

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10.02.2015

CORAM:

THE HONOURABLE MR.JUSTICE R.S.RAMANATHAN

Cr1.O.P. No.2298 of 2015

and

M.P.No.1 of 2015

M.Mohamed Ali

... Petitioner/Accused No.2

vs.

1.State rep.by

The Inspector of Police,
Anti Land Grabbing Special Cell,
Vedaranyam Police Station,
Nagapattinam District.

2.Mohammed Kasim

Respondents/Complainant &
Complainant

...

Defacto

PRAYER : Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure praying to call for the records in FIR No.02/15 in ALGSC Crime No.2/15 on the file of the Judicial Magistrate No.I, Nagapattinam and to quash the same.

For Petitioner : Mr.K.Shahul Hameed

For 1st Respondent : Mr.M.Maharaja,
Addl.Public Prosecutor

For 2nd Respondent : Mr.M.Vijayakumaran

O R D E R

It is submitted by the learned counsel for the petitioner that the petitioner has been arrayed as A.2 in Crime No.2 of 2015 on the file of the first respondent police. On the basis of the complaint given by the second respondent, the case has been registered against the petitioner and the first accused in Crime No.2/2015 for offence under Sections 120(B), 465, 468, 471, 420 and 448 of the IPC. It is submitted by the learned counsel for the petitioner that the petitioner is a bona fide purchaser of the property vide registered sale deed dated 4.3.2013 from one N.Udumanul Arif and the petitioner was not aware of the earlier sale deeds executed by his vendor to the defacto complainant and as per the sale deed executed in favour of

the petitioner, the petitioner is entitled to have 3,451 sq.ft. of land having North South 17 ft and East West 203 ft in Survey No.265/1A/1A in Thethakkudi South Sethi Panchayat limits and he has not encroached upon any property and he is enjoying the property he purchased and therefore, submitted that the petitioner has not committed any offence and no allegations have been made against the petitioner as if the petitioner was aware of the earlier sale deeds executed by his vendor in favour of the second respondent. He therefore submitted that the F.I.R as against the petitioner/A.2 is liable to be quashed.

2. Heard the learned Additional Public Prosecutor for the first respondent and the learned counsel for the second respondent.

3. The learned counsel for the second respondent submitted that the second respondent purchased the property from N.Udumanul Arif under registered sale deeds dated 21.7.1995, 1.11.1995, 20.6.1996 and 4.3.2013 and in all those sale deeds, common pathway was clearly mentioned and thereafter, the said N.Udumanul Arif sold the pathway to the second respondent herein under a sale deed dated 4.3.2013. Therefore, the petitioner in collusion with the vendor committed the offence and therefore, the case was registered against the petitioner and the vendor N.Udumanul Arif.

4. It is seen from complaint that the defacto complainant/second respondent is the power agent of Sultan Arif and his wife Farzaana Begum. It is seen from the typed set of papers, the second respondent enclosed the copy of the sale deeds dated 15.6.1995, 20.7.1995, 20.6.1996, 20.6.1996, 27.5.1998, 14.7.2004, 22.10.2007, 28.8.2008 and 4.5.2010. It is seen from the documents that the sale deed dated 15.6.1995 was executed by A.1 to Mohammed Jilas and Sabheena Begum, sale deed dated 20.7.1995 was executed by A.1 to Ayesha Banu, sale deed dated 20.06.1996 was executed by A.1 to Sulthanul Ariffin, and another sale deed dated 20.06.1996 was executed by A.1 to Hithayathulla. In the complaint, the defacto complainant/second respondent referred to four sale deeds dated 21.7.1995, 1.11.1995, 20.6.1996 and 4.3.2013. Except the sale deeds dated 20.6.1996 and 4.3.2013, the sale deeds dated 21.7.1995, 1.11.1995 were not enclosed in the typed set of papers. It is seen from the sale deeds dated 20.6.1996 executed by A.1 to one of the principals of the petitioner that while describing the property that was sold under the document, the common pathway was mentioned as northern boundary. It was not stated what was the survey number of the pathway or the extent of the pathway. Similarly, in the other sale deeds executed by A.1 in favour of the other persons, the common pathway was mentioned as boundary and no description to the pathway was mentioned in those documents. Therefore, in the absence of description of pathway in the documents relied upon by the petitioner, it cannot be stated that A.1 sold the pathway, which was already sold to the petitioner. Further, considering the fact that

A.2, the petitioner herein is the purchaser of the property under the sale deed dated 4.3.2013 and in the absence of any allegations that he was aware of the fact that the property was already sold, it cannot be stated that the petitioner has committed the offence as alleged in the F.I.R.

5. According to me, if the second respondent has got any right or title over the property, it is open for him to enforce the right in accordance with law and no case can be registered on the basis of the sale deed executed in favour of the petitioner.

6. Hence, F.I.R. No.02/15 in ALGSC Crime No.2/15 on the file of the Judicial Magistrate No.I, Nagapattinam is quashed in respect of the petitioner and the petition is allowed. The connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar
Dated:16.2.15

True Copy

Sub Assistant Registrar

To

1.The Judicial Magistrate No.I,
Nagapattinam.

2.The Inspector of Police,
Anti Land Grabbing Special Cell,
Vedaranyam Police Station,
Nagapattinam District.

3.The Public Prosecutor,
Madras High Court,
Chennai.

+1 cc to Mr.M.Vijayakumaran, Advocate,SR.7511

+1 cc to Mr.K.Shahul Hameed, Advocate,SR.7686.

msm(co)
krd 19/2

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