

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 06.04.2017

CORAM:

THE HON'BLE MR.JUSTICE C.T. SELVAM

CrI.O.P.No.16603 of 2014
and
M.P.Nos.1, 2 and 3 of 2014

1. Anna Malai,
S/o. Machakalai.

2. Palaniswamy,
S/o. Anna Malai.

3. Vella Kutty,
S/o. Ramaswamy.

4. Vasantha @ Muthukaruppi,
W/o. Subramani.

..Petitioners/Respondent

Vs.

Valli,
W/o. Vella Kutty.

.. Respondent/Petitioner

Criminal Original Petition filed under Section 482 of the Criminal Procedure Code praying to call for records in C.C.No.4548 of 2013 on the file of learned X Metropolitan Magistrate, Egmore, Chennai, and to quash the same.

For Petitioners : Mr.M.Anandaraj
For Respondent : Mr.Manoj Sreevatsan

O R D E R

This petition challenges the proceedings in C.C.No.4548 of 2013 on file of learned X Metropolitan Magistrate, Egmore, Chennai.

2. The action is one wherein the respondent seeks relief under the Protection of Women from Domestic Violence Act, not against the husband, but against the father-in-law, mother-in-law, father-in-law's brother and sister-in-law.

3. Heard learned counsel for petitioners and learned counsel for respondent.

4. Learned counsel for petitioners submitted that petitioners are aged 75, 55, 70 and 56 years respectively. The marriage between the respondent and the son of petitioners 1 and 2 took place about 30 years ago. This position is not disputed by learned counsel for respondent. Learned counsel for petitioners submitted that first petitioner purchased a house under a sale deed of the year 1987 and was in ownership and possession thereof. Learned counsel submitted that the patta thereto has been erroneously issued in the name of the husband of the respondent/son of petitioners 1 and 2. Challenging the same, first petitioner had moved the RDO, who, after enquiry on several dates, passed a final order on 13.07.2011 requiring the parties to approach the Civil Court. First petitioner moved O.S.No.103 of 2013 on the file of learned District Munsif, Thirupathur, on 22.07.2013. It is only thereafter that the respondent had moved C.C.No.4548 of 2013 alleging acts of domestic violence against petitioners. Learned counsel submitted that the respondent has done so at the instance of her husband, son of petitioners 1 and 2. Respondent and her husband always resided at Chennai and never had resided in the premises belonging to the first petitioner, wherein a right of residence was being claimed. Learned counsel for petitioners submitted that O.S.No.103 of 2013 on the file of learned District Munsif, Thirupathur, was filed on 22.07.2013 and defendants therein who were the respondent, her husband as also one another, had appeared before the trial Court on 01.09.2013 and it was only thereafter, petitioners moved C.C.No.4548 of 2013 on file of learned X Metropolitan Magistrate, Egmore, Chennai.

5. Learned counsel for respondent submitted that the petition in C.C.No.4548 of 2013 was under a prescribed format and therein respondent had, against the column relating to incidence of domestic violence, informed that petitioners 1 and 2, her father and mother-in-law had set upon both her husband and herself with an aruval towards murdering them and also abused them in vulgar language. Against the column provided for verbal and emotional abuse, respondent had alleged that imputations were cast against her chastity and that she had been treated in a demeaning manner and further that she had been verbally abused. Against the column provided for economic violence, respondent had alleged that she had been prevented from entering the house and that her sreedhana properties had been sold away. She had also alleged that electricity bills had not been paid. Learned counsel submitted that besides the above allegations, respondent has also sought right of shared house hold and referring to the definition thereof in the Act, submitted that contentions of respondent are matters for trial

and it is not for this Court to interfere.

6. Learned counsel for petitioners, by way of reply, submitted that even in the affidavit in support of the vacate stay petition moved by respondent, no allegation of respondent and her husband residing in the house, wherein right of residence is sought, has been made. According to learned counsel for respondent, this too would be a matter for trial. Learned counsel for respondent further submitted that the D.V.O.P. petition moved in Chennai was maintainable inasmuch as the respondent presently resides at Chennai.

7. This Court has considered the rival submissions.

8. On a total consideration of the facts and circumstances of the case, this Court is in no doubt whatsoever that in preferring DVOP, an act of abuse of process of Court has been indulged in. This Court need not so much as seek to explain why as the very circumstances are clearly indicative thereof.

The Criminal Original Petition is allowed. The proceedings in C.C.No.4548 of 2013 on file of learned X Metropolitan Magistrate, Egmore, Chennai, is quashed. Respondent is directed to pay a sum of Rs.1,00,000/- (Rupees one lakh only) in costs to the Tamil Nadu State Legal Services Authority within a period of four weeks from the date of receipt of this order. Connected miscellaneous petitions are closed.

-s/d-

Assistant Registrar (CS-II)

True Copy

Sub-Assistant Registrar

To

1. The X Metropolitan Magistrate,
Egmore, Chennai.
 2. The Tamil Nadu State Legal Services Authority, Chennai
- +1 CC to Mr. M.Anandaraj, Advocate sr 21401
+1 CC to Mr. Manoj Sreevatsan, Advocate sr 20559

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KJ (CO)
sp/10/4