



WEB COPY

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 09.02.2022

CORAM:

THE HON'BLE MR.JUSTICE M.NIRMAL KUMAR

CRL.O.P.NO.29210 OF 2017

AND

CRL.M.P.NOS.16509 OF 2017

1.Chinnappa Gounder

2.Pachamauthu

3.Angamuthu @ Thangaraj

4.C.Semalai Gounder

`...Petitioners

Vs.

1.State,

By its Inspector of Police,  
Ammapettai Police Station,  
Ammapettai, Erode District,  
(Crime No.373 of 2005)

2.G.Suseela

3.C.Gurusamy

4.Mariammal

...Respondents

(Respondents 2 to 4 impleaded by order dated  
09.02.2022 in Crl.M.P.No.13090 of 2021 in  
Crl.O.P.No.29210 of 2017)

PRAYER : Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, to set aside order in Tr.Crl.M.P.No.1422 of 2017, on the file of the Principal Sessions Judge, Erode and to transfer the Calendar case in C.C.No.130 of 2016 on the file of the Judicial Magistrate, Bhavani to any other Judicial Magistrate in Erode District.

For Petitioners : Mr.A.V.Arun

For Respondent : Mr.A.Damodaran  
Additional Public Prosecutor.



## ORDER

This Criminal Original Petition has been filed to set aside the order in Tr.Crl.M.P.No.1422 of 2017, on the file of the Principal Sessions Judge, Erode and to transfer the Calendar case in C.C.No.130 of 2016, on the file of the Judicial Magistrate, Bhavani to any other Judicial Magistrate in Erode District.

2.The petitioners, who are the accused in C.C.No.130 of 2016, on the file of the Judicial Magistrate, Bhavani facing trial for offences under Sections 419, 467, 468, 471 r/w 109 IPC, have filed this petition.

3.The gist of the complaint is that the defacto complainant Gurusamy had lodged a complaint stating that on 17.04.1968, his father late Gurusamy Gounder had inherited 2 acres of agricultural land in R.S.No.120 and 121/1 of Illipilli Village, Bhavani Taluk along with the rights in the electricity connection and motor pumpset. On 14.01.2004, his father passed away due to ill health. Thereafter, the property had devolved on the defacto complainant and his mother Mariammal. A1 in this case is the junior paternal uncle of the defacto complainant and A2 & A3 are the sons of A1. A4 and A5 are the friends of A1. A1 to A3 had created a forged Will on 08.01.2004 and got it registered as Document No.1 of 2004, at SRO Ammapettai and claim rights over the property. The Thumb impression would prove that it is not that of the defacto complainant's father late Gurusamy. Hence, the accused have created a forged Will and attempted to take away of property of the defacto complainant.

4.The contention of the petitioners is that the said late Gurusamy Gounder had married one Mariammal Daughter of Sidhagounder @ Dinnugounder of Edapadi Taluk. The said Mariammal deserted her husband Gurusamy within few months of marriage, thereafter, she was living with one Chinnathambi of Pudhupatti, Poolampatti Village, Edapadi Taluk. Out of the relationship with Chinnathambi, the defacto complainant Gurusamy in C.C.No.130 of 2016 was born. In the school certificate, birth certificate and in all documents of the defacto complainant Gurusamy, it is recorded that he is the son of Chinnathambi. Thus, the defacto complainant Gurusamy has no right to lodge a false complaint on the inheritance of the property. The petitioner/complainant G.Suseela, who is the adopted daughter of late Gurusamy Gounder, had initially lodged a complaint before the District Crime Branch, Erode in Crime.No.12 of 2010 and the case was closed as mistake of fact and RCS.No.06 of 2010 dated 06.08.2010 was served to her. Therefore, she filed a petition in CMP.No.2076 of 2017 which was dismissed, against which, she preferred a Criminal Revision



Petition No.65 of 2017, before the II Additional District and Sessions Judge, Erode. The II Additional District and Sessions Judge, Erode, on 12.01.2022, by partly allowing the Criminal Revision case, set aside the order passed by the Chief Judicial Magistrate, Erode in C.M.P.No.2076 of 2017 dated 15.11.2017 and directed the Chief Judicial Magistrate, Erode, to comply with the requirements under Section 204 Cr.P.C in respect of R1 to R8.

