



CrI.O.P.No.20032 of 2022

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.02.2024

CORAM:

THE HON'BLE MRS.JUSTICE T.V.THAMILSELVI

CrI.O.P.No.20032 of 2022

and

CrI.M.P.No.13139 of 2022

1. S.Dhamodharaswamy
2. S.Sivasamy
3. L.Santhamani
4. N.Lingasamy

... Petitioners

Versus

1. Sub-Divisional Magistrate cum
Revenue Divisional Officer,
Coimbatore North,
Coimbatore Dt.
(Proc. vide Na.Ka.No.855 of 2021/A2)
2. The Inspector of Police,
Annur Police Station,
Annur Coimbatore Dt.
(Crime No.93 of 2021)

3. Chandrasekaran

4. Subbathal

... Respondents



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PRAYER : Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, to call for the records in the impugned proceeding order in Na.Ka.No.855/2021/A2 dated 23.05.2022 passed by 1st respondent under Sec.145 of Code of Criminal Procedure, 1973 and quash the same as illegal and arbitrary.

For Petitioners : Mr.K.V.Muthu Visakan
For Respondents : Mr.S.Vinoth Kumar,
Govt. Advocate (Crl. Side)
for R1 and R2

Mr.K.Susindran for R3

No appearance for R4

ORDER

This Criminal Original Petition has been filed seeking to quash the impugned proceedings in Na.Ka.No.855/2021/A2 passed by the 1st respondent under Sec. 145 of Cr.P.C.



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2. Heard both sides.

3. The petitioners are ranked as 'A' party 1 to 4 in the impugned proceedings initiated in Na.Ka.No.855/2021/A2 by the 1st respondent and the respondents 3 and 4 are the 'B' party 1 and 2 in the said proceedings, who are the complainant herein. Challenging the impugned proceedings initiated by 1st respondent, the petitioners/'A' party prayed to quash the proceedings stating that they are relatives and legal heirs of late Arumuga Gounder, who is owner of larger extent of land including S.F.No.30, 28, 45/1B, 54/1, 56/3, 153/3, 154/3, 155/1, 159, 166, 168, 171, 173, 174 of Kunnathur and S.S.Kulam Village, Annur Taluk, Coimabatore Dt. The said Arumuga Gounder had two sons and three daughters viz., Shanmugasamy, Palanisamy, Meenakshiammal, Subbathal/4th respondent herein and Lakshmi respectively. The petitioners 1 to 3 are the legal heirs of above said Shanmugasamy. In the year of 1974, their father Shanmugasamy filed a suit seeking for the relief of partition and separate possession against his father Arumuga Gounder, brothers and sisters in O.S.No.874 of 1974 on the file of III Addl. Sub-Court, Coimbatore. During the pendency of suit, a



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compromise was arrived between the parties and based on the compromise, entire property was divided into 6 equal shares. The application in I.A.No.183 of 1978 in O.S.No.874 of 1974 was filed and final decree was also passed on 31.08.1978. As per the above said compromise decree, the entire property was divided into the following manner :-

Sl. No.	Parties	Scheduled	Extent/Acres
1.	Arumuga Gounder	A	9.86
2.	Shanmugasamy	B	10.03
3.	Palanisamy	C	12.77
4.	Meenakshiammal	D	0.58
5.	Subbathal	E	0.58
6.	Lakshmi	F	0.58

After the said compromise decree, the lands comprised in S.F.No.54/1 to an extent of 1.18 acres and in S.F.No. 166 to an extent of 1.40 acres were taken possession by the petitioners' father and eversince from the date of decree on 31.08.1978, he enjoyed the same as absolute owner till his demise on 22.08.2005. After his demise, his wife Ponnammal and



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petitioners 1 to 3 inherited the property and they have enjoyed absolutely.

