



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 18.02.2020

CORAM:

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

Crl.O.P. (MD)No.23601 of 2015

and

M.P. (MD)No.1 of 2015

WEB COPY

1.M.Ravi
2.Satish
3.Nagendran

... Petitioners/Accused 3 ,4 & 5
-vs-

1.The State represented by
The Inspector of Police,
Ammaiya Nayakkanur Police Station,
Dindigul District. ... Respondent/Respondent

2.P.Johnson ... Respondent/Defacto Complainant

PRAYER: Petition filed under Section 482 of the Criminal Procedure Code to call for the records of the proceedings in C.C.No.409 of 2015 on the file of the Judicial Magistrate, Nilakottai and quash the same in so far as the petitioners are concerned.

For Petitioners : Mr.V.Karthick
Senior Counsel
for Mr.A.Jenasenan

For R1 : Mr.A.Robinson, Government Advocate
(Crl side)

For R2 : Mr.M.Jegadeesh Pandian

O R D E R

This Criminal Original Petition has been filed for quashing the proceedings in C.C.No.409 of 2015 on the file of the learned Judicial Magistrate, Nilakottai. The second respondent herein is the defacto complainant. According to the defacto complainant, the property comprised in S.No.281/7A in Oruthattu Village is his absolute property. On 16.11.2014, at about 10.30 a.m., the accused are said to have trespassed into the said property and put up fencing. When the complainant objected to the same, the accused are said to have abused him in filthy language and also criminally intimidated him. Based on such a complaint lodged by the respondent before the Ammaiya nayakkanur police station, Crime No.75 of 2015 was registered. The case was investigated and final report was filed before the learned Judicial Magistrate, Nilakottai for the offences under Sections 147, 447, 294(b) and 506(i) of IPC . The



case was taken on file in C.C.No.409 of 2015 and and summons were issued to the accused. To quash the same, A3, A4 and A5 have filed this Criminal Original Petitions.

2.Heard the learned Senior Counsel appearing for the petitioner, the learned Government Advocate and the learned counsel for the defacto complainant.

3.The learned Senior Counsel reiterated the contentions set out in the memorandum of grounds and wanted this Court to quash the impugned proceedings as an abuse of legal process.

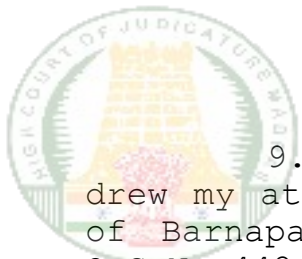
4.Per contra, the learned counsel for the defacto complainant, submitted that this Court will not be justified in invoking its inherent powers in this case. He also contended that all the documents on which the petitioners are placing reliance do not tally with the subject property. In any event, the petitioners will have to be necessarily relegated to the trial Court to establish their defence.

5.The learned Government Advocate also supported the stand taken by the learned counsel for the defacto complainant. I carefully considered the rival contentions and perused the materials on record.

6.It is not in dispute that the subject land is comprised in S.No.281 /7A in Oruthattu Village, measures an extent of 3.19 acres. The said property admittedly stood in the name of Dhanapalan who is the father of the second respondent herein. Dhanapalan had purchased the property in question vide sale deed dated 20.10.1993 (Document No.304/1994) from one Subbiah Gounder and three others. Vide sale deed 25.07.1995 (Document No.1565/1995) he sold the same to Barnapas who is none other than the father of the second respondent / defacto complainant. It is again not in dispute that Barnapas executed a registered sale agreement in favour of Thiruchencode Gokulam chit fund on 26.07.1995. He also executed a registered power of attorney in favour of the said finance company on the very same date.

7.While so, on the strength of the said Power of Attorney, the power holder sold the property in favour of Thiruchencode Gokulam chit fund on 12.12.1997. Ofcourse, an allegation is made that Barnabpas passed away in the year 06.03.1996 itself and that the power of attorney automatically lapsed.

8.Be that as it may, the fact remains that Dhanapalan repurchased the property from Thiruchencode Finance vide sale deed dated 26.05.2003(D.No.839 of 2003) on the file of the Sub Registrar Office, Nilakottai. Dhanapalan passed away some time in the year



9.The learned Senior Counsel appearing for the petitioner drew my attention to the civil suits instituted by the legal heirs of Barnapas in O.S.No.86 of 1997. The same was renumbered as O.S.No.442 of 2008 on the file of the Sub Court, Thiruchencode. The property in question is figuring as Item No.2 in the suit schedule. The suit was for the relief of declaration and permanent injunction. The Gokulam finance is figuring as the first defendant in the said suit. It has been established before me that the said suit was rejected on 04.09.2012 in I.A.No.847 of 2011 filed at the instance of the defendants. The plaint in O.S.No.442 of 2008 was ordered to be rejected under Order 7 Rule 11A of C.P.C.

10.It is also seen that the defacto complainant through a power agent filed O.S.No.106 of 2015 before the District Munsif Court, seeking the relief of permanent injunction. In the said suit, the petitioners herein are figuring as D3 to D5. The said suit also suffered a dismissal as early as on 10.02.2017.

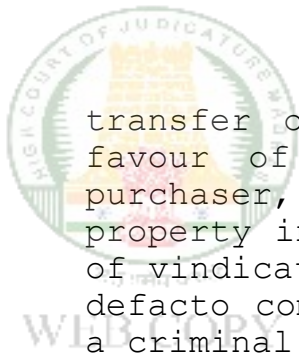
11.The learned Senior Counsel on instruction firmly states that no application seeking its restoration has been filed and that the dismissal of the said suit has attained finality.

12.A bunch of materials have also filed before me indicating that the petitioners are in possession of the property in question as on date. But then, as rightly pointed out by the learned counsel for the defacto complainant, I will not be justified in looking into them because those documents came into existence after the registration of the First Information Report. Therefore, the case was adjourned and the petitioners have filed a fresh typed set of papers in which they have enclosed property tax receipts for the years commencing from 2011-2012 onwards. But then, in those receipts, Survey numbers has not been mentioned.

13.The charge against the petitioners is that they had committed trespass on 16.11.2014 at 10.30 a.m. The petitioners are very much having a title document in their favour. The property was purchased by the father of the second petitioner herein Dhanapalan, on 26.05.2003. It is a registered document. The defacto complainant filed an injunction suit later and the same had suffered a dismissal for default. A declaration suit filed earlier had been rejected.

14.Therefore, the question that arises for my consideration is whether the petitioners should undergo the agony of the criminal trial when two suits, one for declaratory relief with consequential injunction and another for permanent injunction have both suffered dismissals.

15.I am of the view that the continuance of the impugned proceedings would clearly be an abuse of legal process. There is a



transfer of title from the father of the defacto complainant in favour of Gokulam Finance some 23 years ago. From the said purchaser, the father of the second petitioner had repurchased the property in the year 2003. I am therefore of the view that instead of vindicating his rights before the jurisdictional civil Court, the defacto complainant is simply harassing the petitioners herein with a criminal prosecution.

16.In this view of the matter, the impugned proceedings are quashed and this Criminal Original Petition is allowed. The benefit of the order will enure in favour of the non petitioning accused also, as far as this case is concerned. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (AD-II)

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Sub Assistant Registrar(CS)

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To

1.The Inspector of Police,
Ammaiya Nayakkanur Police Station, Dindigul District.

2.The Judicial Magistrate, Nilakottai .

3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to MR.M.SETHURAMAN, Advocate (SR-7225[F] dated 20/02/2020)

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VB(02.06.2020) 4P 5C