

HON'BLE Dr. JUSTICE B. SIVA SANKARA RAO

CRIMINAL PETITION No.6565 of 2013

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ORDER:

Heard both sides.

The petitioner is accused No.1 in C.C. No.30 of 2012 on the file of the II Additional Judicial Magistrate of First Class, Eluru, which is outcome of Crime No.330 of 2011 of II Town Police Station, Eluru, registered for the offences punishable under Sections 447, 427 r/w 34 I.P.C.

2. Undisputedly, there is a civil suit and the accused obtained a decree against the *de facto* complainant not to interfere with his land in Plot No.160 of Titasnagar, Eluru, and there was also an execution petition for violation of injunction under Order 21 Rule 32 C.P.C. and there was an undertaking by the *de facto* complainant herein not to interfere with that plot No.160.

3 . The *de facto* complainant's claim is that he is no way interfering with the peaceful possession of the accused and there is no violation of decree and he has nothing to do with plot No.160 and he owned plot No.163 and the accused is interfering with his possession in plot No.163 and caused damage to it by mischief, thereby liable for prosecution.

4. The police after investigation filed final report. There is an observation by the Tahasildar to the Station House Officer, II Town Police Station, Eluru, during investigation, stating that the *de facto* complainant is in possession of plot No.163 and what the accused herein claims of plot No.160 is in possession of some third party, by name Smt. Vezeedla Neelaveni. The crux of the case to decide nothing even reflected from the Tahasildar report is by survey with reference to FMB and localization of plot Nos.160 and 163, in particular, had it been done so, either in the suit or in the execution petition or by the investigating officer, in this case, by filing final report,

the issue could have been clinched.

5. Having regard to the above, as the case is of the year 2012, there is no meaning in staying the calendar case proceedings and, therefore, the Criminal Petition is disposed of, however, by directing the trial Court, by virtue of this order, to cause appoint a Surveyor to localize the property and to identify whether the disputed property is in plot No.160 or in plot No.163, as the case may be.

6 . Miscellaneous petitions pending, if any, in this criminal petition, shall stand closed.

Dr. B. SIVA SANKARA RAO, J

08.12.2015

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