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CrI.O.P.No.7174 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.12.2023

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THE HON'BLE Mr. JUSTICE G.K.ILANTHIRAIYAN

CRL.O.P.No.7174 of 2022
and
CRL.M.P.Nos.4097 & 4100 of 2022

1. Mathumalar
2. M.Vijayakumar Petitioners

Vs

1. The State Rep by
Inspector of Police,
Anti Land Grabbing Special Cell – 11,
Central Crime Branch – II,
Vepery, Chennai – 600 007.

2. S.Saraswathi Respondents

Prayer: Criminal Original Petition is filed under Section 482 of Criminal Procedure Code, to call for the records relating to C.C.No.263 of 2020 on the file of the Judicial Magistrate, Tambaram, Crime No.26 of 2012 on the file of the 1st respondent and quash the same in respect of the petitioners/accused Nos. 2 & 3.

For Petitioner : Mr.R.Murali

For R1 : Mr.A.Gopinath
Government Advocate (CrI. Side)



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ORDER

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This Criminal Original Petition has been filed to quash the proceedings in C.C.No.263 of 2020 on the file of the Judicial Magistrate, Tambaram.

2. Heard the learned counsel appearing for the petitioners and the learned Government Advocate (Crl.Side) appearing for the first respondent. Though notice has been served on the respondent, none appeared on behalf of the respondent either in person or through pleader.

3. The petitioners are arrayed as A2 and A3. The case of the prosecution is that the land, comprised in Survey No.377/4 admeasuring to an extent of 3000 sq.ft. situated at Durga Nagar, Thiruveermalai Village, Tambaram Taluk, Kancheepuram District, was originally owned by one Ekambaram. He purchased the said property from one S.Dilli Naidu by a registered sale deed dated 23.12.1993 vide document No.5227 of 1993. He sold of the said property to the first accused by a registered sale deed dated 14.12.2006 vide document No.4854 of 2006. In order to deal with the said property, the first accused executed a power of attorney in favour of the first petitioner herein on 30.10.2009



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registered vide document No.984/IV/2009. Thereafter, the first accused also had entered into a Joint Venture Agreement dated 01.11.2009 with M/s.Greenwaay Housing Private Limited, which is represented by its Managing Director, viz., the second petitioner, herein. In order to develop the suit property, the first petitioner, being a power agent, applied for planning permission before the authority concerned. Thereafter, as per the Joint Venture Agreement, the first accused appointed the second petitioner as a power agent in respect of the undivided share of 2690 Sq.ft. out of total extent of 4398 sq.ft dated 04.05.2010 registered vide document No.367/IV/2010. Thereafter, the second petitioner developed the said land into residential apartments, which were sold to the prospective buyers. After construction, the second respondent filed a suit as against the first accused and the petitioners in O.S.No.124 of 2010 on the file of the District Munsif, Alandur, for injunction restraining them from interfering with her land bearing Plot No.15 comprised in Survey No.377/4 admeasuring to an extent of 3000 sq.ft situated at Durga Nagar, Thiruneermalai Village, Tambaram Taluk., Kancheepuram District.



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4. In the complaint, she also alleged that the first accused trespassed into the land and dugged up for putting basement. Therefore, she lodged a complaint and she was directed to approach the Civil Court for appropriate relief. In fact, the petitioners filed their written statement and categorically stated that they never trespassed and constructed any superstructure in Survey No.377/4. Whereas, they had put up construction only in the land belonging to the first accused premises in Survey No.374/1A2, that too admeasuring 4938 sq.ft. Therefore, the second respondent, without even identifying property, filed a suit. Subsequent to the said suit, she also lodged the present complaint. Pending suit, the petitioners filed an application to appoint an Advocate Commissioner to note down the physical features of the suit property. The Advocate Commissioner inspected the suit property and filed a detailed report along with a sketch.

5. In the Advocate Commissioner's report, it is stated that the suit property is situated in the middle of the sketch and the petitioners property is situated away from the suit property. However, the second respondent alleged that by showing their documents, the petitioners illegally encroached her property and put up construction, whereas, the



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Advocate Commissioner filed his report stating that both the properties are located in different areas.

6. That apart, the second respondent filed a writ petition in W.P.No.15013 of 2010 before this Court for the very same set of allegations and the same was dismissed by an order dated 07.11.2016. Therefore, no offence is made out as against the petitioners as alleged by the second respondent. The property itself is completely different from the property owned by the second respondent.

7. A perusal of the parent documents also reveals that the first accused and his vendors have title over the subject property. That apart, the survey number as well as the extent of the property are completely different from the property owned by the second respondent. Therefore, the present impugned proceedings is nothing but clear abuse of process of law and the second respondent has given a criminal colour for a civil dispute. Therefore, the impugned proceedings cannot be sustained as against the petitioners and it is liable to be quashed.



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8. In view of the above discussions, the proceedings in

C.C.No.263 of 2020 on the file of the Judicial Magistrate, Tambaram, is

hereby quashed. Accordingly, this Criminal Original Petition stands

allowed. Consequently, connected miscellaneous petitions are closed.

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Index:Yes/No

Internet:Yes/No

To

1. The Judicial Magistrate,
Tambaram.

2. The Inspector of Police,
Anti Land Grabbing Special Cell – 11,
Central Crime Branch – II,
Vepery, Chennai – 600 007.

3.The Public Prosecutor,
High Court, Madras.



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