

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.04.2019

CORAM:

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

Crl.O.P.No.18648 of 2017 and
Crl.M.P.Nos.11355, 11356 & 15476 of 2017

1.M.V.Rathinam
2.Muthu Jayalakshmi
3.Abirami
4.Vaishnavi

... Petitioners

..Vs..

N.Muthurajan

...Respondent

PRAYER: Criminal Original Petition filed under Section 482 Cr.P.C. praying to call for the records in C.C.No.498 of 2017 on the file of Judicial Magistrate No.1, Tiruppur and quash the complaint in C.C.No.498 of 2017 on the file of Judicial Magistrate No.1, Tiruppur.

For Petitioners : Mr.P.Kumaresan
for Mr.M.Sivavarthan

For Respondent : Mr.Sithirai Anandan

ORDER

This Criminal Original Petition has been filed to quash the proceedings in C.C.No.498 of 2017 on the file of Judicial Magistrate No.1, Tiruppur, having been taken cognizance for the offences punishable under Sections 395, 426, 437, 447, 454 and 506(ii) I.P.C.

2. The learned counsel for the petitioners submitted that the petitioners are arrayed as A1 to A4. The second petitioner is the sister of the respondent defacto complainant. The first petitioner is the husband of the second petitioner and the third and fourth petitioners are children of the first and second petitioners herein. All the family members have been falsely roped into this criminal proceedings. The impugned complaint has been filed by the respondent and the same has been taken cognizance of by the learned Judicial Magistrate No.I, Tiruppur for the offences under Sections 395, 426, 437, 447, 454 and 506 (ii) I.P.C. He further submitted that the second petitioner and

the defacto complainant family had properties comprised in T.S.Nos.1155 and 1156 situated at Thottipalayam Village, Tiruppur. Their younger sister filed a partition suit in O.S.No.634 of 1993 on the file of the Sub Court, Tiruppur in which there was a compromise between them and on the basis of the compromise, decree was passed on 14.02.1994.

2.1. He further submitted that as per the partition decree, their mother was allotted 1.02 acres comprised in T.S.No.1155 and the second petitioner was allotted 88 cents comprised in T.S.No.1156 and other sister was allotted one acre in T.S.No.1156 and 67 cents of land in T.S.No.1156 was left for 50 feet road. That apart, other properties were also divided in the compromise decree. The respondent was allotted other properties. While being so, their mother executed settlement deed dated 29.12.2010 in respect of her share in favour of the second petitioner and the same was registered as document No.3808 of 2016 thereby she settled the property admeasuring 42 cents and 21 cents of land in T.S.No.1156. While being so, the second respondent to grab his mother's share he fabricated the sale agreement and also filed a specific performance suit as against his mother in respect of the property comprised in T.S.No.1156 and the said suit was dismissed on 06.08.2009.

2.2. He further submitted that he also filed another suit seeking permanent injunction in O.S.No.45 of 2010 before the District Munsif, Tiruppur as against the petitioners 1 and 2 and the same was also dismissed on 06.11.2012. He also filed another suit in O.S.No.388 of 2011 and the said suit was also dismissed for default on 07.02.2017. Now he has filed an application to restore the said suit and it is pending. Again he filed another suit in O.S.No.243 of 2015 before the District Munsif, Tiruppur as against the second petitioner herein and three others and the said suit was also dismissed on 15.10.2015. He further submitted that on the strength of partition compromise decree dated 14.02.1994 in O.S.No.694 of 1993 the second petitioner executed settlement deed in favour of the third and fourth petitioners vide document Nos.1281 of 2010 and 3868 of 2016 respectively in respect of the property comprised in T.S.No.1156. After settlement deed, 3rd and 4th petitioners became absolute owners of the property comprised in T.S.No.1156. Thereafter they also filed suit as against the respondent in O.S.Nos.200 of 2017 and 198 of 2017 on the strength of their settlement deed and interim injunction was granted in their favour and both injunction orders are still in force. While being so, the second respondent filed the present impugned complaint suppressing all the above facts alleging that the petitioners entered into their property and committed offence for the offences under Sections 395, 426, 437, 447, 454 and 506 (ii) I.P.C.

