2014

**Acts Referred:**

**Citation :** (2015) 2 MadWNCri 379

**Hon'ble Judges :** Ms. R. Mala, J.

**Bench :** Single Bench

**Advocate :** Mr. S. Deenadhayalan, Advocate, for the Petitioner; Mrs. S. Prabha, Government Advocate (Crl.side), for the Respondent Nos. 1 and 2; Mr. A. Velan for M/s. Ajmal Associates, for the Respondent No. 3

**Final Decision :** Disposed Off

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## Judgement

Ms. R. Mala, J.&mdash;Challenging the impugned order passed by the first respondent dated 15.11.2014 in Na.Ka.A2/2513/2014, the present revision has been filed.

2. Heard the submissions made on either side.

3. The learned counsel for the petitioner would submit that the property is originally owned by the petitioner's mother viz., Dawood Beevi and a civil suit is pending between the legal heirs of the deceased Dawood Beevi and the Revenue Divisional Officer, the first respondent herein has passed an order restraining both parties not to enter into the house till the disposal of the suit by the Civil Court, against which, the petitioner, by name Mohamed Niyas has filed the present revision.

4. Assailing the impugned order, the learned counsel for the petitioner would submit that the first respondent has not recorded his subjective satisfaction as to whether there is any breach of peace and the first respondent has also not followed the procedures as contemplated under Section 145 of Criminal Procedure Code. The first respondent has not passed any preliminary order

before passing the final order in the proceedings under Section 145 of Criminal Procedure Code. It is also to be noted that he has not considered the fact that a civil suit is pending between both parties. The petitioner herein is residing in the property and he was restrained. Hence, he prayed for setting aside the impugned order.

5. To substantiate his argument, he relied upon a decision reported in 2011 (1) T.N.L.R. 17 Mad (MB) A.Narayanan v. The Revenue Divisional Officer and Others], wherein it was held that the Magistrate has passed an order in nature of prohibitory injunction which is beyond his jurisdiction. Hence, it has to be set aside and also relying upon a decision of this Court reported in 2013(2) LW (CrI) 162 Mrs. Pakkiammal v. The Revenue Divisional Officer-cum-Executive Magistrate, Pollachi Taluk & Others, he prayed for setting aside the impugned order.

6. Resisting the same, the learned Government Advocate (Criminal side) appearing for the first and second respondents would submit that on 01.07.2014 at about 07.00 p.m., the petitioner herein and his men criminally trespassed into the third respondent's house and beaten the third respondent and her mother. On 02.07.2014, on the basis of the complaint given by her mother, a case in Crime No.96 of 2014 has been registered under Sections 147, 148, 294(b), 448, 323, 324 and 506(II) IPC by the Inspector of Police, Mimisal Police Station and on 04.07.2014, the mother of the third respondent also died. Hence, a counter case in Crime No.95 of 2014 has been registered against the third respondent under Sections 294(b), 323, 324 and 506(II) IPC. While performing the customary rites and rituals to the mother of the third respondent in her house, the petitioner herein and his men caused breach of public peace. Hence, the first respondent was forced to pass such an order under Section 145 of Criminal Procedure Code, after considering all the aspects. She would further submit that the first respondent has passed an order restraining both parties to enter into the property, till the competent Court of law decides the issue in question. Hence, she prayed for dismissal of the revision.

7. The learned counsel for the third respondent would submit that as per the order dated 05.04.2014, interim injunction has been granted after considering the merits of the case and restraining the petitioner herein from interfering with peaceful possession and enjoyment of the petition mentioned properties. Once an order passed by the Civil Court is in force, 145 Cr.P.C., proceedings shall not be taken by the Executive Magistrate. To substantiate the same, he relied upon a decision of the Orissa High Court reported in 1979 Cri.L.J. 1200 [Bhima Nayak v. Panjashaw Durgah].

8. Considering the rival submissions made on both sides and on a perusal of the typed-set of papers, it is an admitted fact that the property is originally owned by the mother of the third respondent Dawood Beevi. The petitioner is the son. The third respondent is the daughter. There is a civil suit pending between both parties. The petitioner herein has filed O.S.No.21 of 2013 on the file of the

learned Principal District Judge, Pudukkottai, wherein he also filed an interlocutory application in I.A.No.35 of 2013 for injunction restraining the respondents therein not to alienate or part away the petition mentioned properties till the disposal of the suit. The mother of the third respondent and two others also filed an interlocutory application in I.A.No.86 of 2013 for injunction restraining the petitioner herein, who is the plaintiff in the said suit, from interfering with peaceful possession and enjoyment of the petition mentioned properties. The property in dispute in the present revision is the first item in both Interlocutory Applications. However, I.A.No.35 of 2013 has been filed restraining the respondents therein not to alienate or part away the petition mentioned properties and in the said application, order has been passed on 05.04.2014 and in paragraph No.12 of the order, it was specifically mentioned as follows:

"In the result, I.A.No.35 of 2013 is hereby partly allowed in respect of item Nos.2, 6, 7, 9, 14, 15, 18, 19, 20, 27, 28, 33 to 44 and 45 and for remaining items, petition is dismissed."

