

THE HON'BLE SRI JUSTICE M.S.K. JAISWAL

CRIMINAL PETITION No.2087 of 2011

ORDER:

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This criminal petition is filed seeking to quash the proceedings in C.C.No.114 of 2008 on the file of the III Metropolitan Magistrate, Cyberabad at L.B Nagar, Ranga Reddy District.

2. The allegations, in brief, are that the 2nd respondent/complainant filed a complaint with the concerned police on 23-12-2007, alleging that in the morning hours of the said date, the petitioners, A-1 and A-3 and non-petitioner-A-2 have criminally trespassed into his plot bearing No.27 in Sy.No.56, Chilkanagar, Uppal, admeasuring 419 yards and caused damage to the property. On that basis, a complaint was registered and after investigation, the police have filed the charge-sheet.

3. A-2 is said to have died even before the charge-sheet was filed. It is reported that A-1 is also died. The only surviving petitioner is Accused No.3. The contention of the learned counsel for the petitioner is that a false case has been foisted against him. According to the learned counsel, the property has been purchased by the petitioner from the deceased, A-1 under a registered sale deed, and as a matter of fact, he obtained injunction orders in respect of the property in question. It is further submitted that A-3 has also filed a complaint before the police against the 2nd respondent/complainant, which, however, has not been acted upon and no action is taken.

4. The record discloses that in respect of the same plot, mentioned above, a suit in O.S.No.1053 of 1999 was filed and by an order dated 07-01-2006 the suit was decreed and perpetual injunction was granted against the 1st defendant therein and

not against defendants 2 and 3. Defendant No.2 is said to be the vendor of the *de facto* complainant. A perusal of the record clearly shows that in respect of the same property, both the petitioner/A-3 and the 2nd respondent/*de facto* complainant are claiming ownership. Both have the title deeds. However, the question as to whose title prevails; cannot be adjudicated upon

by the Criminal Court. What is required is whether there was any criminal trespass as alleged by the 2nd respondent/*de facto* complainant. *Prima facie* when there is injunction order in favour of the petitioner/A-3, and when he is in possession of the subject property, it cannot be said that he trespassed into the subject plot. Therefore, the criminal prosecution does not lie in favour of the petitioner/A-3. The dispute is purely of civil in nature and it has to be decided by the Civil Court, as to who is in possession and enjoyment of the property. Launching of criminal prosecution against the petitioner/A-3 is nothing but a clear case of misuse of the criminal jurisprudence and the same cannot be countenanced.

5 . In that view of the matter, the criminal petition is allowed, and the proceedings in C.C.No.114 of 2008 on the file of the III Metropolitan Magistrate, Cyberabad at L.B.Nagar, Ranga Reddy district are hereby quashed. It is needless to mention that the observations made by this Court in this petition shall not be taken as determining the right, title and possession of the respective parties.

6. The miscellaneous petitions pending, if any, shall also stand closed.

M.S.K. JAISWAL, J.

Dt.06-10-2015.

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