

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.01.2015

CORAM

THE HON'BLE MR.JUSTICE S. MANIKUMAR

Criminal Revision Case No.1221 of 2014

T.Kuppusamy

... Petitioner

Vs.

1. R.Kalimuthu

2.K.Sivasamy

... Respondents

Prayer:- Petition filed under Section 397 r/w. 401 of Cr.P.C, praying to set aside the order, dated 14.10.2014, made in C.C.No.136 of 2014, on the file of the Judicial Magistrate, Tharapuram.

For Petitioner : Mr.B.Manoharan

For Respondent : Mr.M.Guruprasad

O R D E R

Ancestor of both the complainant and the accused is one Ramasamy Gounder and he owned 102.3 Acres of land in Kolathupalayam Village. Ramasamy Gounder has got three children, viz., Periyakaliyappa Gounder, Chitra Gounder and Chinnakaliyappa Gounder. After the demise of Ramasamy Gounder, they orally partitioned the property and enjoyed their respective shares. Chinnakaliyappa Gounder has two sons, viz., Chellappa Gounder and Semalai Gounder. The said Chellappa Gounder has got two sons, viz., Karuppana Gounder and Ramasamy Gounder. The complainant is the son of Thirumalaisamy Gounder and the latter is none other than the son of Karuppana Gounder. Accused are father and son respectively. 1st accused, Kalimuthu, is the son of Ramasamy Gounder and the 2nd accused is the son of 1st accused.

2. 1st accused is illiterate. The 2nd accused is working as a Technical Assistant in Tamil Nadu Government Transport Corporation,

Tharapuram. The property in Old Survey No.2300A and New Survey No.337/2, measuring 1.06 Acres, was registered in the name of Thirumalaisamy Gounder, son of Karuppana Gounder, under Patta No.2157. According to the complainant, the accused have no right or title to the property. As the valuation of property had increased, with an evil intention to grab the same, the 1st accused, who had no right over the same, had created a false document on 01.07.2011 and registered the same, in favour of his son, Sivasami, 2nd accused, in the Office of the Sub-Registrar, Tharapuram, in Document No.7401/2011. Consequently, they have made mutation in revenue records.

3. According to the complainant, the property was in possession and enjoyment of the petitioner. On 18.10.2011, there was a partition deed, executed between the petitioner and other direct descendants of Thirumalaisamy Gounder and that the same has been registered in Document No.11527/2011, on the file of Sub-Registrar, Tharapuram. As the accused have created a false document, a complaint, dated 05.11.2012, was given to the Superintendent of Police, Tirupur District. After conducting an enquiry on the petition, the Inspector of Police (Land Grabbing Cell), Tirupur District, has recommended to the District Registrar, Department of Registration, to cancel the settlement, dated 01.07.2011, registered as document No.7401/2011. According to the complainant, the accused have fabricated the document and committed an offence, under Sections 463 to 471 and 474 IPC.

4. Before the Trial Court, apart from the petitioner-complainant, one Mr.Govindarajan has been examined as witness. Upon considering the complaint, documents and submissions of the petitioner, the learned Judicial Magistrate, Tharapuram, vide order in C.C.No.136 of 2014, dated 14.10.2014, has dismissed the complaint. Aggrieved by the same, the petitioner-complainant has preferred this revision.

Heard the learned counsel for the parties and perused the materials available on record.

5. Before the lower Court, though the common ancestor of the petitioner and the accused, Ramasamy Gounder, is stated to have possessed 102.3 Acres of land, no document was filed to support the same. The contention that the said Ramasamy Gounder had three children, viz., Periyakaliyappa Gounder, Chitra Gounder and Chinnakaliyappa Gounder and that on the basis of their possession and enjoyment of the parties, they made a partition among themselves, has also not been proved by any document.

6. The further contention that the legal heirs of Chinnakaliyappa Gounder, viz., Chellappa Gounder and Semalai Gounder, were in enjoyment of 17.05 Acres each and that the said 17.05 Acres, allotted to Chellappa Gounder was partitioned equally, by Chellappa Gounder's sons, viz., Karuppana Gounder and Ramasamy Gounder and on that basis, Karuppana Gounder's son, Thirumalaisamy Gounder was allotted land to an extent of 1.06 Acres, have not been substantiated with any documents. Though Patta No.2157 is stated to be in the name of Thirumalaisamy Gounder, father of the petitioner, no title deed has been filed before the lower Court. In the abovesaid circumstances, the learned Judicial Magistrate, Tharapuram, has observed that at best, patta could only be a proof of the person in possession and that it would not confer title.

7. Upon perusal of the documents, the Court below has observed that even before the partition deed, dated 18.10.2011, registered as Document No.11527 of 2011, on the file of the Sub-Registrar, Tharapuram, between the petitioner and other direct descendants of Thirumalaisamy Gounder, a settlement deed, dated 01.07.2011, has been executed by the 1st accused to the 2nd accused and registered as Document No.7401/2011 on the file of Sub-Registrar, Tharapuram. In the abovesaid circumstances, the learned Judicial Magistrate, Tharapuram, has observed that coming to know of the settlement, there is also a possibility of the partition deed, dated 18.10.2011, between the petitioner and others.

8. The Court below has also observed that merely because the Inspector of Police (Land Grabbing Cell), has recommended to the District Registrar, Department of Registration, to cancel the settlement, dated 01.07.2011, registered as document No.7401/2011, under Section 67 of the Registration Act, it cannot be concluded that the subject property was owned by the petitioner. Observing that the dispute between the parties, is of civil nature and that in the absence of any prima facie evidence, to establish that the document, dated 01.07.2011 has been created with an intention to grab the property and further holding that the dispute could be adjudicated, only in the court of competent Civil jurisdiction, the complaint, dated 06.03.2014, has been dismissed.

9. Though Mr.B.Manoharan, learned counsel for the petitioner reiterated the same contentions and assailed the order made in C.C.No.136 of 2014, dated 14.10.2014, on the file of the Judicial Magistrate, Tharapuram, on the grounds, inter alia that the Court below has failed to consider that without any right over the property, the 1st accused has conspired with the 2nd accused created a settlement deed, to encumber the complainant's property, with an

intention to grab the same and that the Court below has also failed to see to the fact that the patta stood in the name of the complainant's father and therefore, there is a prima facie material for arriving at the conclusion that the settlement deed, has been created by the accused and that the same which is also taken note of by the Inspector of Police (Land Grabbing Cell), this Court is not inclined to accept the said contentions, as the findings given by the learned Judicial Magistrate, Tharapuram, cannot be said to be perverse nor there is any illegality. No propriety can be attributed to the impugned order.

10. Hence, this Criminal Revision case is dismissed. No costs.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

skm

To

The Judicial Magistrate,
Tharapuram.

+1cc to Mr.B.Manoharan, Advocate, S.R.No.3811

+1cc to Mr.M.Guruprasad, Advocate, S.R.No.3477

Criminal Revision Case No.1221 of 2014

LRS (CO)
CA(16/04/2015)

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