However, at the instigation of 3rd respondent, the 4th respondent Subbathal, who is sister of their father Shanmugasamy filed a suit in O.S. No. 763 of 2012 before the Sub-Court, Coimbatore against these petitioners seeking for the relief of partition in Survey No.54/1 and Survey No.166, but the said suit was dismissed for default on 21.06.2017. Thereafter, in the year of 2019, the 3rd respondent purchased entire lands in Survey No.54/1 and Survey No.166 without any title nor Subbathal, who conveyed the property not having any title. Based on that, they have attempted to convert the lands into plots colluding with 4th respondent, thereby the 3rd respondent created a sham and nominal document and attempted to trespass into the property, for that, the petitioners have raised objections. Hence, a complaint was given by respondents 3 and 4/'B' party. Accordingly, both 'A' parties and 'B' parties, the petitioners and respondents 3 and 4 appeared before the revenue authority. On hearing both sides, the 1st respondent passed an order on 23.05.2022 concluding that as on date in Survey Nos.54/1 and 166, there is no document to show that those lands were under possession of a particular individual. So, he had a doubt in his mind



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that whether the decree passed in O.S.No.874 of 1974 is to be implicated or not. Accordingly, he had passed an order of status quo and also suggested to approach a civil forum. Aggrieved that, the petitioners have preferred this petition to quash the proceedings stating that already a compromise decree passed in O.S.No.874 of 1974 is still in force and when there is no appeal against the said decree as on date, the 1st respondent had passed an order of status quo contrary to the said civil court decree. Hence, they prayed to quash the proceedings as if the 1st respondent has no authority to pass an order of status quo.

4. The learned counsel for 3rd respondent would submit that in the said compromise decree, Subbathal has not signed and without her knowledge, the compromise decree was passed in the year of 1978 and as a daughter of Arumuga Gounder, Subbathal is also having valid share, but ignoring her share, the said compromise decree was passed, however she is having valid right to sell the property in common. Therefore, she sold the property to 3rd respondent and the revenue authority has also rightly considered all the available documents and partly ordered to maintain



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status quo and also rightly referred the matter to a civil forum, which needs no interference. Hence, he prayed to dismiss this petition.

5. On considering both side submissions and on perusal of records, it reveals that the legal heirs of Arumuga Gonder had filed a suit in O.S.No.874 of 1974, in which Subbathal is also one of defendant and on 31.07.1978, there was a compromise arrived between parties and based on that, a final decree was passed dividing the property into six equal shares. So also, the said Arumuga Gounder was allotted with A Schedule and the petitioners 1 to 3' father was allotted B schedule of property. Even as per the compromise decree, 58 cents was allotted to Subbathal and if at all, she is aggrieved by the compromise decree, she ought to have filed an appeal before the civil forum. But, as on date, she has not filed any such appeal. Therefore, the compromise decree passed on 31.08.1978 is still in force.

6. Subsequently, the 4th respondent Subbathal had filed another suit in O.S.No.763 of 2012 before the Sub-Court, Coimbatore seeking for the relief of partition, but the same was dismissed for default. Therefore, she is



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not inclined to proceed with the original relief through a civil forum. But, on the contrary, after the dismissal of civil suit in the year of 2017, she had sold the property in Survey Nos.54/1 and 166, which was allotted to petitioners' 1 to 3 father Shanmugasamy during the final decree proceedings. Therefore, without having any valid title, the 4th respondent Subbathal sold the property to the 3rd respondent as such is not valid under law, since because a compromise decree is still in force.

7. The learned counsel for petitioner also produced patta and on perusal of patta, it reveals that the lands in Survey No.54/1B an extent of 0.47.34 hectares allotted to Shanthamani, who is one of legal heir of Arumuga Gounder and the lands in Survey No. 166/2 was allotted to Dhamodaasamy, son of late Shanmugasamy and a patta was also granted by the revenue authority. But, ignoring all these facts, the 1st respondent Revenue Divisional Officer had referred the matter to a civil forum and failed to consider the fact that the final decree is still in force and against which, no appeal was preferred as on date. Therefore, considering all the facts and circumstances, the order of status quo passed by the 1st



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respondent as such is erroneous one and the same is liable to be quashed.

Accordingly, this Criminal Original Petition is allowed and the impugned proceedings passed by the 1st respondent in Na.Ka.No.855/2021/A2 dated 23.05.2022 is quashed. Consequently, connected Criminal Miscellaneous Petition is closed.

15.02.2024

Index: Yes/No

Internet: Yes/No

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To

1. Sub-Divisional Magistrate cum
Revenue Divisional Officer,
Coimbatore North,
Coimbatore Dt.
2. The Inspector of Police,
Annur Police Station,
Annur Coimbatore Dt.
3. The Public Prosecutor,
High Court, Madras.



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T.V.THAMILSELVI, J.

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