

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.04.2017

CORAM

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

**Crl.O.P No.19374 of 2011
and
M.P.No.1 of 2011**

1.Ramasamy

2.Kasthuri

3.Santha

4.Rajesh @ Meenan

... Petitioners

vs.

1.The State rep. by Sub-Inspector of Police,
Paradrami Police Station,
Paradrami, Vellore District.

2.Subramani

... Respondents

Prayer: Criminal Original Petitions filed under Section 482 of Cr.P.C., to call for the records pertaining to in C.C.No.37 of 2010, on the file of the learned Judicial Magistrate, Gudiyatham and quash the same.

For Petitioners

: Mr.V.M.G.Ramakkannan

For Respondents

: Mr.B.Ramesh Babu (for R1)
Government Advocate (Crl. Side)

JUDGMENT

The petitioners have come up with the present quash petition to quash the proceedings in C.C.No.37 of 2010 pending on the file of the Learned Judicial Magistrate Gudiyatham. According to the petitioners that followed by the registration of the case in Crime No.173 of 2009 dated 26.11.2009 for the offence under section 447, 506(ii) of IPC., final report was filed and the same was taken on file in Calendar Case No.37 of 2010.

2.It is the admitted case that the petitioners are the legal heirs of one Pattu Govindha Manthiri. The said Pattu Govinda Manthiri has owned property in survey No.90/5A an extent of 1 Acre 90 cents. He executed a registered deed of power of attorney dated 07.04.2010 in favour of the 1st petitioner. However, earlier the said Pattu Govindha Manthiri filed an original suit in O.S.No.30 of 1988 before the learned District Munsif, Gudiyatham for the relief of declaration and permanent injunction. As such a suit in O.S.No.63 of 1987 was also filed for the very same prayer as against the said Pattu Govindha Manthiri. The 2nd Respondent/Defacto complainant herein deposed in O.S.No.63 of 1987 and admitted the title and possession of the said Pattu Govindha Manthiri.

3.The further case of the petitioners is that when an attempt was

made by the Defacto-Complainant to remove the pillar post and fencing of

the land in the subject matter of the aforesaid suit property on 26.11.2009, a complaint was lodged by the said Pattu Govindha Manthiri and the same was registered in Crime No.174/2009 on the file of the Paradrami Police Station,Vellore District, as against the Defacto-Complainant for the offence under sections 447, 427, and 506(ii) of IPC. However, on the complaint given by the Defacto complainant, the instant case was registered in Crime No.173 of 2009 dated 26.11.2009. As for as the petitioners in the final report is concerned, it is stated by the police that in view of pendency of original suit in O.S.No.271 of 2009, the petitioners ought not to have entered into the properties without the authority of law.

4.In fact, the said suit was filed by the father in law of the 1st petitioner as against the Defacto-Complainant and some others in order to restrain them from interfering with his peaceful possession and enjoyment. The specific case of the petitioners is that it is not necessary for them to trespass the lands possessed by the said Pattu Govindha Manthiri as the 1st petitioner was the power agent of the said Pattu Govindha Manthiri for the very same property involved in the case. Moreover, the offence of criminal intimidation with weapons has also no truth. But without considering these facts the case was investigated, charge sheet was filed and cognizance was taken for the offence under

section 447, 506(ii) of IPC.

5.The learned counsel for the petitioner would submit that the property which was allegedly trespassed by the petitioners belonged to the daughters and son-in- law of the title holder of the land and they have been authorized to maintain the said land. In fact the civil case in O.S.No.271 of 2011 was filed by the said Pattu Govindha Manthiri as against the Defacto complainant and some others. So, the criminal case filed against the petitioners is totally false.

6.I heard Mr.V.M.G.Ramakkannan, learned counsel appearing for the petitioners and Mr.N.Ramesh Babu, learned Government Advocate (Criminal Side) appearing for the 1st respondent and all the materials available on record are perused.

7.It is necessary to record here that the property belongs to one Pattu Govindha Manthiri was the genesis of the case. The petitioners are close relatives among themselves and legal heirs of the said Pattu Govindha Manthiri. Their specific case is that it is unnecessary for them to oppose the right of the said Pattu Govindha Manthiri as the 1st petitioner is the power agent of the said Pattu Govindha Manthiri. On the other

hand, the case of the respondents is concerned that the registration of the criminal case as against the petitioners is justifiable as they have committed the offence of trespass and criminal intimidation.

