

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.03.2017

CORAM

THE HON'BLE MR. JUSTICE M.V.MURALIDARAN

CRL.O.P.No.28978 of 2010
and
M.P.Nos.1 and 2 of 2010

Nisar Ahmed

.. Petitioner

Vs

S.Leela

... Respondent

PRAYER: Petition under Section 482 of the Code of Criminal Procedure to call for the records in C.C.No.905 of 2010 on the file of the learned Judicial Magistrate, Tambaram and to quash the same.

For Petitioner : Mr.Babu Muthu Meeran

For Respondent : No Appearance

ORDER

This Criminal Original Petition has been filed by the petitioner to call for the records in C.C.No.905 of 2010 on the file of the learned Judicial Magistrate, Tambaram and to quash the same.

2. Briefly stated, the case of the petitioner is as follows: According to the petitioner, he is the absolute owner of the property comprised in Survey No.46/2, bearing Plot No.42 in No.29, Pammal Village measuring 1680 Sq. Ft., having purchased the same from one Amtul Mohsina vide a registered sale deed. It is stated that from the date of purchase, the petitioner is in continuous and peaceful possession and enjoyment of the said property. The petitioner had put up construction of house in the said property way back in September, 1990.

3. It is the case of the petitioner that the adjacent plot owner, one Vellaipandi, alleged that the petitioner had encroached upon his land. Based on a survey conducted, a Memorandum of Compromise was executed on 10.9.1990 pursuant to acceptance of cash consideration of Rs.1800/- by the said Vellaipandi.

4. It is stated that the said Vellaipandi subsequently sold his property to the respondent, specifically excluding the portion of land covered in the memorandum of compromise. Subsequently, the said Vellaipandi executed another sale deed in favour of the respondent in respect of the property covered by the Memorandum of Compromise. Based on the said second sale deed, the respondent filed O.S.No.809 of 2007 before the learned District Munsif Court, Alandur, falsely stating that she was in possession of that piece of land and also obtained an order of interim injunction. On contest, the order of interim injunction was modified to an order of status quo. Thereafter, it is stated that the respondent filed another suit in O.S.No.820 of 2008 before the learned District Munsif Court, Alandur.

5. When two civil suits were pending between the parties, the respondent filed a complaint as if the petitioner had encroached upon her property and also filed Crl.O.P.No.11672 of 2010 before this Court to direct the Police Department to register a case against the petitioner. In the order passed by this Court on 20.5.2010 in Crl.O.P.No.11672 of 2010, it was recorded that enquiry had been conducted in the petition and it has been closed.

6. Thereafter, the respondent had filed the present complaint in C.C.No.905 of 2010 against the petitioner under Section 200 of the Criminal Procedure Code before the learned Judicial Magistrate, Tambaram. The crux of the allegations contained in the complaint is that the petitioner had illegally trespassed into the house of the respondent, abused, assaulted and threatened her. Based on the said complaint, the learned Judicial Magistrate had issued process.

7. Seeking quashment of the said complaint, the present criminal original petition is filed.

8. It is the contention of the learned counsel appearing on behalf of the petitioner that two civil suits are pending between the parties in respect of the same property, what could not be achieved in the civil suits, the respondent is trying to achieve by filing this criminal original petition, that too to settle his personal score against the petitioner. In other words, it is his contention that a civil dispute is sought to be

given a criminal colour at the instance of the respondent complainant, which is impermissible.

9. There is no representation on behalf of the respondent and till date the respondent had not chosen to file any counter affidavit.

10. I heard Mr.Babu Muthu Meeran, learned counsel for the petitioner and perused the documents available on record.

11. At the outset, it needs to be noted that way back on 14.12.2010 an order of interim stay was granted and till date the said order is in force and the respondent had not taken any steps to vacate the same.

12. In the case on hand, it is beyond any cavil that two civil suits are pending between the parties, viz., O.S.No.809 of 2007 and O.S.No.820 of 2008 on the file of the learned District Munsif, Alandur.

13. Pending the civil suits, the respondent had also filed CrI.O.P.No.11672 of 2010 before this Court to direct the Police authorities to register the complaint of the respondent dated 4.5.2010 and to investigate the same in accordance with law.

14. It is a matter of record that the said criminal original petition was dismissed by this Court on 20.5.2010 taking note of the fact that an enquiry was conducted on the complaint of the respondent and the said complaint was closed, finding nothing for adjudication.

15. It is only after the dismissal of the said criminal original petition, being CrI.O.P.No.11672 of 2010, that the respondent had chosen to file another complaint in C.C.No.905 of 2010 on 11.6.2010. It only shows that after dismissal of the criminal original petition on 20.5.2010, the respondent had filed another complaint on 11.6.2010 making various allegations against the petitioner.

