

Saraswathi Vs. Radhakrishnan and Others

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Court : Chennai Madurai

Decided On : Jun-15-2016

Judge : The Honourable Dr.(Mrs.) Justice S. Vimala

Appeal No. : Crl.O.P.(MD) No. 3831 of 2010

Appellant : Saraswathi

Respondent : Radhakrishnan and Others

Judgement :

(Prayer: Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, praying to call for the records relating to the order made in Na.Ka.No.A2/3651/09 dated 03.03.2010 on the file of the Sub-Divisional Magistrate-cum-Revenue Divisional Officer, Padmanabapuram and quash the same as illegal.)

1. This petition has been filed, seeking to quash the order of the Sub-Divisional Magistrate-cum-Revenue Divisional Officer, Padmanabapuram allegedly passed under Section 145 of the Code of Criminal Procedure in Na.Ka.No.A2/3651/09 dated 03.03.2010.

2. Section 145 Cr.P.C., provides for resolution of disputes, when disputes relate to land or water, is likely to cause breach of peace. The object of Section 145 of the Code is to provide for speedy and efficacious remedy for the prevention of a dispute likely to cause breach of peace. The sine quo non for exercise of

jurisdiction by the Executive Magistrate is his satisfaction that a dispute likely to cause a breach of peace exists. Thereafter, the learned Executive Magistrate has to pass the preliminary order under Section 145(1) Cr.P.C., and the essential requirements are as under:

- i) a statement that the Magistrate is satisfied as to the existence of a dispute likely to cause breach of the peace;
- ii) the grounds of his being so satisfied;
- iii) a correct description of the property in respect of which the proceedings are instituted;
- iv) a direction requiring the parties or either of them to attend the Court on a particular day and put in written statements of their claim in respect of the fact of actual possession of the land in dispute.

3. So far as this case is concerned, by the order dated 29.07.2009, the Revenue Divisional Officer, Padmanabapuram, has passed an order, stating that the disputed property belongs to Saraswathi, that she is in possession of the property and therefore, all activities of others towards establishment of their rights must be prevented.

4. Reversing this order, the learned Executive Magistrate has passed an order under Section 145(5) Cr.P.C., giving a finding that one Radhakrishnan is the owner of the property, located at Eraniel Village in R.S.No.485/70 (0.16.0ers) and therefore, excepting him, others are prevented from entering into the property. This order is under challenge.

5. Learned counsel for the petitioner would submit that the final order under Section 145(5) Cr.P.C. has been passed without passing any preliminary order under Section 145(1) Cr.P.C. and therefore, the order passed by the 4th respondent is not valid. Further contention is that the Executive Magistrate ought to have afforded sufficient opportunity to the aggrieved parties and the failure to do so would amount to violation of principles of natural justice and hence, the impugned order is liable to be set aside. Yet another contention is that there is no

finding either with regard to the breach of peace or with regard to the actual possession of the property by anyone of the parties.

6. In order to appreciate the contention, it is appropriate for this Court to extract Section 145 Cr.P.C. as follows:

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 subsection (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)to (10)

7. Perusal of the provisions of Section 145 Cr.P.C. would amply reveal that the Executive Magistrate has no jurisdiction to deal with the title to the property of any of the parties. There is a specific finding in the order that one Radhrkrishnan is the owner of the property and therefore, the finding rendered in the order is unsustainable, on account of want of jurisdiction. Moreover, the order does not reflect the subjective satisfaction of the Magistrate regarding existence of the threat to public peace. Therefore, the impugned order is liable to be quashed.

8. In the result, this Criminal Original Petition is allowed and the proceedings in Na.Ka.No.A2/3651/09 dated 03.03.2010 on the file of the Sub-Divisional Magistrate cum - Revenue Divisional Officer, Padmanabapuram, stand quashed.

9. It is made clear that this order cannot be construed as an impediment for the parties to move the Civil Court seeking appropriate relief in the manner known to law and to establish their rights. Consequently, connected miscellaneous petition is closed.

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