

In Re: S. Ramiah and ors.

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Court : Chennai

Decided On : Nov-30-1950

Reported in : AIR1951Mad773; (1951)IMLJ191

Judge : Govinda Menon, J.

Acts : Indian Penal Code (IPC) - Sections 21 and 186

Appeal No. : Cr. Revn. Nos. 665 and 666 of 1949 and Cr. Revn. Petn. Nos. 611 and 612 of 1949

Appellant : In Re: S. Ramiah and ors.

Advocate for Pet/Ap. : K. Bhimasankaram, Adv.;The Public Prosecutor

Disposition : Revisions dismissed

Judgement :

ORDER

Govinda Menon, J.

1. Two points have been argued by Mr. Bhimasankaram for the petnrs. & the first of them is that the Comr, appointed by the Ct. to divide the properties by metes & bounds in a partition suit where a preliminary decree has been passed is not a public servant within the meaning of Section 21, Penal Code. What happened here is that after the passing of a preliminarydecree for partition, the District Munsif

appointed a Comr., under Order 26, C. P. C., to go to the spot, identify the properties, divide them, demarcate the boundaries & report to the Gt. While the Comr. with the assistance of people whom he had taken was measuring the lands, the petnrs. objected to it & used force by dragging the chain by which the lands were being measured. Petnrs. 1 to 6 obstructed on the first day & at their instigation petnrs. 6 to 10 did it on the next day. For this act they were charge-sheeted under Section 186, Penal Code, & found guilty by both the lower Cts.

2. The argument of Mr. Bhimasankaram on behalf of the petnr. is that since the Comr. is not a public servant any obstruction to the work done by him cannot be termed an offence coming within the ambit of Section 186, Penal Code. The answer to this depends upon the interpretation of Clause (4) of Section 21, Penal Code, & this contemplates that any person specially authorised by a Ct. of justice to perform any of the duties such as investigate or report on any matter of law & fact is a public servant within the meaning of the term. Though the Comr. here is not a permanent Govt. servant like an amin or a process-server or a clerk still he is an officer appointed or specially authorised by a Ct. of justice to investigate & report on a question of fact. I have no hesitation in coming to the conclusion that a Comr. appointed by a Ct. to divide the properties by metes & bounds as a result of a preliminary decree for partition is a public servant within the meaning of the term under Section 21, Penal Code.

2a. The next argument of the learned counsel is that the Comr. had no justification, after the protests of the petnra., to enter upon the lands & measure it. The proper course which the Comr. ought to have taken was to have reported to the Ct. to the effect that there was obstruction to his proceeding with the work. Not having done so & the Comr. proceeding to measure the lands in spite of the protests by the petnra who claimed the lands to be theirs the action of the petnrs. in preventing such work cannot be said to be an offence. I am afraid this argument proceeds upon the assumption that it is open to a party to obstruct a public servant in the discharge of his duties if the public servant is told by the party that he should not act as such. The proper procedure for the petnrs. would have been to apply to the Ct. stating that the Comr. was trespassing upon the lands which are not the subject-matter of the suit. This they have not done. Even otherwise on the finding

by the trial Ct. that the petnrs. insisted in the property being leased to each of them their action in preventing the Comr. amounts to an offence under Section 186, Penal Code.

3. Since both the points argued by the learned counsel are unacceptable to me, the order of the lower Ct. is confirmed. These revns. are, accordingly dismissed.

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