



Crl.O.P.No.15389 of 2019
and
Crl.M.P.No.7573 of 2019

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on :28.10.2022

Pronounced on 03.11.2022

Coram:

THE HONOURABLE DR. JUSTICE G.JAYACHANDRAN

Crl.O.P.No.15389 of 2019
and
Crl.M.P.No.7573 of 2019

1.C.Shenbagam
2.Chinnathambi

.. Petitioners

/versus/

1.The Sub-Inspector of Police,
Jolarpet Police Station,
Jolarpet, Vellore District.

2.Dr.Vasudevan

.. Respondents

Prayer: Criminal Original Petition has been filed under Section 482 of Cr.P.C., to call for the records in Crime No. 143 of 2019 dated 27.04.2019 on the file of the 1st respondent police and quash the same.

For Petitioners :Mr.Abdul Saleem for
M/s AAV Partners

For Respondents :Mr.R.Kishore Kumar
Government Advocate (Crl.Side)for R1
Mr.T.Gowthaman for R2



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ORDER

The petition to quash the criminal complaint on the file of the Jolarpet Police Station in Cr.No.143/2019 is filed on the ground that the complaint is borne out of malafide and a pure civil suit is given criminal colour to harass the petitioners.

2. According to the petitioners, the first petitioner is daughter of Raji Gounder born to his first wife. The defacto complainant is the eldest among the five children of Raji Gounder born to his second wife. Raji Gounder died intestate on 09/10/1979 leaving behind the first petitioner, defacto complainant and 4 others, who are the defacto complainant's brother and 3 sisters. In the partition suit between the legal heirs of the deceased Raji Gounder filed before the Sub-Court Thirupattur in O.S.No: 102/1991, the parties entered into an amicable settlement. The properties were divided among the legal heirs and a partition deed dated 14/07/2004 was registered. Under the partition deed, agricultural land ad-measuring to an extent of 1



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acre 04 cents, comprised in S.F.No: 285/2 B, situated at Chinnavenkayapalli Village and few other properties were allotted to the share of the first petitioner. Since then the said property is in absolute possession and enjoyment of the first petitioner. Revenue records stands mutated in the name of the first petitioner. Put up a house in S.No 296/1 and got electricity connection. Thus, the parties have acted upon the partition deed and enjoying their respective shares peacefully.

3. The first petitioner withdrew her suit for partition and got transposed as defendant from the plaintiff. Few other plaintiffs continued the suit. A preliminary decree in the suit O.S.No.102/1991 was passed on 26/11/2012. Presently, S.A.No.140/2016 filed by the defacto complainant in respect of item No; 10 is pending. Whiles, the petitioners being the owner of the land and the standing timber on the land in S.No.285/2 B removed 60 teak trees after obtaining permission from their patta land, vide proceedings dated 03/06/2014 granted by the Forest Department.



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4. While the fact being so, the defacto complainant with an ulterior motive gave a false complaint on 26/06/2014 alleging that the land in S.No.285/2 B, belongs to him and he planted the teak trees 25 years ago and watered. Those teak trees were removed illegally by the petitioner without permission from the forest authorities. The said complaint was taken up for enquiry in C.S.R.No.311/2014. After enquiry, the said complaint was closed as the police was satisfied with the revenue records regarding possession and permission issued by the Forest Department to cut the teak trees.

5. On 13/11/2018, the defacto complainant with 20 goondas came to the property and illegally trespassed into it. Damaged the fences, CCTV cameras and set fire to the LED TV. In this regard, the police complaint was lodged on 14/11/2018 and C.S.R.No.460/2018 was registered against the defacto complainant and taken up for enquiry. In the said circumstances, to counter blast the complaint against him, the impugned complaint referring the earlier closed complaint has been filed. The complaint of the petitioner is

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closed as civil dispute, though serious damaged caused to her property and proved through video clippings. Whereas, the police is trying to convince the petitioner to settle the dispute amicably through local politicians by way of Kattapanchayat.(kangaroo court).

6. Claiming that the land in which the teak trees were standing belongs to her and those trees were cut with proper permission from the Forest Authorities, the partition deed of the year 2004, the patta pass book, FMB sketch, Adangal and the permission to cut the teak trees which are all in her name is relied by the petitioners.

7. Contrarily, the learned counsel for the respondent/defacto complainant submitted that, the partition deed dated 14/07/2004 has become void and non est, in view of the fact that the Court in O.S.No.102/2004 has passed a preliminary decree dated 26/11/2012 allotting the entire extent of 1.04 acres to the defacto complainant. Therefore, the admission of the petitioners/accused that they cut the standing teak trees in S.No. 285/ 2B is a

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fit case for prosecuting the petitioners for offences of criminal trespass, theft and criminal intimidation.

8. Heard the counsels appearing for the respective parties. Records perused.

9. To entertain the petition to quash a criminal complaint, the dispute should be a purely civil in nature, not an iota of criminality should be even *prima facie* should be made out.

10. The disputed fact in this case is whether the land in survey No:285/2B belongs to the defacto complainant or the first petitioner. The defacto complainant claims that 93 cents of land in S.No.285/2B belongs to him. He planted the teak saplings 25 years ago in that property was declared as his property in the preliminary decree passed by the Sub-Court in O.S.No.102/1991, dated 26/11/2012. Whereas the first petitioner claims that even before the preliminary decree, all the parties concern entered into a

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partition deed dated 14/07/2004 in which the property in S.No.285/2B was allotted to her. After the partition deed, patta got mutated in her name and she is in continuous possession and enjoyment.

11. The partition deed dated 14/07/2004 has allotted 1.04 acres of land in S.No.285/2 B. Based on this partition deed, the patta has been transferred to the first petitioner. Permission to cut the teak trees in the land in survey No.285/2 B was granted on 03/06/2014. As on date, though a preliminary decree claimed to have been passed in favour of the defacto complainant allotting the disputed land to the defacto complainant, no final decree passed and the delivery of possession so far not recorded. Further, in the partition deed relied by the petitioners, the defacto complainant is a signatory and party to the deed. So as on the date of the partition deed, the title and possession of the disputed land has conceded to the first petitioner by the defacto complainant. Any claim of title over Survey No.285/ 2 B by the defacto complainant who has earlier conceded the title in favour of the first petitioner gets revive only after passing the preliminary decree in the

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year 2012. Therefore, it is preposterous to allege that the person in whose name patta and title deed stands committed theft of the trees standing in that land. No one can commit theft of his/her own property. Till the final decree is passed in a suit for partition, the ownership is only tentative. The person who is possession of the property, has to be divested of the possession in the manner known to law. The right of the ostensible owner till possession is handed over is either to claim mense profit or damages or both as the case may be.

12. Therefore, this court holds that the dispute in the instant case is purely civil in nature. No criminal colour be given for the act of cutting the trees after obtaining permission from the forest department by the title holder. The title declared by the court in the suit for partition, should culminate in delivery of possession, till then, the co sharer who is holding the portion of the property allotted to the other sharer is not a stranger but person in holding over.

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13. For the reasons stated above, the Criminal Original Petition is allowed. Crime No.143 of 2019 on the file of the first respondent police is quashed. Consequently, connected Miscellaneous Petition is closed.

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Index:yes/no
speaking order/non speaking order
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To :

1.The Sub Inspector of Police, Jolarpet Police Station,
Jolarpet, Vellore District.

2.The Public Prosecutor, High Court, Madras.



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DR.G.JAYACHANDRAN,J.

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Delivery order made in
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