



CRL RC(MD). Nos.768 and 769 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

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DATE : 23.09.2022

PRESENT

THE HONOURABLE MR.JUSTICE G.ILANGO VAN

CRL RC(MD) Nos.768 and 769 of 2022

Crl.R.C.(MD)No.768 of 2022:

Kasimari Shanmuga Sundaram Trust,
Represented through its Managing Trustee,
K.s.Anantharaman,
No.50, Pulla Avenue,
Shenoy Nagar, Chennai-600 030

... Petitioner/petitioner

Vs

1.M.Thirunamam
2.M.Deepasundaram
3.M.Nandini Devi
4.S.Vasudevan
5.S.Periasamy
6.K.Chandrasekar
7.E.Esakkiselvam
8.S.Daniel
9.R.Rathinakumar

... Respondents/Respondents/Accused

Crl.R.C.(MD)No.769 of 2022:

K.S.Kasimaris Ceramiqu Pvt. Ltd.,
represented by its Managing Director,
K.S.Anantharaman(M167)
No.50, Pulla Avenue,
Shenoy Nagar, Chennai

... Petitioner/petitioner

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Vs

1.M.Thirunamam
2.M.Deepasundaram
3.M.Nandini Devi
4.P.Sundar
5.Sholan R.Selvin
6.R.S.Sridhar
7.R.L.Rathinakumar
8.T.Saminathan

... Respondents/Respondents/Accused

COMMON PRAYER: Criminal Revision Cases are filed under Section 397 r/w 401 of the Criminal Procedure Code, to call for the records and set aside the order passed in Cr.M.P.Nos.291 & 292 of 2022 on the file of the Judicial Magistrate cum Anti Land Grabbing Special Court, Tuticorin dated 17.06.2022.

For Petitioner : Mr.H.Arumugam
(in both petitions)

COMMON ORDER

These revision cases are preferred against the order of dismissal that has been passed by the trial Court in Cr.M.P.Nos.291 & 292 of 2022 dated 17.06.2022. The petitioner Companies in both petitions are represented by a Managing Trustee. For better convenience, the same are referred as petitioner.

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2.The facts in brief are:

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The petitioner filed a petition under Section 156 (3) Cr.P.C.. Allegations in the petition was that a trust was created as per the provisions of the Trustee Act by the father of the complainant on 20.12.1979. It was a public trust. Four persons were appointed as founder trustees. The founder trustee had himself purchased several properties measuring about 45 acres 23 cents under various sale deeds on various dates in various survey numbers. The entire property mentioned in the complaint belongs to the Trust.

(b)The aforesaid founder trustee died on 24.07.1995 later the complainant was elected as a Managing trustee. By resolution, the present trustees were authorized to function as such. After the death of the Shanmuga Sundaram, there was some misunderstanding between the trustees and income was also reduced. The elder son of the founder trustee namely, Mothilal died on 10.20.2008 leaving behind the Accused Nos.1 to 3 as his legal heirs. They created patta in respect of the trust property and on the basis of the patta they sold the property to accused Nos.4 and 5.



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(c) On coming to know about the illegal sale, they were issued with a notice. But, there was no reply and there was no cancellation of the sale deed also. Again the accused Nos.1 to 3 sold some other properties to accused No.9, in which the sub-Registrar was also a party. On 30.09.2021, he sent a complaint to Anti Land Grabbing Cell, Thoothukudi, and the same was received, but no action has been taken. Hence, the aforesaid petition was filed under Section 156(3) Cr.P.C., for direction.

(d) The trial Court after going through the complaint recorded a finding that it is purely a civil dispute and this revision petitioner is trying to give criminal color to the civil issue. By granting liberty to the petitioner to file a private complaint, the trial Court dismissed the petition by order dated 17.06.2022. Hence, the present revision.

3. Heard the learned counsel for the petitioner and perused the records.



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4.At the time of argument, the learned counsel for the petitioner has submitted that even without going through the documents, which have been produced by the petitioner, the trial Court has recorded a finding that it is a civil dispute. But however, the trial Court finds that the property absolutely belongs to the Trust as mentioned above. When the property belongs to the Trust, the accused Nos.1 to 3 have no right to sell the property to other persons, but they have created documents and sold the property to various persons. This according to him, *prima facie* shows commission of cognizable offence by the accused persons. When a cognizable offence is made out, then the learned Magistrate is duty bound to direct the concerned police in this regard to register the case and there is no need to record a pre-mature finding that it is purely a civil dispute.

5.The learned counsel appearing for the petitioner objects the manner of the disposal that was undertaken by the Magistrate. He would further rely upon the interim order that was passed in M.P.No. 1 of 2007 in C.M.A.No.403 of 2007, in which an interim injunction was passed against the respondents in the aforesaid petition, pending the C.P.No.16



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of 2003 on the file of the Company Law Board, Chennai. The order is dated 16.02.2007; Even after the aforesaid injunction order, the aforesaid illegal activity was carried on; This will show the criminal intention on the part of the accused persons. The aforesaid sales have been effected without following proper circulars with the connivance of the Sub Registrar and the order passed by the trial Court is required to be interfered.

6. No doubt that the property belongs to the Trust and no person is entitled to deal with the trust properties without following the due process of law. The sale effected by the accused persons is *per se* illegal and the same cannot be enforced. There can be no doubt on that. But whether selling the property belonging to the Trust saying that the property belongs to them, would amount to cheat is the point. Here, the complainant is not the affected party. The complainant is a Trustee of the Trust. But however, it is seen that liberty has been granted to the petitioner to file a private complaint under Section 200 Cr.P.C. When the discretion has been exercised by the trial Court in a particular manner, unless and until it is found to be erroneous or illegal no



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interference can be called for by this Court by way of this revision. Doors were not shut to the petitioner completely. Only one door has been shut and another door is available to the petitioner. He can knock the other door for vending out his grievances. These petitions deserve dismissal. Accordingly, these Criminal Revisions are dismissed with the aforesaid liberty.

(G I J)
23.09.2022

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To

1.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.



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G.ILANGOVAAN,J

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