Insofar as I.A.No.86 of 2013 is concerned, in paragraph No.13 of the order, it was specifically mentioned that the petition is allowed as prayed in the petition.

9. A bare reading of the order of the Civil Court, as stated above, would go to show that there was a specific order passed by the Civil Court, which is the competent authority to decide the title and possession of the properties in question.

10. In paragraph Nos.4 and 5 of the counter-affidavit filed by the first respondent, she had stated that after passing of the order by the Civil Court, the petitioner herein has attempted to interfere with the possession of the third respondent and assaulted her and her mother and hence, a case in Crime No.96 of 2014 has been registered on the basis of the complaint given by the mother of the third respondent and her mother died in suspicious circumstances subsequently, which shows that the petitioner herein has disobeyed the order of the civil Court and entered into the house of the third respondent and on the basis of the complaint given by the petitioner herein, a counter case has been registered in Crime No.95 of 2014 and while performing customary rites and rituals to the mother of the third respondent, there was a breach of public peace and tranquility at the instance of the petitioner herein and his henchmen. Hence, the first respondent passed the impugned order.

11. It is appropriate to incorporate Section 145 of Criminal Procedure Code, which reads thus:

"145. Procedure where dispute concerning land or water is likely to cause breach of peace.- (1) Whenever an Executive Magistrate is satisfied from a report of a police officer or upon other information that a dispute likely to cause a breach of the peace exists concerning any land or water or the boundaries thereof, within his local jurisdiction, he shall make an order in writing, stating the grounds of his

being so satisfied, and requiring the parties concerned in such dispute to attend his Court in person or by pleader, on a specified date and time, and to put in written statements of their respective claims as respects the fact of actual possession of the subject of dispute.

(2) For the purposes of this section, the expression "land or water" includes buildings, markets, fisheries, crops or other produce of land, and the rents or profits of any such property.

(3) A copy of the order shall be served in the manner provided by this Code for the service of a summons upon such person or persons as the Magistrate may direct, and at least one copy shall be published by being affixed to some conspicuous place at or near the subject of dispute.

(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 party so dispossessed as if that party had been in possession on the date of his order under sub-section (1).

(5) Nothing in this section shall preclude any party so required to attend, or any other person interested, from showing that no such dispute as aforesaid exists or has existed; and in such case the Magistrate shall cancel his said order, and all further proceedings thereon shall be stayed, but, subject to such cancellation, the order of the Magistrate under sub-section (1) shall be final.

(6)(a) If the Magistrate decides that one of the parties was, or should under the proviso to sub-section (4) be treated as being, in such possession of the said subject, he shall issue an 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 such eviction; and when he proceeds under the proviso to sub-section (4), may restore to possession the party forcibly and wrongfully dispossessed.

(b) The order made under this sub-section shall be served and published in the manner laid down in sub-section (3).

(7) When any party to any such proceeding dies, the Magistrate may cause the legal representative of the deceased party to be made a party to the proceeding and shall thereupon continue the inquiry, and if any question arises as to who the

legal representative of a deceased party for the purposes of such proceeding is, all persons claiming to be representatives of the deceased party shall be made parties thereto.

(8) If the Magistrate is of opinion that any crop or other produce of the property, the subject of dispute in a proceeding under this section pending before him, is subject to speedy and natural decay, he may make an order for the proper custody or sale of such property, and, upon the completion of the inquiry, shall make such order for the disposal of such property, or the sale-proceeds thereof, as he thinks fit.

(9) The Magistrate may, if he thinks fit, at any stage of the proceedings under this section, on the application of either party, issue a summons to any witness directing him to attend or to produce any document or thing.

(10) Nothing in this section shall be deemed to be in derogation of the powers of the Magistrate to proceed under Section 107."

12. As per the said provision, once a civil suit is pending, the Executive Magistrate has no right to pass a prohibitory order which is beyond his jurisdiction.

13. At this juncture, it is appropriate to incorporate paragraph Nos.9 to 12 of the judgment of this Court reported in 2011 (1) T.N.L.R. 17 Mad (MB) [A.Narayanan v. The Revenue Divisional Officer and Others], which read thus:

"9. In the instant case, admittedly the civil suit is pending between the petitioner and the third respondent with regard to the immovable property and therefore, the first respondent cannot pass any prohibitory order restraining the petitioner and the third respondent from using the property. The order is admittedly in the nature of prohibitory injunction. Such a power is not vested with the first respondent, as per Section 145 of the Code of Criminal Procedure.

