



Crl.O.P.(MD)No.23089 of 2022

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 27.11.2024

CORAM

THE HON'BLE MR.JUSTICE N.ANAND VENKATESH

Crl.O.P.(MD) No.23089 of 2022

and

Crl.M.P. (MD) No.16374 of 2022

1.PR.Chellam

2.Chelliah

... Petitioners

Vs.

A.Azhagappan

... Respondent

PRAYER : Criminal Original Petition filed under Section 482 of Criminal Procedure Code, to call for the records relating to the impugned complaint in C.C.No.1470 of 2022 on the file of the learned Judicial Magistrate, Karaikudi, Sivagangai and quash the same.

For Petitioners	: Mr.VR.Shanmuganathan
For Respondent	: Mr.N.Anantha Padmanabhan
	Senior Counsel
	for M/s.M.Rajeswari

ORDER

This petition has been filed seeking to quash the proceedings in C.C.No.1470 of 2022 pending on the file of the learned Judicial Magistrate, Karaikudi.



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2.The respondent has filed a private complaint against the petitioners on the ground that there was a dispute regarding a pathway and the said dispute became the subject matter before the civil Court in which the petitioners were relying upon two documents which were marked as Ex.B2 and Ex.B3, which was the decision taken by the panchayathars and which is said to be notarized by the notary public. This document was relied upon by the civil Court to hold in favour of the petitioners. Ultimately, it was found that this document itself is a fabricated document and the advocate who is said to have attested the document in the year 1977 actually became a notary public only in the year 1978. Therefore, the said documents could not have been attested by the notary public as was claimed by the petitioners. It is under these circumstances, the private complaint came to be laid against the petitioners for alleged offences under Sections 420, 426, 463, 464, 466, 469 and 120(b) of IPC.

3.Heard the learned counsel for the petitioners and the learned Senior Counsel appearing on behalf of the respondent.



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4.In the case in hand, the lands measuring 1 ½ cents out of 3 cents in Survey No.117/16 at kanadanoor Village, Karaikudi Taluk, is an ancestral property. The petitioners had constructed a house and were residing in the said house. The other 1 ½ cents belongs to the respondent. The respondent started claiming a right over 1 ½ cents which was in occupation of the petitioners. Hence, a suit was filed in O.S.No.241 of 2006 on the file of the Additional District Munsif Court, Karaikudi for the relief of declaration of title and possession. In this suit, the documents in question were marked as Ex.B2 and Ex.B3. The trial Court, on considering the facts and circumstances of the case and on appreciation of oral and documentary evidence, came to the conclusion that the respondent had not established the right and title and accordingly, the suit came to be dismissed by judgment dated 16.09.2010.

5.Aggrieved by the above judgment of the trial Court, the respondent filed an appeal in A.S.No.1 of 2011 before the Sub Judge, Devakottai. The Appellate Court also concurred with the findings of the



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trial Court and the appeal suit was dismissed by judgment and decree dated 01.03.2011. As against the same, the respondent has filed the second appeal before this Court in S.A.(MD) No.312 of 2012 and the said appeal is pending.

6.The specific case of the respondent is that the respondent came to know about this fabricated document that was relied upon by the petitioners and which was marked as Ex.B2 and Ex.B3 only subsequently and therefore, the private complaint came to be filed before the Court below.

7.The crux of the issue is that the attestation of Ex.B2 and Ex.B3 made by the notary public could not have been done since these two documents are dated 06.10.1977 and whereas the advocate who is said to have notarized had become a notary public only in the year 1978.

8.The learned Senior Counsel appearing on behalf of the respondent submitted that under Section 198 of IPC, the documents that were relied upon by the petitioners was used knowing the same to be



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false and it should be treated in the same manner as if the petitioners gave a false evidence. Hence, the punishment that is provided under Section 193 of IPC will be applicable to the petitioners. Since the punishment may extend to seven years, the present private complaint cannot be said to be barred by limitation.

9.In the considered view of this Court, the respondent took a very specific stand even before the civil Court that the notary public could not have attested the documents marked as Ex.B2 and Ex.B3 since he became a notary public only in the year 1978. This issue was also considered by the trial Court and the appellate Court and it was not accepted and a finding was given to the effect that the petitioners have independently proved their possession beyond the statutory period, *de hors* the said documents. Therefore, it is quite clear from the judgment of the trial Court and the appellate Court that the right of the petitioners was recognized by the Court even apart from Ex.B2 and Ex.B3 that were also relied upon by the petitioners.



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10.In view of the above, it will be too late in the day for the respondent to rake up an issue which was considered by the civil Court.

The continuation of the criminal proceedings will virtually amount to whipping a dead horse. In any case, the respondent was not able to succeed before the civil Court and whose second appeal is pending before this Court, wanted to start one more innings against the petitioners on the criminal side. Such criminal prosecution launched by the respondent is clearly a abuse of process of law which requires the interference of this Court in exercise of its jurisdiction under Section 482 of Cr.P.C.

11.In the result, the proceedings in C.C.No.1470 of 2022 on the file of the learned Judicial Magistrate, Karaikudi, is hereby quashed and this Criminal Original Petition stands allowed. Consequently, connected miscellaneous petition is closed.

27.11.2024

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