

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 14.09.2018

C O R A M

THE HONOURABLE MR. JUSTICE M.V.MURALIDARAN

Crl.R.C.No.94 of 2018

Padma Srinivasan

... Petitioner

Vs.

1.Sundaravadanam

2.S.Vijay Anand

... Respondents

PRAYER: Criminal Revision is filed under Section 397 read with 401 of Cr.P.C., to call for the records in C.M.P.No.2472 of 2017 and set aside the order dated 02.01.2018 passed by the learned Judicial Magistrate, Alandur and consequently direct the Judicial Magistrate, Alandur to take cognizance of the complaint.

For Petitioner : Mr.C.Rajan

For Respondents : Mr.R.Bharathkumar

O R D E R

The instant Criminal Revision Case is filed by the petitioner as against the order of dismissal of his Private Complaint filed under Section 200 of Cr.P.C. as against the respondents for alleged offences of Criminal Trespass and Mischief over his property in LIC Nagar, Madipakkam, Chennai.

2.It is the case of the revision petitioner that the respondents who are adjacent land owners have trespassed into the petitioner's property and have put up a construction intruding his property. The respondents do not have title or right whatsoever to intrude into her property by extending their construction beyond the extent mentioned in the sale deed of the respondents. After a Survey conducted in the year 2015 by revenue authority, the

respondents' occupation was found as illegal. It was further found that in the meantime the 1st respondent had settled his property on 13.02.2015 in favour of the 2nd respondent. Though the 1st respondent obtained planning permission on 12.03.2014 from the competent authority, the construction is put up by him additionally by encroaching the petitioner's property. Hence aggrieved over the misdemeanour of respondents the revision petitioner has filed the above Private Complaint in CrI.M.P.No. 2472 of 2017 on 19.05.2017 as against the respondents for alleged Offences punishable under Sections 427 and 448 of I.P.C. However the Learned Trial Judge on misconception of Law and facts had dismissed her complaint devoid of merits vide the impugned Order dated 02.01.2017. Hence the present Criminal Revision petition.

3.I heard Mr.C.Rajan, learned counsel for the Revision petitioner and Mr.R.Bharathkumar, learned counsel for the respondents and perused the entire materials available on record.

4.The Learned Counsel for the Revision petitioner vehemently argued reiterating the substance of the preceding paras.

5.Per Contra, the Learned Counsel for the respondents by submitting that there is a Title and boundary dispute exists between the revision petitioner and the respondents prayed for dismissal of the criminal revision petition.

6.Hearing upon rival submissions and on perusal of records, this Court at outset finds that there is already a suit in O.S.No.175 of 2016 on the file of learned Principal District Judge, Chengalpet seeking for declaration of a Title over the disputed area and for Mandatory injunction to remove the construction put up by the 1st respondent is filed by the Revision petitioner and the suit was then pending Trial at the time of institution of the subject private complaint on 19.05.2017.

7.It is further seen that the 1st respondent herein filed his Written Statement in the month of February 2017 and had setup his defence claiming the disputed area as his exclusive property and that he argued the reliefs and the suit as not maintainable and the same is liable to be rejected.

8.In the said factual background, this Court having found that admittedly there is a title dispute to be decided in the revision petitioner's suit in O.S.No.175 of 2016 on the file of Principal District Judge, Chengalpet and that unless her title is declared over the disputed area, the question of Trespass will not arise and it is quiet natural that if the revision petitioner succeeds, she would be entitled to the relief of Mandatory injunction removing the respondents' construction, this Court do not find any value over the Revision petitioner's claim at this stage in this Revision petition.

9.Though a civil proceeding may not be a bar to a criminal action, admittedly the question of Trespass or mischief will not arise unless the Title of the disputed area is decided. In other words when the both the revision petitioner and respondents have claimed for title in a suit and the same is pending adjudication, it is not feasible to come to appropriate decision over the right or claim over the disputed area in the subject Private Complaint. The Learned Trial Judge had dealt all the above issues in the right aspect and thereby rightly had dismissed the revision petitioner's Private Complaint in Crl.M.P.No. 2472 of 2017 on 19.05.2017 as against the respondents for alleged Offences punishable under Sections 427 and 448 of I.P.C.

10.In the result, the Criminal Revision Case is dismissed. No costs.

Sd/-

Assistant Registrar(CS)

//True Copy//

Sub Assistant Registrar

vs

To

The Judicial Magistrate, Alandur.

+1cc to Mr.C.Rajan , Advocate SR.No. 64210

Judgment made in

Crl.R.C.No.94 of 2018

ASK(26/09/2018)