



Crl.R.C(MD)No.681 of 2023

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 07.08.2023

Pronounced on : 22.11.2023

CORAM :

THE HONOURABLE MR.JUSTICE K.K.RAMAKRISHNAN

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Punithavathi

.. Petitioner/Petitioner

Vs.

1.The Inspector of Police,
Ottapidaram Police Station,
Ottapidaram,
Thoothukudi District.
(Crime No.109/2016)

.. Respondent/Respondent

2.Dhanaraj

3.Mohan Power Infrastructure Pvt. Ltd.,
through its power agent
M.P.Sundarrajan

4.Green Info Clean Energy Pvt. Ltd.,
through its power agent
Gnanaprakasam.

.. Respondents/Proposed accused

PRAYER: Criminal Revision filed under Section 397 r/w 401 of the Criminal Procedure Code, to call for the records pertaining to the order dated 20.06.2023 passed in Crl.M.P.No.2716 of 2023 on the file of the



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learned District Munsif-cum-Judicial Magistrate, Ottapidaram,

Thoothukudi District and set aside the same.

For Petitioner : Mr.R.Jegadeeswaran

For Respondent : Mr.M.Vaikkam Karunanithi
Government Advocate(Criminal side)
For R1

Mr.C.Venkatesh Kumar
for M/s.Ajmal Associates
For R4

For R2& R3 : No appearance

ORDER

This Criminal Revision has been filed against the order dated dated 20.06.2023 passed in Crl.M.P.No.2716 of 2023 on the file of the learned District Munsif-cum-Judicial Magistrate, Ottapidaram, Thoothukudi District.

2. Veerappanaickar is the petitioner's father-in-law. The said Veerappanaickar has five female children and three male children. He is the owner of the property situated in the Valasamuthiram village in Survey No.2/3 to the extent of 5 acres 52 cents and the same was acquired by him through his family partition. He died intestate on



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07.10.1998. After his demise, all the legalheirs were enjoying the property jointly without any dispute. That being the situation, one of the sons, namely, the second respondent herein executed a sale deed in respect of the above said property to the fourth respondent though the power agent third respondent. The fourth respondent on the basis of the sale deed, trespassed into the said property and committed mischief of cutting the trees and removing wood and also sand from the property worth about Rs.4,00,000/-. The petitioner gave the complaint to the jurisdictional police station. The same was not taken on file and hence, she sent a representation to the Superintendent of Police, Toothukudi. But no action was taken. Hence, she filed the private complaint before the learned Judicial Magistrate-cum-District Munsif, Ottappidaram for the offence under Sections 406, 471, 420, 294(b), 355 and 506(ii) IPC. The same was taken on file in Cr.M.P.No.2716 of 2023 and after considering the facts and circumstances, the trial Court dismissed the said petition.

3. Challenging the same, the petitioner has filed this petition and reiterated the contention made in the said complaint. It is the specific case of the petitioner that the land was not divided among the



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coparceners. Each coparcener is the owner of the property till the partition is effected in accordance with law. Further, the act of the fourth respondent to trespass into the land is nothing but a criminal offence. Further, the fourth respondent and his men criminally intimidated the petitioner also. So, the accused persons committed offence under Sections 406, 471, 420, 294(b), 355 & 506(ii)IPC.

4. The fourth respondent filed counter stating that he purchased the property from one of the sons of Veerappanaickar. According to the fourth respondent, during the lifetime of the said Veerappanaickar, he orally partitioned the property in question and this property was allotted to the second respondent. From the second respondent, he purchased the property and hence he has every right to interfere with the property and hence, there is no criminal element in this petition. The petitioner filed this petition to give the criminal colour to the civil dispute.

5. This Court has considered the rival submissions made by both sides and perused the records.



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6. According to the petitioner, there was no partition. Even as per the fourth respondent's case, there was oral partition during the lifetime of the father of the second respondent Veerappanaickar. The petitioner is the daughter-in-law of the said Veerappanaickar and she is entitled to the share of her husband and his possession should not be disturbed. Even as per the fourth respondent's case, he purchased the property on the basis of the oral partition. He has not purchased the property on the basis of the registered partition entered between his vendor and the petitioner with metes and bounds. In the said circumstances, he is duty-bound to file the suit for partition for separate possession. Without taking appropriate relief before the trial Court, the fourth respondent cannot take law in his hand and illegally trespass into the land of the petitioner namely, widow (wife of the respondent's vendor's deceased brother) and hence, this Court *prima facie* finds that an enquiry is to be conducted as per the **Lalitha Kumari** case reported in **2014(2)SCC1** to ascertain the above said act of entry of the fourth respondent into the land in possession of the petitioner whether it constitutes offence or not. Hence, this Court sets aside the order passed by the learned trial Judge and directed the jurisdictional police to enquire the matter as per the **Lalitha Kumari** case reported in **2014 (2) SCC 1**.



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WEB COPY 7. It is the duty of the learned Judicial Magistrate to look into the allegation as to whether any offence is made out or not. The learned Judicial Magistrate has not considered the principle laid down by the Hon'ble Supreme Court in **Lalitha Kumari case** and hence, this Court is inclined to set aside the order passed by the trial Court.

8. In the result, this Criminal Revision Case is allowed. The impugned order dated 20.06.2023 passed in Crl.M.P.No.2716 of 2023 by the learned District Munsif-cum-Judicial Magistrate, Ottapidaram, Thoothukudi District, is hereby set aside and the first respondent police is hereby directed to conduct the enquiry by issuing summons to the respondents 2 to 4 under Section 41 A of Cr.P.C and complete the same within a period of 14 days as fixed in the **Lalitha Kumari** case and register the case, if any cognizable offence is made out.

22.11.2023

NCC : Yes/No
Index :Yes/No
Internet :Yes/No
PJJ



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To

1. The District Munsif-cum-Judicial Magistrate,
Ottapidaram,
Thoothukudi District.
2. The Inspector of Police,
Ottapidaram Police Station,
Ottapidaram,
Thoothukudi District.
3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.
4. The Section Officer, Criminal Section,
Madurai Bench of Madras High Court,
Madurai.



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K.K.RAMAKRISHNAN, J.

PJL

**Pre-delivery order made in
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22.11.2023