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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON : 06.04.2018

PRONOUNCED ON : 09.08.2018

CORAM :

THE HONOURABLE MRS. JUSTICE R. THARANI

Cr1.RC(MD)No.273 of 2017
and
Cr1.M.P.(MD).No.2496 of 2017

- 1.Anbalagan
- 2.Mathiyalagan
- 3.Chakkaraiammal
- 4.Ariyamalai
- 5.Alagupillai
- 6.Vellachi
- 7.T.K.Chithran Amblam
- 8.Raja ...Petitioners/Petitioners/Accused No.1 to 8

Vs.

C.Samsari @ Chitran ... Respondent/Respondent/Complainant

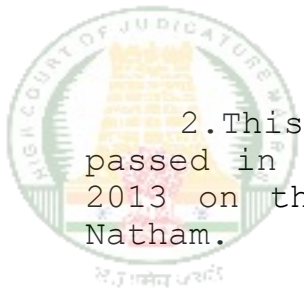
PRAYER: Criminal Revision filed Under Sections 397 and 401 of Cr.P.C., to call for the records from the lower Court and to set aside the order passed in Cr.M.P.No.1752 of 2015 dated 30.01.2017 in C.C.No.58 of 2013 on the file of the District Munsif Cum Judicial Magistrate, Natham.

For Petitioners : Mr.T.K.Gopalan

For Respondent : Ms.V.Jeyarani

ORDER

Heard Mr.T.K.Gopalan, learned counsel appearing for the petitioners and Ms.V.Jeyarani, learned counsel appearing for the respondent.



2.This revision case has been filed to set aside the order passed in Cr.M.P.No.1752 of 2015 dated 30.01.2017 in C.C.No.58 of 2013 on the file of the District Munsif Cum Judicial Magistrate, Natham.

3.The case of the prosecution is that the the first petitioner is A1 in the criminal case. At the instigation of A7 and A8, A1 to A6 trespassed into the house of the respondent and committed theft of steel bureau, TV, steel cot, Two wheeler spare parts and TV spare parts and using JCB bearing Registration No.TN-63-AC-6301 demolished the shop premises. When the same was questioned by the respondent, the first petitioner came with the aruval, the second accused with knife and third accused with wooden log and they criminally intimidated the respondent and others. Since the complaint was not registered, the respondent filed a private complaint under Section 156(3) of Cr.P.C., in Cr.M.P.No.1182 of 2012 before the District Munsif cum Judicial Magistrate, Natham and the FIR was registered. Since the FIR was closed as 'mistake of fact', the respondent filed another complaint under Section 190(a) and 200 of Cr.P.C., before the learned Judicial Magistrate, Natham.

4.On the side of the petitioners, it is stated that the respondent is the only son of the seventh petitioner. The petitioners are aged more than 42 years and the respondent filed a criminal case against these petitioners. It is alleged that the respondent is the owner of a tiled house bearing door No.2/162A, 2/163 and 2/163b and he leased out two shop premises and on 18.05.2015 at about 01.00 p.m., at the instigation of the 7th and the 8th petitioners, the petitioners 1 to 6 trespassed into shop premises and committed theft of iron bureau, TV, iron cot, Two wheeler spare parts and TV spare parts and using JCB bearing Registration No.TN-63-AC-6301 demolished the shop premises. When the respondent and his wife questioned the petitioners, the petitioners 1 to 3 attacked the respondent with wooden log. It is alleged that the respondent filed a private complaint before the learned District Munsif cum Judicial Magistrate, Natham, a case was registered in Crime No.363 of 2012 under Sections 147, 148, 427, 447, 379 and 506(ii) of IPC. Subsequently, pending C.C.No.58 of 2013, the petitioners filed a discharge petition under Section 245(ii) of Cr.P.C., before the learned Judicial Magistrate, Natham and the same was dismissed on 30.01.2017.

5.On the side of the petitioners, it is stated that there was a civil suit between the parties. The 7th petitioner is the owner of the property and he got a decree for recovery of possession against the respondent in O.S.No.551 of 2001 before the Principal District Munsif Court, Dindigul. The case was decreed in favour of the 7th petitioner. The learned District Munsif, Natham ordered for delivery of the suit property in E.P.No.167 of 2012. The respondent filed O.S.No.85 of 2006 against the 7th petitioner. The suit filed by the respondent was dismissed stating that both the suit properties are the same.

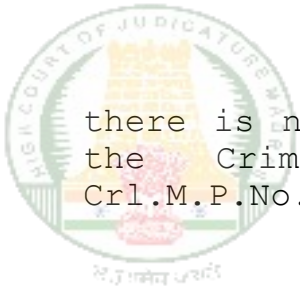


6.The respondent filed a complaint against the 7th petitioner and the petitioners filed a discharge petition. In the discharge petition, the learned Judicial Magistrate without going through the details of civil case, wrongly come to the conclusion that the suit property and the property mentioned by the respondent are different and he dismissed the discharge petition. The Civil Court has come to the conclusion that the property delivered and the suit property are the same. The second petitioner is in service and to blackmail them, the respondent has filed the case.

7.On the side of the respondent, it is stated that for the same cause of action already quash petition was filed by the petitioners. When the Court was about to dismiss the same, the petitioners seeks permission of this Court to withdraw the criminal revision case and the same is dismissed as withdrawn. The property in question is an ancestral property. In Survey No.307/1C1 there are two shops namely, 2/105A and 2/106 whereas the respondent is residing in Survey No.303/2A1 and having 9 shops and one thatch house. The Survey number of the shop was not correctly mentioned. The delivery order was made only in the paper and actual possession was with him. The lower Court has correctly concluded that properties were the same properties in O.S.No.565 of 2016.

8.On the side of the respondent, it is stated that the respondent is the only son of the 7th petitioner and he is aged about 29 years. He loved a girl and married her. Though 7th petitioner accepted the marriage, the sisters of the respondent convinced the Panchayat and asked the respondent to leave the girl, if not, the house and shops would be allotted to the respondent's sister. After the respondent's wife gave birth to three children, one of the sister's daughter attained puberty. His sister compelled the respondent to marry her daughter. The 7th petitioner fell down on the feet of the respondent's wife and asked her to accept the marriage. With the consent of his wife, the respondent married his sister's daughter. After two children were born to the second wife of the respondent, the sisters drove away his first wife.

9.Records perused. There are a number of civil suits pending between the parties and both the petitioners and the respondents argued the facts relating to the civil case. The ownership of the property would be decided only by the civil Court and the same cannot be decided on this revision petition. From the records, it is clear that O.S.No.118 of 2012 and 71 of 2012 and CrI.O.P.(MD) No.16490 of 2013 are still pending. The allegation against the petitioners in C.C.No.58 of 2013 is for trespassing into the property and for criminal intimation. Already O.S.No.285 of 2000 and 85 of 2006 and C.C.No.284 of 2006 and C.C.No.147 of 2006 are disposed of between these parties. It clearly shows that there is some previous enmity prevailing between the parties. In the above circumstances, whether the petitioners involved in the occurrence or not can be decided only after the completion of the trial. Hence,



there is nothing to interfere in the order of the lower Court and the Criminal Revision Case is dismissed. Consequently, Crl.M.P.No.2496 of 2017 is closed.

Sd/-

Assistant Registrar(CS-III)

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Sub Assistant Registrar

To

The District Munsif Cum Judicial Magistrate,
Natham.

Crl.R.C. (MD) No.273 of 2017
09.08.2018

mrn

JM/RP/SAR 2/04.09.2018/4P/2C