10. The first respondent has passed an order in the nature of a prohibitory injunction, hence, this Court is of the view that the order has been passed beyond the jurisdiction of the first respondent under Section 145, Cr.P.C. and the same is not legally sustainable and liable to be set aside.

11. While passing orders under Section 145, Cr.P.C., the first respondent, being Sub-Divisional Magistrate (Executive Magistrate) can act on the report submitted by the Inspector of Police having jurisdiction to maintain law and order. However, he cannot initiate a proceeding, based on the complaint given by one party and ask the Inspector to enquire and submit report, so as to take any action, based on the report, as it would not be in the real sense of maintaining law and order.

12. As the order passed by the first respondent is not in accordance with the provisions under Section 145, Cr.P.C., I find it just and reasonable to allow this criminal revision petition and set aside the impugned order, dated 4.10.2010 passed by the first respondent."

13.1. On a perusal of the said judgment, I am of the view that the said citation is squarely applicable to the facts of the present case.

14. In *Mrs. Pakkiammal v. The Revenue Divisional Officer-cum-Executive Magistrate, Pollachi Taluk & Others* [2013(2) LW (Cri) 162], this Court has held that the Magistrate, while passing an order under Section 145 of Criminal Procedure Code, has to record his subjective satisfaction as to the existence of likelihood of breach of peace, confers jurisdiction and not the complaint of the police officer. But the said citation is not applicable to the facts of the present case.

15. Coming to the judgment relied on by the learned counsel for the third respondent in *Bhima Nayak v. Panjashaw Durgah* [1979 Cri.L.J. 1200], wherein it was held that while dealing with the proceedings under Section 145 Cr.P.C., the Magistrate must respect the decisions and directions of competent Civil Court regarding possession or delivery of possession in favour of particular party in earlier litigation, this Court is of the view that here, in the case on hand, as on today, injunction order granted by the Civil Court is in force against the petitioner herein restraining him not to interfere with possession and enjoyment of the petition mentioned properties and in such circumstances, as per the said decision, once an order of injunction has been granted by the Civil Court, the first respondent, the Revenue Divisional Officer has no business to interfere with civil matters.

16. Considering the same, now, it has to be decided that the petitioner herein himself has filed O.S.No.21 of 2013 and he has also filed an interlocutory application in I.A.No.35 of 2013 for injunction restraining the third respondent and others not to alienate or part away the petition mentioned properties till the disposal of the suit and only in respect of some items of properties, injunction has been granted and in respect of remaining items, the petition stood dismissed, but whereas, the mother of the third respondent Dawood Beevi also filed I.A.No.86 of 2013 for injunction restraining the petitioner herein from interfering with peaceful possession and enjoyment of the petition mentioned properties till the disposal of the suit, wherein, injunction has been granted as prayed for. The matter in issue is the first item of properties. Injunction has been granted in I.A.No.86 of 2013, restraining the petitioner herein not to interfere with peaceful possession and enjoyment of the third respondent. Once the Civil Court has prohibited the petitioner herein to enter into the house, without considering the same, the first respondent, stating that there are two cases registered in Crime Nos.96 and 95 of 2014, after passing of the interim order by the Civil Court, passed an order in the proceedings under Section 145 of Criminal Procedure Code, restraining both the parties not to enter into the house, which, in my considered opinion, is unsustainable and hence, the same is liable to be set aside and accordingly set aside. But, whereas, in the application filed by the mother of the third respondent in I.A.No.86 of 2013, injunction has been granted in respect of the property and also restraining the petitioner herein from

interfering with peaceful possession and enjoyment of the property. Hence, I am of the view that the first respondent has no right to pass an order in the proceedings under Section 145 of Criminal Procedure Code. It is also made clear that the petitioner herein is not entitled to enter into the house till the disposal of the Civil Miscellaneous Appeal alleged to be filed by him along with a petition under Section 5 of the Limitation Act, since already in I.A.No.86 of 2013, a specific order has been passed by the Civil Court.

17. As already stated, the petitioner herein has filed only an interlocutory application not to alienate or part away the properties and he has also not filed any injunction application not to interfere with his possession. Furthermore, in respect of item No.1, the Civil Court has dismissed the application for injunction in I.A.No.35 of 2013 filed by the petitioner herein. In such circumstances, I am of the view that the first respondent has no right to pass an order under Section 145 of Criminal Procedure Code, restraining both parties to enter into the house, and since as per the order of the Civil Court, the third respondent is in possession and enjoyment of the property in question and that has not been set aside by any competent Court of law, the petitioner herein is not entitled to enter into the house.

18. As already discussed above, the revision is allowed setting aside the order passed by the first respondent. The petitioner herein is not entitled to enter into the house till the disposal of the Civil Miscellaneous Appeal alleged to be filed by him along with the petition under Section 5 of the Limitation Act. Consequently, the connected miscellaneous petition is closed.