

**(2017) 05 KL CK 0017**

**High Court Of Kerala**

**Case No:** 2991 of 2013

OUSEPH @ JOSEPH

APPELLANT

Vs

DAVID

RESPONDENT

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Date of Decision: May 23, 2017

Acts Referred:

- Code of Criminal Procedure, 1973, Section 482 - Saving of inherent powers of High Court
- Indian Penal Code, 1860, Section 465 - Punishment for forgery

**Hon'ble Judges:** A.M.Babu

**Bench:** SINGLE BENCH

**Advocate:** P.T.JOSE, B.ASHOK SHENOY, C.G.PREETHA, THOMAS P.MAKIL, K.V.GEORGE, P.N.RAJAGOPALAN NAIR

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### **Judgement**

1.Petitioners seek to quash a private criminal prosecution initiated against them. They seek the relief under Sec.482 of Cr.P.C .

2.The 1st respondent filed a complaint against 13 persons. Annex-A1 is a copy of it. It was filed alleging commission of offences under Secs 465 and 468 of IPC . The learned magistrate took the case on file as C.C.261/2013 under Sec.465 of IPC against respondents 1 to 10 in annex-A1 complaint and issued process to them. They are the petitioners herein who are accused 1 to 10 in C.C.261/2013. Annex-A2 is the copy of the order of the magistrate on annex-A1 complaint.

3.Heard the learned counsel for the petitioners and the learned counsel for the 1st respondent. Heard the learned public prosecutor also.

4.I have carefully read annex-A1 complaint. The dispute is all about the title to a pathway. The 1st respondent in his annex-A1 complaint asserts himself to be the owner of the pathway. He claims to have purchased it under a registered sale deed. His grievance is that the petitioners while selling their property to the persons who

are arrayed in annex-A1 complaint as respondents 11 and 12 included the said pathway also. Annex-A4 is a copy of the sale deed. The dispute is purely civil in nature. There is no element of forgery in the execution of annex-A4 sale deed.

5.Civil suits between the parties are pending in two courts. Those suits are O.S.50/2004 pending before the Munsiff's Court, Kolencherry and O.S.35/2011 pending before the Sub-Court, Perumbavoor. Annex-A5 is a copy of the plaint in O.S.50/2004. That was a suit filed by the 1st respondent against petitioners 1 to 3 and another. The 1st respondent sought transfer of O.S.50/2004 to the Sub-Court, Perumbavoor for joint trial with O.S.35/2011. Annex-A6 is a copy of the application filed by the 1st respondent to stay the proceedings in O.S.50/2004 till the disposal of the transfer petition. The subject-matter in both the suits is the pathway referred to above. The 1st respondent himself stated so in his annex-A6 application. Civil litigations are pending between the parties and the dispute between them is purely civil in nature. No criminal court has any role in deciding such a dispute.

6.The only argument the learned counsel for the 1st respondent could raise was that the pathway was owned by the 1st respondent. That itself is a disputed fact which is to be decided by the civil court. Civil suits are pending to decide the dispute. Prosecuting the petitioners in a criminal court in respect of a purely civil dispute does amount to abuse of the process of the court. Such a criminal prosecution is liable to be quashed.

7.The Criminal miscellaneous case is allowed. All proceedings against the petitioners in C.C.261/2013 on the file of the court of the judicial magistrate of the first class, Kolencherry stand quashed.