



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 29.07.2021

Pronounced on : 16.09.2021

WEB COPY

CORAM :

THE HONOURABLE **Mr. JUSTICE G.ILANGOVAN**

Crl.O.P.(MD)No.9852 of 2021

and

Crl.M.P.(MD)No.5020 of 2021

1.P.Kannan @ Kannusamy
2.P.Pandiyarajan
3.J.Panju
4.V.Gowri

... Petitioners

Vs.

1.State represented through
The Sub Inspector of Police,
Land Grabbing Special Cell,
Madurai District.

2.The Superintendent of Police,
Madurai District,
Madurai.

3.Jeyanthi

... Respondents

Prayer : Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, to call for the records relating to the summon dated 06.07.2021 on the file of the 1st respondent and quash the same.

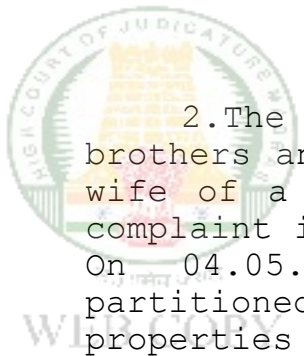
For Petitioners : Mr.G.Prabhu Rajadurai

For Respondents : Mr.R.M.Anbunithi,
Additional Public Prosecutor
for R1 & R2

Mr.A.Prasanna Rajadurai for R3

ORDER

This petition is filed seeking quashment of the summon dated 06.07.2021, which was issued to the petitioners.

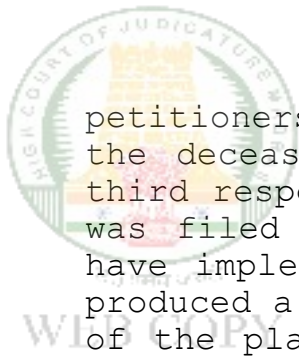


2.The case of the petitioners is that all the petitioners are brothers and sisters among themselves. The third respondent is the wife of a deceased's brother. The third respondent has lodged a complaint in the year 2011 and that was closed after proper enquiry. On 04.05.2003, the petitioners, their brother and parents partitioned the family properties and in that progress, some properties were allotted to Manoharan, who is the husband of the third respondent herein. He sold some of the properties that was allotted to him and retained some properties. After the marriage, the third respondent and Manoharan did not have any issue. Manoharan died due to cancer. When the above said Manoharan was sick, the third respondent left the matrimonial home after receiving a sum of Rs.10,00,000/- and 100 sovereigns of gold. The mother took care of the said Manoharan till his demise on 19.10.2011. During the life time, the deceased/Manoharan executed a Will on 18.01.2009 bequeathing the properties in favour of his mother. So after the death of said Manoharan, the Will came into effect and the mother was in possession of the properties. Later, the third respondent returned to the village and disturbed the possession of the mother. So she filed a suit in O.S.No.155 of 2012 before the Sub Court, Melur. The said suit is still pending. During the pendency of the aforesaid suit, the third respondent has given a complaint before the Inspector of Police, Karuppayurani Police Station. When they were summoned, they filed Crl.O.P.(MD)No.16022 of 2011 before this Court seeking a direction not to harass the petitioners and the same was allowed and the complaint was also closed as civil dispute. The mother later died on 29.05.2021 and she settled the properties in favour of the petitioners through settlement deed dated 08.07.2015 during her life time. After the death of the above said mother, the third respondent gave another complaint stating that the Will is a forged one. Now on that basis of the complaint, the petitioners have been summoned. Since it is purely civil dispute, this petition has been filed.

3.Heard both sides.

4.When the matter was taken up for hearing, the learned counsel for the third respondent has submitted that this matter has become infructuous, since the petitioners appeared before the enquiry officer and their statements were also recorded. Since they have complied the summons, the quashment of summons has become infructuous.

5.The learned Additional Public Prosecutor would submit that based upon the complaint given by the third respondent herein, enquiry was undertaken in C.No.24443 of 2021 and during the course of enquiry, summons were issued to the petitioners and both the parties appeared before the enquiry officer. During the course of the enquiry, the third respondent has given a statement to the effect that she will again appear before the enquiry officer, since <https://hcservices.courts.madras.gov.in/hcservices> that her husband executed a Will. Similarly, the



petitioners 1 and 2 also have given a statement to the effect that the deceased/Manoharan executed a Will on 18.01.2009 and that the third respondent disputed the same and a suit in O.S.No.155 of 2012 was filed by their mother/Bhuvaneshwari and after her death, they have impleaded themselves as her legal representatives. They also produced a copy of the unregistered Will dated 18.01.2009. The copy of the plaint is also filed by the petitioners, wherein the third respondent is added as the first defendant. In the plaint, it has been stated that Manoharan was affected by cancer and during the sickness period, the third respondent left the matrimonial home after receiving a sum of Rs.10,00,000/- and 100 sovereigns of gold jewels as her life time maintenance. Manoharan executed a Will on 18.01.2009 during his life time. After a lapse of 2 ½ years, he died. After the death of Manoharan, the Will came into effect and Bhuvaneshwar inherited the properties. So it appears that the Will under now dispute, which is the subject matter of the above said suit and now after the death of Bhuvaneshwari, the petitioners state that they have impleaded themselves as parties. Another disturbing feature is that Bhuvaneshwari and the petitioners along with others filed Crl.O.P.(MD)No.16022 of 2011 seeking a similar ie., not to harass them on the basis of the complaint given by the third respondent, since it is purely a civil dispute. At that time, a undertaking was given by the learned Additional Public Prosecutor to the effect that no harassment will be made to the petitioners and above said Bhuvaneshwari. Recording the said undertaking that petition was closed. According to them, the complaint subsequently came to be closed, which has been narrated in the statement given by the petitioners 1 and 2 before the enquiry officer. It is seen that it is the third round of complaint given by the third respondent. Since the matter is taken cognizance by the competent Civil Court, the second respondent herein may not have any power to enquire the same. The Will has to be proved as per law before the concerned Civil Court. So a direction is issued to the first respondent to direct the third respondent as well as the petitioners to work out their remedies in the pending suit, by closing the enquiry.

6.With this direction, this Criminal Original Petition is disposed of. Consequently, connected miscellaneous petition is closed.

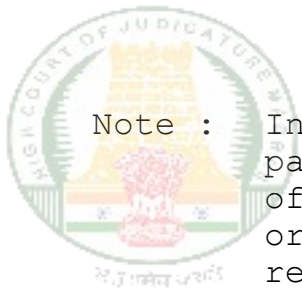
Sd/-

Assistant Registrar (T&P)

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/ /2021

Sub Assistant Registrar(CS)



Note : In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

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To

- 1.The Sub Inspector of Police,
Land Grabbing Special Cell,
Madurai District.
- 2.The Superintendent of Police,
Madurai District,
Madurai.
- 3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.G.PRABHU RAJADURAI, Advocate (SR-29519[F] dated 17/09/2021)

Crl.O.P. (MD)No.9852 of 2021
16.09.2021

RK (01.10.2021) 4P 5C