IN THE HIGH COURT OF JUDICATURE AT MADRAS

Order Reserved On : 16.10.2020

Order Delivered On : 04.11.2020

CORAM

THE HONOURABLE MR. JUSTICE R.PONGIAPPAN

Crl.O.P No.23641 of 2019

P.N.Murugesan ...Petitioner

Vs.

1. The Inspector of Police,
District Crime Branch,
Erode.

2. The Inspector of Police,
Anti-Land Grabbing Special Cell,
Erode.

3. Muthulakshmi ...Respondents
Amended order dated 27/09/2019
in Crl Mp.13968 of 2019

PRAYER: Criminal Original Petition filed under Section 407 of the Code of Criminal Procedure to withdraw C.C.No.2 of 2012 on the file of the learned Special Judicial Magistrate Land Grabbing, Erode, and transfer the same to the learned Judicial Magistrate - II, Erode, and consequently, direct the learned Judicial Magistrate - II, Erode, to dispose of the same.

For Petitioner : Mr.K.S.Jeyaganeshan
For 1st & 2nd Respondents : Mr.S.Karthikeyan
Additional Public Prosecutor
For 3rd Respondent : Mr.K.Elangovan

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O R D E R

The present Criminal Original Petition has been filed seeking a relief to withdraw C.C.No.2 of 2020 pending on the file of the learned Special Judicial Magistrate, Land Grabbing, Erode, and transfer the same to the file of the learned Judicial Magistrate-II, Erode, and consequently, direct the learned Judicial Magistrate-II, Erode, to dispose of the same.

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2. Heard the learned counsel appearing for the petitioner, learned Additional Public Prosecutor appearing for the 1st and 2nd respondents police and the learned counsel appearing for the 3rd respondent.

3. The case of the petitioner before the trial Court is that the petitioner and the 3rd respondent are husband and wife. The petitioner got married on 12.06.1992 and thereafter, the 3rd respondent gave birth to one girl child in the year 1993. After some time from the date of giving birth to the female child, due to misunderstanding arose between them, the 3rd respondent left her matrimonial home and joined with her parents. In the meanwhile, the petitioner purchased lands on 14.11.2005 in R.S.No.198/6 and R.S.No.40/1, 4 and thereafter, he is in exclusive possession of the said lands.

4. Consequent to the separation, the 3rd respondent herein had filed a petition for divorce against this petitioner in H.M.O.P.No.255 of 2009. Subsequent to the filing of the said petition, the 3rd respondent and two other persons namely, Manickam and Sekar, with a view to grab the property purchased by the petitioner, created a forged document illegally and defrauded the petitioner. In respect of the same, upon the complaint given by the petitioner, an F.I.R has been registered against the 3rd respondent and others in Crime No.38 of 2011 under Sections 120-B, 420, 467, 468 and 471 of I.P.C. and after enquiry, the 1st respondent has forwarded the case to the 2nd respondent for investigation. On receipt of the same, the 2nd respondent, after perusing the records, filed the final report before the learned Judicial Magistrate, Anti-Land Grabbing, and the same was taken on file in C.C.No.2 of 2012.

5. In the said circumstances, since the Court constituted for the purpose of land grabbing cases, were stayed by the Hon'ble Apex Court, the petitioner is not in a position to see the result of the proceedings initiated in C.C.No.2 of 2012. Therefore, it is necessary to withdraw the same from the file of the learned Judicial Magistrate, Land Grabbing, and to transfer the same to the learned Judicial Magistrate -II, Erode.

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6. The learned counsel appearing for the petitioner, during the time of making his submission, reiterated the petition averment found in the petition. The learned Additional Public Prosecutor appearing for the respondent Nos.1 and 2 had also conceded that the petition filed by the petitioner has to be allowed.

7. Per contra, the learned counsel appearing for the 3rd respondent would submit that under Section 407 (2) Cr.P.C.,

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the petitioner is not entitled to file the petition before this Court, without filing any application before the Sessions Court concerned and therefore, the petition filed by the petitioner is liable for dismissal.

8. Now considering the submissions made on either side, it is true that the petitioner has approached this Court directly without approaching the Sessions Judge, who is also having the power to transfer the criminal case from one Court to another Court. However, yet another important fact, which is necessary to decide the case is that the petition mentioned case is pending on the file of the learned Special Judicial Magistrate, Land Grabbing, Erode, from the year of 2012. Subsequently due to the stay granted by the Hon'ble Apex Court, no progress was made for the past eight years. If the same thing is continued, it is impossible for the petitioner to see the finality in the above-referred case. More than that, the omission committed by the petitioner is no way prejudice the right of the 3rd respondent.

9. All are aware that speedy disposal is a fundamental right guaranteed under the Constitution. Therefore, in the said circumstances, it would be appropriate to direct the learned Special Judicial Magistrate, Land Grabbing, Erode, to transfer the case records in C.C.No.2 of 2012 from his file to the file of the learned Judicial Magistrate - II, Erode, within a period of two weeks from the date of receipt of a copy of this order. On receipt of such case records, the learned Judicial Magistrate - II, Erode, is directed to dispose of the same within a period of four months.

With the above directions, the Criminal Original Petition is allowed.

Sd/-

Assistant Registrar

//True Copy//

Sub Assistant Registrar

To

1. The Special Judicial Magistrate,
   Land Grabbing, Erode.

2. The Judicial Magistrate - II, Erode.

3. do thro-The chief Judicial Magistrate,
   Erode.

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4. The Inspector of Police,
   District Crime Branch, Erode.

5. The Inspector of Police,
   Anti-Land Grabbing Special Cell, Erode.

6. The Public Prosecutor,
   High Court, Madras.

+1cc to Mr.K.Elangovan, Advocate, S.R.No.35672
+1cc to Mr.K.S.Jeyaganeshan, Advocate, S.R.No.35775

Crl.O.P No.23641 of 2019

GMR(CO)
RV(07/12/2020)

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