5.The learned counsel for the petitioners submits that there is also a civil case pending in respect of the said property.

6.The learned Additional Public Prosecutor submits that the petitioners, due to the pendency of the above petition, had kept the trial pending in C.C.No.130 of 2006 for the past several years. He further submitted that there are only nine witnesses in this case and all these nine witnesses have been examined and therefore, the trial can be completed within a period of three months.

7. The learned counsel for the defacto complainant submitted that the petitioners earlier filed discharge petitions in C.C.No.130 of 2016 in C.M.P. Nos. 4819, 4968, 4421 and 4967 of 2016, thereafter, the discharge petitions were dismissed by the Judicial Magistrate, Bhavani. The petitioners represented before the lower Court that they have preferred the revision and obtained stay in Crl.R.C.No.1059 to 1062 of 2017. Since no order copy was produced, the trial Court proceeded with the trial, against which, the present petition filed seeking transfer on the ground that the Judicial Magistrate, Bhavani had prejudged the issue and had not conducted a fair trial. He further submitted that the pendency of the case in Crl.M.P.No.2076 of 2017 before the Chief Judicial Magistrate, Erode is in no way connected with the present case. By filing one petition or the other, the accused are stalling the trial in C.C.No.130 of 2006. He further submitted that the revision petitions filed against the discharge petitions in Crl.R.C.Nos.1059 to 1062 of 2017, later had been withdrawn. It is also now represented that the Judicial Magistrate, Bhavani is transferred, Be that as it may.

8.Considering the submissions and on a perusal of the materials, it is seen that in C.C.No.130 of 2006, there are nine witnesses and the case is pending before the Judicial Magistrate, Bhavani. The private complaint in C.M.P. No.2076 of 2017, filed by G.Suseela claiming herself to be the adopted daughter of late Gurusamy Gounder, before the Chief Judicial Magistrate, Erode is now directed by the II Additional Sessions Judge, Erode in Crl.R.C.No.65 of 2017 to proceed with the case under Section 204 Cr.P.C., in this case, there are only four witnesses. On a perusal of the materials, it is seen that the



complaints in both the cases seems to be whether the defacto complainant Gurusamy in C.C.No.130 of 2006 is the son of late Gurusamy Gounder born to Gurusamy Gounder and Mariammal or G.Suseela is the adopted daughter of Gurusamy Gounder and the issue is forgery of Will.

9.The sum and substance is to enjoy the property of two acres in R.S.No.120 and 121 along with the electricity connection and motor pumpset. This Court feels that it would be appropriate that C.C.No.130 of 2006 to be transferred from Judicial Magistrate, Bhavani to the Chief Judicial Magistrate, Erode, to be tried along with Crl.M.P. No.2076 of 2017 in the event of Crl.M.P. No.2076 of 2017 is converted as calendar case both cases to be tried simultaneously, the only condition is that the witnesses to be examined separately, evidence to be recorded separately, judgment to be passed on the same date. Since in both cases, witnesses are only limited the Chief Judicial Magistrate, Erode to give preference and to complete the trial in the two cases within a period of four months from the date of receipt of a copy of this Order. Accordingly, this Criminal Original Petition is disposed of. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (CS-VI)

// True Copy //

Sub Assistant Registrar

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To

- 1.The Principal Sessions Judge,  
Erode.
- 2.The IInd Additional Session Judge,  
Erode.
- 3.The Judicial Magistrate,  
Bhavani.
- 4.The Judicial Magistrate,  
Erode.
- 5.The Chief Judicial Magistrate,  
Erode.
- 6.The Inspector of Police,  
Ammapettai Police Station,  
Ammapettai, Erode District.



7.The Public Prosecutor,  
High Court, Madras.

+1cc to M/s.A.V.Arun, Advocate Sr.No.8394

+1cc to M/s.N.Manokaran, Advocate Sr.No.8424

CRL.O.P.No.29210 of 2017

PMK (CO)  
RVM(28/06/2022)