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CRL.O.P.Nos.13477 & 13740 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 27.06.2022

CORAM:

THE HONOURABLE MR.JUSTICE **G.K.ILANTHIRAIYAN**

CRL.O.P.Nos.13477 & 13740 of 2020

and

Crl.M.P.Nos.5227, 5228 & 5277 of 2020

V.C.Gopinath

... Petitioner in both Crl.O.P.s

Vs.

1.The Sub-Divisional Magistrate (North)

Puducherry.

... 1st Respondent in both Crl.O.Ps.

2.V.Seenuvasamurthy

... 2nd Respondent in both Crl.O.P.s.

3.K.Sridharan

... 3rd Respondent in Crl.O.P.No.13740 of 2020

4.Balaji Raja

... 4th Respondent in Crl.O.P.No.13740 of 2020

Common Prayer: These Criminal Original Petitions filed under Section 482 of Cr.P.C. praying to call for the records of the first respondent culminating in the proceedings in M.C.No.31 of 2020, on the file of the Sub Divisional Magistrate (North), Puducherry, and quash the same.



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CRL.O.P.Nos.13477 & 13740 of 2020

(In both Crl.O.P.s)

For Petitioner : Mr.C.A.Diwakar

For Respondents

For R1 : Mr.V.Balamurugane
Public Prosecutor (Puducherry)

For R2 : Mr.V.Karthik Senior Counsel
for Mr.K.Sasindran

COMMON ORDER

These petitions have been filed to quash the proceedings in M.C.No.31 of 2020 on the file of the Sub Divisional Magistrate (North), Puducherry, registered for the offences under Sections 145 and 133 of Cr.P.C., as against the petitioner.

2. Heard both sides and perused the materials available on record.

3. Based on the complaint lodged by the 2nd respondent and the general public, the 1st respondent registered a complaint and initiated proceedings under Sections 145 and 133 of Cr.P.C., against the petitioner. The property extent of 01.45.40 hectares fall under Cadastre Nos. 546 and 557(part), comprising R.S.No.173/1, situated at Oulgaret Municipality, Saram Revenue Village, Karuvadikuppam, Puducherry. The petitioner is one of the paternal



grand sons of Late S.S.Varadaraja Mudaliar and a coparcener of the family, who purchased the property (herein after called as subject property) through Court auction sale in the year 1935. The said subject property was brought to an auction by one Pierre Ulric Roland Bisch seeking to recover the monies owned to him by one Govindasamy Pillai under (A) Mortgage Deed in respect of subject property and other properties. The Court auction sale of the properties were held on 27.08.1935. The land measuring 01.45.40 hectares under Cadastre No.546 was purchased by the said S.S.Varadaraja Mudaliar and the Encumbrance Certificate of the said land was issued in his favour on 20.01.1936.

4. Thereafter, the Revenue Records were mutated and he was issued Patta. After implementation of Pondicherry Survey and Boundaries Act, 1967 and consequential re-survey in the year 1972, the subject land falls in R.S.No.173/1 under Patta No.475 in the name of one of the coparceners, namely S.S.V.Muthusamy. Therefore, the coparceners of the said S.S.Varadaraja Mudaliar were in continuous possession and enjoyment of the subject property.



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5. In view of the differences of opinion between the coparceners, they filed a suit in O.S.No.230 of 1977 before the II-Additional Sub Judge, Pondicherry, for partition, and the same was decreed on 25.07.1979. During the pendency of the Final Decree, the proceedings in I.A.No.564 of 1980 in O.S.No.230 of 1977, some portions of the subject properties were acquired by the Government of Puducherry, following which the properties were subdivided.

6. The property ad-measuring 01.46.40 of land which was acquired for construction of Kamarajar Mani Mandabam, was assigned Re-Survey No.173/1A. The property ad-measuring 00.61.00 hectares of land which was acquired for expansion of the East Coast Road, was assigned Re-Survey No.173/1B and the land ad-measuring 00.43.00 hectares was acquired for construction of an Interstate Police Wireless (ISPW) quarters was assigned Re-Survey No.173/1C/2. The remaining lands are in possession and enjoyment of the coparceners. The issue of apportionment of the compensation among the legal heirs of S.S.Varadaraja Mudaliar was referred to the Principal District Judge, Pondicherry. In respect of item 2 of the properties, which was acquired, and the same was ended in compromise, between the legal heirs and in respect



of the property ad-measuring 01.46.40 hectares, the same was acquired for the construction of Kamarajar Mani Mandapam.

