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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 20.01.2022

C O R A M

THE HONOURABLE MR.JUSTICE N. SATHISH KUMAR

Crl. O.P. No.29478 of 2017 and
Crl.M.P.No.16657 of 2017

1) Thangaraj

2) Nesamani

...Petitioners/Accused

Versus

1) State rep by the Inspector of Police,
Vaniyambadi Taluk Police Station,
Vellore District.

...1st Respondent/Complainant

2) Rajendhiran

3) Stella

4) Meluguraj

5) Lakshmi

6) Mani

7) Sivakumar

... Respondents/Accused 3 to 7

PRAYER : Criminal Original Petition filed under Section 482 of Criminal Procedure Code, to call for the records of the entire proceedings in M.C.No.1 of 2017 dated 11.12.2017 on the file of Sub Divisional Magistrate cum Sub Collector, Tirupattur, Vellore District and quash the same.

For Petitioners : Mr.D.Senthil Kumar

For Respondents : Mr.S.Vinoth Kumar for R1
Government Advocate (Criminal side)

: Mr.T.Sundaravadanam for R2 to R7



O R D E R

This Criminal Original Petition has been filed to call for the records of the entire proceedings in M.C.No.1 of 2017 dated 11.12.2017 on the file of Sub Divisional Magistrate cum Sub Collector, Tirupattur, Vellore District and quash the same.

2.The impugned order was passed by the Sub Divisional Magistrate cum Sub Collector, Tirupattur, Vellore District in M.C.No.1 of 2017 dated 11.12.2017. The order has been passed to the effect that survey No.123 of 2016 is shown as street as per the revenue records. The petitioners herein have already filed a suit in O.S.No.58 of 2015 before the learned Additional District Munsif, Vaniyambadi in respect of the plot situated at Survey No.123 of 2018 and got a decree against the respondents 2 to 7 herein, in respect of house property. Now, the dispute appears with regard to the common pathway which is situated in Survey No.123 of 2016. The Sub Collector has passed an order that, on examination, the petitioners were found to have dug a pit and raised a compound wall as against that order. Hence, the present petition has been filed.

3. The contention of the learned counsel for the petitioners is that the Civil Court has already decided the rights of the parties. The respondents produced the Decree and Judgment made in O.S.No.58 of 2015 dated 04.10.2016 and filed a complaint before the respondent police, which resulted in passing of an order by the Sub Divisional Magistrate cum Sub Collector, Tirupattur, Vellore District. It is his further contention that the petitioners are in possession of the plot as per the Decree and Judgment made in his favour in Survey No.123 of 2018.

4. When a query was raised by this Court as to whether he has any right over survey no.123/2016, the learned counsel fairly submitted that as far as the pathway which is situated in survey no.123/2016 is concerned, the petitioners have no title over the above said land and he is entitled to put up construction in his land and not on the public pathway. As rightly pointed out by the learned counsel for the petitioners, the petitioners are certainly entitled to enjoy their lands which is also the subject matter of the Decree and Judgment passed by the Civil Court in O.S.No.58 of 2015 by the learned Additional District Munsif, Vaniyambadi, as far as survey No.123/2018, the dispute revolves around Survey No.123 of 2016 which is said to be the common road and FMB sketch annexed in the petitioner's typed set also shows that there is a common



road earmarked for all the plots. In the above survey number which is the disputed area, now, the learned Sub Divisional Magistrate cum Sub Collector, Tirupattur, Vellore District, taking note of the Decree and Judgement, which is confined only in respect of survey No.123 of 2018, it is found that there was an attempt made by the petitioners to dig a pit in order to put up a compound wall over the public pathway.

5. As the petitioners themselves have submitted before this Court that, in front of their house on the road, they have no right to raise any construction, this Court is of the view that the order of the Sub Divisional Magistrate cum Sub Collector, Tirupattur, Vellore District does not suffer any infirmities. Accordingly, the order of the Sub Divisional Magistrate cum Sub Collector, Tirupattur, Vellore District is confirmed and it is also made clear that the petitioners are entitled to enjoy the property only in respect of Survey No.123 of 2018 and they cannot obstruct the passage which is shown as the road in FMB sketch which is situated in Survey No.123 of 2016.

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

SD/-
ASSISTANT REGISTRAR

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SUB ASSISTANT REGISTRAR

msv

To

1. The Sub Divisional Magistrate,
cum Sub Collector,
Tirupattur,
Vellore District.
2. The Inspector of Police,
Vaniyambadi Taluk Police Station,
Vellore District.



3. The Public Prosecutor,
High Court,
Madras.

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+1cc to M/s.T.Sundaravadanam, Advocate Sr.3458
+1cc to M/s.D.Senthil Kumar, Advocate Sr.3830

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Cr1.M.P.No.16657 of 2017

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srg 10/02/2022