8. At this juncture, it is very relevant to point out here that the final report is filed under the impression that in view of the decree passed in O.S.No.271 of 2009, the petitioners are not entitled to enter into the property. But two things have failed to note by the 1st respondent. The first one is that the petitioners are not parties in the aforesaid original suit and the same is ascertained by the relevant records, when that be the factual position the act taking cognizance is an improper exercise. The second one is that the Defacto complainant is one Subramani has suffered with the decree in O.S.No.271 of 2009 and he is prohibited from entering into the property. So, his case as if the petitioners allegedly attempted to trespass in the property, for which he is no way connected, his locus-standi is meaningless as against him, the owner of the property obtained a Judgment and Decree in respect of the very same property which is the subject matter of the present case.

9. Hence, as the factual position is this, definitely the proceedings of the Calendar Case is an improper exercise and the same is deserved to be set-aside, as the consumption of time for the disposal of the present case

before the trial Court would not be proper. Accordingly the proceeding in C.C.No.37 of 2010 is liable to be quashed.

10.In the result, this Criminal Original Petition is allowed and the proceeding in C.C.No.37 of 2010, pending on the file of the learned Judicial Magistrate, Gudiyatham is quashed. Consequently, connected miscellaneous petition is closed.

05.04.2017

Note: Issue order copy on 30.08.2017

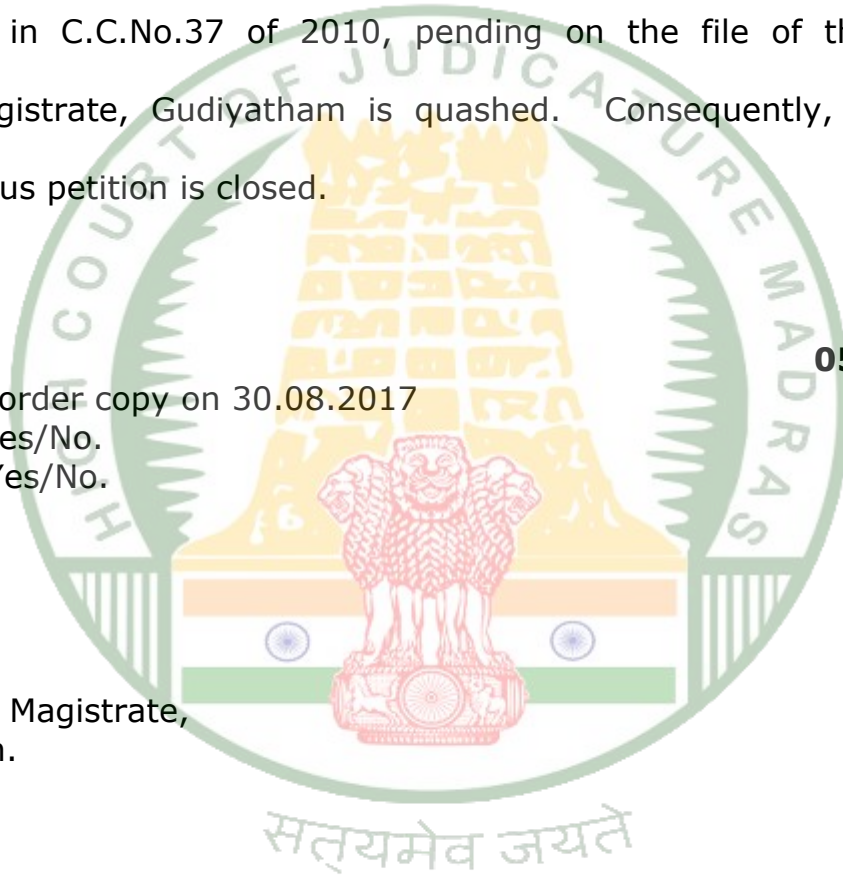
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vs

To

The Judicial Magistrate,
Gudiyatham.



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VS



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