7. While that being so, one P.Sithanandhan and P.Aravamudhu filed an objection with regard to payment of compensation and it is pending in L.A.O.P.No.12 of 2005, on the file of the learned Principal District Judge, Pondicherry, for non filing of statement and further, they have no right over the subject property, even then they claimed that their grandfather Govindasamy Pillai had purchased the property through Court auction sale and that the property has since passed down generations to them. However, the descendants of the said Varadaraja Mudaliar obtained Patta in their name legally.

8. Thereafter, on 22.03.2018, when the petitioner sought to register a Settlement Deed to settle his 1/3rd share in the coparcenery property in favour of his son, the said persons have registered a few documents in respect of the subject property and created Encumbrance Certificate by way of Power of Attorney dated 09.02.2012, agreement for Sale Deed dated 20.02.2012 and also by an agreement for Sale Deed dated 21.12.2021 by the said Aravamudhu, G.Gowri and P.Vasantham claiming to be legal heirs of the late Govindasamy Pillai in favour of one N.K.Kumar.



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9. Therefore, the petitioner lodged a complaint before the Hon'ble Lieutenant Governor of Pondicherry, and the same has been forwarded to the District Collector concerned for enquiry. While pending the enquiry, the District Registrar, by his proceedings dated 25.04.2018, directed that no documents shall be registered in respect of the subject property. Further, the petitioner has also lodged a land grabbing complaint against them and the petitioner produced the Sale Certificate and other documents to substantiate his title over the property. After verification of all the documents, the person who registered those documents, was suspended and he is facing departmental proceedings.

10. In fact, on receipt of the proceedings from the District Registrar, the said Aravamudhu filed a Writ Petition before this Court in W.P.No.16455 of 2018, challenging the said proceedings on the ground that the District Registrar has no power to conduct any enquiry into the fraudulent registration of documents. They also filed suit in O.S.No.1649 of 2018 on the file of the II Additional Munsif, Puducherry, for declaring them as owners of the subject property and also for declaration that the Preliminary Decree passed in the Partition suit in O.S.No.230 of 1977 is null and void. Based on the complaint



lodged under land grabbing, the petitioner was enquired and it was affirmed that the family members of the said S.S.Varadaraja Mudaliar, have been in continuous possession and enjoyment of the subject property.

11. While that being so, the second respondent lodged a complaint before the first respondent alleging that the petitioner and his men are attempting to trespass into his property and sought action under Section 145 Cr.P.C. On receipt of the same, the 1st respondent mechanically issued summons, without even passing a preliminary order as contemplated under Section 145(1) of Cr.P.C. Simultaneously, on the complaint received from the general public, the first respondent also initiated proceedings in M.C.No.32 of 2020 under Section 133 Cr.P.C. The provisions under Section 145 Cr.P.C are clear that the first respondent ought to have passed the preliminary order as contemplated under Section 145 Cr.P.C. The first respondent without passing any preliminary order, straight away commenced the proceedings under Section 145 Cr.P.C and issued summons to the petitioner.

12. It is also seen that the second respondent already filed a direction petition before this Court in Crl.O.P.No.8937 of 2020, seeking Police protection to remove "Seemai Karuvelan" trees and to lay a temporary fencing



in the subject property, and this Court dismissed the said same with observation that there is a civil dispute between the parties and therefore, the Police cannot go into the civil dispute and it can be resolved only before a Civil Court.

13. That apart, admittedly, the second respondent has already filed a suit in O.S.No.1649 of 2018 on the file of the II Additional District Munsif Court, Pondicherry, for declaration and injunction, which is pending. Once the matter is seized of by the Civil Court, the first respondent has no jurisdiction to deal with the subject property. That apart, there is absolutely nothing warranting for the first respondent to initiate proceedings under Section 145 Cr.P.C, since it is the private dispute between the two parties.

14. While that being so, the third parties have no role to play to initiate the proceedings under Section 133 Cr.P.C by the first respondent, since the matter already is seized of by the Civil Court. In fact, the second respondent, though filed I.A for possession of the subject property, no interim order is passed by the Civil Court. Therefore, the first respondent has no jurisdiction to conduct parallel enquiry with regard to the possession of the subject property, when the Civil Court is already seized the matter. Therefore, both the



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proceedings initiated by the first respondent cannot be sustained as against the petitioner and both the proceedings initiated by the first respondent are liable to be quashed.

15. Accordingly, these Criminal Original Petitions stand allowed and the proceedings in M.C.No.31 of 2020, on the file of the Sub Divisional Magistrate (North), Puducherry, are hereby quashed. Consequently, connected miscellaneous petitions are closed.

27.06.2022

Index : Yes / No
Speaking / Non Speaking order

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To

1. The Sub-Divisional Magistrate (North)
Puducherry.
2. The Public Prosecutor
Madras High Court,
Chennai.



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G.K.ILANTHIRAIYAN, J.
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