2.3.He further submitted that even as per the complaint no offence has been made out and there is no ingredients to attract any offence. It is completely civil dispute and all the averments are civil in nature. Further all the petitioners are same family members and they are unnecessarily roped into the criminal prosecution by the respondent only to threaten them since the first and second petitioners have only female heirs, namely 3rd and 4th petitioners. Therefore, the respondent wants to grab the entire property and after failing in all the civil courts now he has instituted the false complaint by way of private complaint. Therefore he sought for quashment of the impugned complaint.

3. Per contra, the learned counsel for the respondent submitted that the respondent filed the complaint alleging that the property comprised in T.S.No.1155/1 and T.S.No.1150 admeasuring 7.11 acres was allotted as his share by the family partition which had taken place on 05.11.1975. In the land comprised in T.S.No.1155 there was a community hall and he obtained electricity connection for the same. While being so, on 22.05.2017, the petitioners trespassed into his property along with JCB and also demolished the entire structure. When he questioned the same, they threatened him with dire consequences. Therefore he lodged a complaint before the Inspector of Police, North Police Station, Tirupppur but to no avail. Therefore, he filed direction petition before this Court in Crl.O.P.No.15167 of 2017 to register the complaint. He further submitted that they obtained interim injunction in O.S.Nos.200 of 2017 and 198 of 2017. The petitioners trespassed into his property and demolished the same. Therefore, the petitioners committed very serious offence and they have to be tried and they are liable to be punished for the offences committed by them. Therefore, he sought for dismissal of this quash petition.

4. Heard the learned counsel for the petitioners and the learned counsel for the respondent.

5. The petitioners are arrayed as A1 to A4 and they are all same family members. The second petitioner is none other than own sister of of the respondent and on the partition suit filed by another younger sister of the second petitioner there was a compromise partition decree in O.S.No.634 of 1993 dated 14.02.1994. Accordingly, the second petitioner was allotted share in land comprised in T.S.No.1156. Thereafter her mother also executed settlement deed in favour of the second petitioner in respect of her land comprised in T.S.No.1156. On the strength of settlement deed and the partition deed, the second petitioner executed settlement deed in favour of the third and fourth petitioners respectively. Both the settlement deed were

duly registered and even then the respondent tried to interfere with the possession. Therefore, they filed suits separately in respect of their shares in O.S.Nos.200 of 2017 and 198 of 2017 on the file of the Sub Court, Tiruppur. In both the suits, they obtained order of interim injunction as against the respondent and the interim orders are in force and are pending.

6. It is also seen that the second respondent filed so many suits as against his mother and the petitioners herein. All the suits were dismissed on the ground of one or another. Though the restoration petition along with condone delay petition is pending, the respondent resorted to file a criminal complaint to achieve something which is not achieved by the civil court as against the petitioners. Therefore, on perusal of the entire records it is clear civil dispute between the petitioners and the respondent. The respondent having been failed in all the civil courts he has chosen to lodge the present impugned complaint as against the petitioners. It is nothing but clear abuse of process of law and it cannot be sustained as against the petitioners.

7. In view of the above discussions, this Criminal Original Petition is allowed and the proceedings in C.C.No.498 of 2017 on the file of Judicial Magistrate No.1, Tiruppur is quashed. Consequently, connected miscellaneous petitions are close
lok

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

The Judicial Magistrate No.1,
Tiruppur

2. -Do- Thro' The Chief Judicial Magistrate,
Tiruppur.

+1cc to Mr.M.Sivavarthanan, Advocate, SR.No.39431
+1cc to Mr.S.Sithirai Anandam, Advocate, SR.No.40157

CrI.O.P.No.18648 of 2017

Kak (01/07/2019)