

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 09.09.2016

CORAM:

THE HON'BLE MR. JUSTICE P.N. PRAKASH

Crl.O.P. No.4582 of 2016 & Crl.M.P. Nos.2401 & 2402 of 2016

Hari Eswaran

Petitioner

vs.

1 Sarasu @ Saraswathy

2 The Inspector of Police
N-5 Ennore Police Station
Chennai

Respondents

(R2 impleaded suo motu impleaded as per
Court order dated 01.04.2016 made in
Crl.O.P. No.4582 of 2016)

Criminal Original Petition filed under Section 482, Cr.P.C.
to call for the records in C.C. No.310 of 2013 pending on the
file of the Judicial Magistrate Court, Thiruvottiyur and quash
the complaint filed by the first respondent.

For petitioner Ms. S. Deepika

For R1 Mr. R. Balakrishnan

ORDER

This Criminal Original Petition has been filed to call for
the records in C.C.No.310 of 2013 pending on the file of the
Judicial Magistrate Court, Thiruvottiyur and quash the complaint
filed by the first respondent.

2 For the sake of convenience, the parties are referred
to by their name.

3 It is the case of Sarasu (the complainant/first
respondent herein) that she is in absolute possession and
enjoyment of the property at No.5-A, II Cross Street, Jothi
Nagar, Ernavoor Village, Thiruvottiyur, Chennai - 19 (for
brevity "the property in dispute"). While so, it is alleged by

her that Hari Eswaran (the petitioner herein) attempted to disturb her peaceful possession and enjoyment of the property in dispute, pursuant to which, she filed O.S. No.229 of 2008 before the District Munsif Court, Thiruvottiyur, against Hari Eswaran, seeking the relief of permanent injunction. Even according to Sarasu, the said suit was dismissed on 07.06.2010 against which she filed A.S. No.49 of 2011 before the Sub-Court, Ponneri. Under such circumstances, it is alleged by her that Hari Eswaran, along with certain others, had illegally trespassed into her property and had dispossessed her with the help of the local police. In this regard, she gave a complaint to the police and since no action was taken, she filed CrI.O.P. No.1224 of 2011, in which, this Court, by order dated 26.05.2011, had issued a direction to the Inspector of Police, Ennore Police Station, pursuant to which, a case in Crime No.478 of 2011 has been registered on 15.06.2011 under Sections 147, 148, 341, 427 and 448 IPC against Mathivanan and others. In the said FIR, this petitioner is not an accused.

4 Now, Sarasu has filed a private complaint in C.C. No.310/2013 before the Judicial Magistrate, Thiruvottiyur against 12 accused, including Hari Eswaran (A4), alleging that the accused had conspired to trespass into her property and forcibly dispossessed her and had damaged her household articles on 26.04.2011. Challenging this prosecution, Hari Eswaran is before this Court.

5 Heard Ms. Deepika, learned counsel for Hari Eswaran and Mr.R.Balakrishnan, learned counsel for Sarasu.

6 The learned counsel for Hari Eswaran submitted that the property in dispute absolutely belongs to Hack Bridge Hewittic and Easum Ltd., a company promoted by Hari Eswaran and the property in dispute was purchased on 23.06.1966 and registered as Document No.2767 of 1966 in the office of the Joint Sub-Registrar-1, Chennai North and that it is Sarasu who had executed a settlement deed dated 26.06.1991 to her minor children as there was no parent document with her.

7 Per contra, Mr. Balakrishnan, learned counsel for Sarasu submitted that Hari Eswaran and other accused have colluded with one another and had dispossessed Sarasu and had damaged her property on that date and therefore, a full fledged trial should proceed against the accused.

8 This Court gave its anxious consideration to the rival submissions.

9 On a reading of the complaint and the sworn statement of Sarasu, it is seen that she has not stated as to how she had become the owner of the property in dispute. She has merely

proceeded on the footing that she is in possession of the property in dispute. Admittedly, the suit filed by her in O.S.No.229 of 2008 against Hari Eswaran has been dismissed on 07.06.2010, holding that she is not entitled to the relief of permanent injunction as prayed for. Her appeal is pending before the Appellate Court. In her sworn statement, she has stated that even the Revenue officials were present for surveying the property in dispute.

10 From a conspectus of the allegations in the complaint and sworn statement of Sarasu, this Court is of the considered view that Sarasu, having met with Waterloo in the civil suit, has launched the present private complaint, which is an abuse of process of law.

Under such circumstances, the prosecution in C.C. No.310 of 2013 on the file of the Judicial Magistrate Court, Thiruvottiyur, against all the accused, including those who have not approached this Court, is quashed and this Criminal Original Petition is allowed. Connected CrI.M.Ps. are closed.

Sd/-
Assistant Registrar(J)

//True Copy//

Sub Assistant Registrar

cad
To

1 The Inspector of Police
N-5 Ennore Police Station
Chennai

2 The Judicial Magistrate
Thiruvottriyur

3 The Public Prosecutor
Madras High Court
Chennai 600 104

1 cc to Mr.R.Balakrishnan, Advocate, sr.51504

CrI.O.P. No.4582 of 2016

pvr co
kra 27.09.2016