



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 11.01.2022

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THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

Crl.O.P.(MD)Nos.15281 & 15301 of 2021
and
Cr.M.P.(MD)Nos.8204 & 8212 of 2021

Crl.O.P.(MD)No.15281 of 2021:

1.Alagumalai
2.S.Sundar
3.Nethaji
4.Arun
5.A.Sethupathi
6.Murugan
7.Vijayalakshmi

... Petitioners/Accused Nos.1&7

Vs.

1.The State represented by
The Inspector of Police,
Devadanapatti Police Station,
Theni District,
Theni.
(Crime No.478 of 2018)

... 1st Respondent/
Defacto complainant

2.Rathinasamy

... 2nd Respondent/
Respondent

Prayer: Criminal Original Petition is filed under Section 482 Cr.P.C., to call for the records pertaining to the final report in C.C.No.297 of 2019 on the file of the learned Judicial Magistrate Court, Periyakulam, in Crime No.478 of 2018 dated 23.12.2018 on the file of the first respondent and quash the same.

For Petitioners : Mr.T.Lajapathi Roy

For Respondents : Mr.E.Antony Sahaya Probahar
Additional Public Prosecutor for R.1

No Appearance for R.2



Crl.O.P. (MD)No.15301 of 2021:

1.Perumal Thevar
2.Perumayi
3.Murugan
4.Vijayalakshmi

... Petitioners/Accused Nos.1 to 4

Vs.

1.The State represented by
The Inspector of Police,
Devadanapatti Police Station,
Theni District,
Theni.
(Crime No.32 of 2019)

... 1st Respondent/
Defacto Complainant

2.Rathinasamy

... 2nd Respondent/
Respondent

Prayer: Criminal Original Petition is filed under Section 482 Cr.P.C., to call for the records pertaining to the final report in C.C.No.298 of 2019 on the file of the learned Judicial Magistrate Court, Periyakulam, in Crime No.32 of 2019 dated 19.01.2019 on the file of the first respondent and quash the same.

For Petitioners : Mr.T.Lajapathi Roy

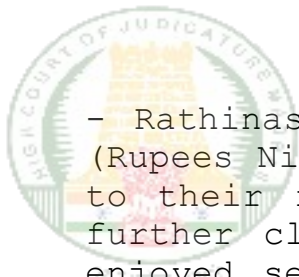
For Respondents : Mr.E.Antony Sahaya Probahar
Additional Public Prosecutor for R.1

No Appearance for R.2

COMMON ORDER

Heard the learned counsel appearing for the accused in C.C.Nos.297 and 298 of 2019 on the file of Judicial Magistrate Court, Periyakulam. The learned Additional Public Prosecutor appearing for the Inspector of Police, Devadanapatti Police Station, Theni District, stated that the defacto complainant in both these cases, viz., Rathnasamy, is the son of Perumal Thevar. Though notices have been served and his name has been printed in the cause list, he has not chosen to enter appearance either in person or through counsel.

2.The case of the defacto complainant is that the property comprised in Survey Nos.1497/1 and 1494/1A measuring about 10 acres in Mattamalai in Devedhanampatti, is an ancestral property and that it was decided to partition the same among the three brothers namely, Chandrasekar, Murugan and the defacto complainant



- Rathinasamy. Each of them were to pay a sum of Rs.9,00,000/- (Rupees Nine Lakhs only) to Rs.10,00,000/- (Rupees Ten Lakhs only) to their father and the property was to be partitioned. It is further claimed that it was orally partitioned and it was being enjoyed separately. However, one of the brothers namely, Murugan wants to grab the entire property. In this regard, a civil suit in O.S.No.72 of 2016 was filed before the District Munsif Court, Periyakulam and it is still pending. At this stage, the offences in question came to be committed, leading to registration of a Crime No.478 of 2018 and Crime No.32 of 2019 on the file of Devadanapatti Police Station. In Crime No.478 of 2018, the persons mentioned in this Criminal Original Petition, are the tenants occupying a portion of the property. In Crime No.32 of 2019, the parents, brother and the sister-in-law of the defacto complainant are shown as accused. Both the cases were investigated and charge sheeted. Cognizance of the offences was taken and the cases are pending and the Crime No.478 of 2018 culminated in C.C.No.297 of 2019, while Crime No.32 of 2019 culminated in C.C.No.298 of 2019. To quash the same, these Criminal Original Petitions came to be filed.

3.The learned counsel appearing for the petitioners / accused reiterated all the contentions set out in the memoranda and called for to quash both the proceedings.

4.Per contra, the learned counsel Additional Public Prosecutor appearing for the first respondent submitted that no case for quashing has been made out.

5.I carefully considered the rival contentions and went through the materials on record.

6.It is seen that the property in question originally stood only in the name of Perumal Thevar. Perumal Thevar had executed a settlement deed dated 08.06.2016 registered as Document No.2529 of 2016 on the file of Sub Registrar Office, Vathalakundu, in favour of the one of his sons, namely, Murugan. It is further seen that the revenue records also stand only in the name of Murugan as of now. That is why Rathnasami had filed O.S.No.72 of 2016 before the District Munisf Court, Periyakulam, seeking the relief of partition.

7. It is not the case of the defacto complainant that he obtained any order of interim injunction in his favour. When the civil Court is seized of the matter and when the defacto complainant is not able to show a scrap of material in support of his claim of possession, the question of prosecuting his parents and his brothers and sister-in-law will not arise at all. The learned counsel for the petitioners goes to the extent of



contending that since Perumal Thevar is very much alive, the question of filing a partition suit against him will not even arise. I do not want to go into the said legal issue. When the defacto complainant is not able to place any prima facie material in support of his claimed legal rights, the question of prosecuting the petitioners for trespass or theft will not at all arise. The very continuance of impugned proceedings is an abuse of legal process. Both the proceedings stand quashed and both the Criminal Original Petitions are allowed. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

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Note: In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant concerned.

To

1. Judicial Magistrate Court,
Periyakulam.
2. The Inspector of Police,
Devadanapatti Police Station,
Theni District, Theni.
3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

+2 CC to M/s.T.LAJAPATHY ROY, Advocate (SR-1524 & 1525[F] dated 12/01/2022)

Crl.O.P. (MD)Nos.15281 & 15301 of 2021
and
Cr.M.P. (MD)Nos.8204 & 8212 of 2021
11.01.2022

USK/31.01.2022/4P/6C

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