16. In *Thermax Limited and others v. K.M.Johny and others*, reported in (2011) 13 SCC 412, the Hon'ble Supreme Court held thus:

"34. If there is a flavour of civil nature, the same cannot be agitated in the form of criminal proceeding. If there is huge delay and in order to avoid the period of limitation, it cannot be resorted to as a criminal proceeding."

17. The animosity and sour relationship of both the sides are evident by the cases pending before the Civil Court and the

dismissal of the earlier criminal original petition. In the case of State of Haryana vs. Bhajan Lal, reported in 1992 Suppl. (1) SCC 335, one of the guidelines which enumerated, when inherent power under Section 482 Criminal Procedure Code can be invoked, is quoted hereunder:-

"Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the accused and with a view to spite him due to private and personal grudge."

18. In the case of Inder Mohan Goswami vs. State of Uttaranchal, reported in (2007) 12 SCC 1, it was observed that the Court must ensure that criminal prosecution is not used as an instrument of harassment or for seeking private vendetta or with an ulterior motive to pressurise the accused.

19. In the case on hand, civil proceedings are pending between the parties. In such view of the matter, this Court is of the view that the petitioner should not be made to face the rigmarole of the criminal prosecution, more so, as there was a stay of operation of the further proceedings in C.C.No.905 of 2010 right from the year 2010. Moreover, this Court is prima facie of the view that the criminal prosecution is used as an instrument of harassment for seeking private vendetta with an ulterior motive to pressurise the petitioner.

20. Considering the overall aspects of the matter, this Court is of the opinion that impugned complaint is maliciously filed with oblique motive to pressurize the petitioner in the civil proceedings and the same is nothing but sheer and clear abuse and misuse of process of law and Court. In my considered view, this is a fit case to exercise extraordinary powers under section 482 of the Code of Criminal Procedure and to quash and criminal proceedings.

21. In such view of the matter, this criminal original petition is allowed and the proceedings in C.C.No.905 of 2010 on the file of the learned Judicial Magistrate, Tambaram, is quashed. No costs. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CS V)

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Sub Assistant Registrar

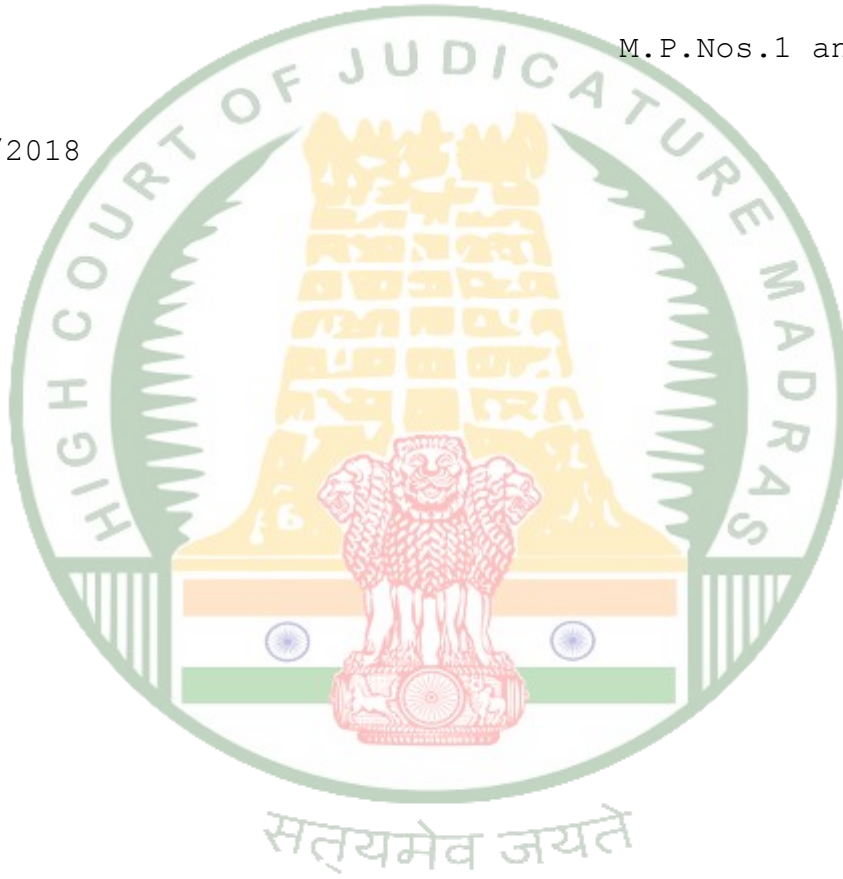
vs
To

The Judicial Magistrate,
Tambaram.

+lcc to Mr.Babu Muthumeeran, Advocate Sr.16693

CRL.O.P.No.28978 of 2010
and
M.P.Nos.1 and 2 of 2010

srg 10/10/2018



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