

S U P R E M E C O U R T O F I N D I A

RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (Crl) No(s).4950/2005

(From the judgement and order dated 21/04/2005 in CRLOP No. 17998/2004 of
The HIGH COURT OF MADRAS)

M.A. YASIN MOHAMED

Petitioner(s)

VERSUS

CHINNASAMY

Respondent(s)

(With appln(s) for exemption from filing O.T.,stay and office report)

WITH SLP(Crl) NO. 1488 of 2006

(With appl(s) for exemption from filing O.T. and ex-parte stay)

Date: 21/07/2006 This Petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE ASHOK BHAN

HON'BLE MR. JUSTICE MARKANDEY KATJU

For Petitioner(s) Mr. V. Prabhakar, Adv.

Mr.Asok K. Sadhu Khan, Adv.

Mr. R.S. Krishna Kumar, Adv.

Mr. M.K.D. Namboodiri,Adv.

In SLP 1488/06 Mr. V. Balachandran, Adv.

For Respondent(s) Mr. K. Ramamoorthy, Sr. Adv.

Mr. Sriram J. Thalapatam, Adv.

Ms. N. Shoba,Adv.

Mr. Arulmuruganandham, Adv.

Mr. G.D. Gupta, Adv.

UPON hearing counsel the Court made the following

O R D E R

Leave granted.

Appeal accepted in terms of the signed order.

Singh)	(J.S. Rawat)	(Kanwal
aster	AR-cum-PS	Court M

[Signed order is placed on the file.]

IN THE SUPREME COURT OF INDIA

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO. 777 OF 2006

(Arising out of SLP(Crl.) No. 4950 of 2005)

M.A. Yasin MohamedAppellant

- Versus -

ChinnasamyRespondent

With

CRIMINAL APPEAL No. 778 OF 2006

(Arising out of SLP (Crl.) No. 1488 of 2006)

O R D E R

Leave granted.

Respondent entered into an agreement of sale with one Nagoorammal, the wife of the appellant's uncle, in respect of an extent of 1 acre 2 cents in Survey No. 12/1 in Silaiman Village, Madurai District, Tamil Nadu for a total consideration of Rs.8,50,000/-. In the said property there existed a cinema theatre duly compounded and hence permission for the sale had to be obtained from the District Collector under the Cinematograph Act. The District Collector granted permission to sell the theater by order dated 01.03.1993.

Sale was executed and registered on 08.09.1993 in respect of 67.90 cents, in which the cinema theater was situated, leaving a balance of 34.10 cents on which the appellant had the possession.

Respondent moved an application with the Executive Magistrate-cum-Revenue Divisional Officer, Madurai (for short "the Magistrate") for a direction to be issued to the appellant, not to interfere with the respondent's peaceful possession and enjoyment of 34.10 cents in Survey No. 12/1.

The Magistrate in the purported exercise of his powers under Sections

145 and 146 Cr.P.C., without passing a preliminary order as contemplated under Section 145 (1) of Cr.P.C., passed the final order on 26.05.2002, the

operative part of which reads as under:

".....I conclude that the entire subject property under Survey No. 12/1 consisting of 1 acre and 2 cents situated in Village Silaiman belongs to the petitioner (respondent herein). Accordingly, I direct the Police authorities to evict the respondent (petitioner herein) from the 34 cents of land illegally occupied by him and restored the same to the petitioner (respondent herein)."

Aggrieved against this order, the appellant filed a revision before the Sessions Judge, which was dismissed. Thereafter, the appellant filed a petition under Section 482 Cr.P.C. in the High Court, which has been dismissed by the impugned order.

Counsel for the appellant submitted that the orders under challenge cannot be sustained as they have been passed without following the procedure laid down under Sections 145 and 146 Cr.P.C. Counsel for the respondent fairly concedes that the Magistrate had passed the order without following the procedure laid down in Sections 145 and 146 Cr.P.C. directing the appellant to handover possession of the property in dispute to the respondent.

In view of the statement made by the counsel for the respondent, the impugned order of the High Court and that of the Sessions Court as well as the Magistrate are set aside and the proceedings under Sections 145 and 146 Cr.P.C. are quashed.

We understand that the suit filed by the owner seeking injunction against the respondent and the suit filed by the respondent for specific performance and injunction are pending in the civil court. The question of title would be decided in those suits and possession will follow title. In case the respondent has taken possession of the property in pursuance to the impugned orders, the concerned authorities will take appropriate steps to get the possession restored to the appellant.

The appeals stand accepted accordingly.

.....J.

(ASHOK BHAN)

.....J.

(MARKANDEY KATJU)

New Delhi;

July 21, 2006