

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 20-07-2015

Coram

THE HONOURABLE MR. JUSTICE B. RAJENDRAN

Criminal Revision Case No. 616 of 2009

1. M. Velu

.. Petitioner

Versus

1. S. Ramasamy
2. S. Balakrishnan
3. K. Dharmalingam
4. Sakthivel
5. Zakir Hussain
6. M. Barani
7. K. Meena

.. Respondents

Criminal Revision Case filed under Sections 397 read with Sec. 401 of Cr.P.C. to set aside the order dated 05.06.2009 made in Crl.M.P. No. 9466 of 2008 on the file of Judicial Magistrate, Tiruchengode.

For Petitioner : Mr. N. Manokaran
For Respondents : Mr. R. Marudachalamoorthy

ORDER

The petitioner is the defacto complainant and the private complaint filed by him in Crl.MP No. 9466 of 2008 before the Court below was dismissed on 05.06.2009. Aggrieved by the same, he has come forward with this Criminal Revision Case.

2. According to the revision petitioner, he is the owner of the property measuring an extent of 3339 square feet in Survey No.83/2 in Kumarapalayam Agraharam Village, which was purchased by him by a sale deed dated 12.06.1990. Further, his father also purchased a piece of land measuring 8 cents in Survey No. 80 by a sale deed dated 04.02.1985. His father had executed a registered settlement deed dated 19.03.1997 and 21.03.1997 setting 2/3 shares in his favour. While so, the first accused had fraudulently created sale deed dated 19.03.2008 in favour of the second accused in which the accused 3 to 7 have actively participated. Further, the accused 3 and 4 stood as witness to the sale transaction. The fifth accused was the scribe of the sale deed while the accused 6 and 7 stood as witnesses who identified the parties to the sale deed. On coming to know about the creation of the fraudulent sale deed dated 19.03.2008, the petitioner has given a complaint to the Superintendent of Police as well as the District Collector on 30.08.2008. The petitioner also reported the matter to the Inspector of Police, Kumarapalayam on 15.09.2008 and for having received the complaint, a receipt in LP No. 526 of 2008 was issued to him. Further, a complaint was given

by the petitioner to the Anti-Land Grabbing Cell. Thereafter, the petitioner issued notice dated 10.10.2008 to all the accused to come forward to cancel the sale deed created by them. As the police authorities did not take any action thereof, the petitioner has filed the private complaint before the Court below and prayed to take action against the respondents/accused for having committed the offences punishable under Sections 120 B, 468 and 420 of IPC. However, the complaint was dismissed on 05.06.2009 against which the present Criminal Revision Case is filed.

3. The learned counsel for the petitioner would contend that the court below, without issuing process on the basis of the complaint to the accused, has dismissed the complaint especially when the right of the petitioner to deal with his own land was prevented by the accused. The sale deed in respect of the land belonged to the petitioner was duly registered with the registering authorities by which an encumbrance was created over the land owned by the petitioner. In such circumstances, the petitioner need not approach the Civil Court to establish his right over the property. At the stage of taking cognisance of the complaint, the Court below is only expected to see whether sufficient grounds are made out in the complaint to issue process to the accused and it is not expected to assess whether there is sufficient ground made out for convicting the accused. Therefore, the learned counsel for the petitioner prayed this Court to allow the Criminal Revision Case.

4. On the contrary, the learned counsel appearing for the respondents/accused would contend that at the earliest point of time, the respondents/accused have sent a reply to the notice sent by the petitioner wherein it was clearly stated that the petitioner and the first respondent herein have entered into an agreement of sale dated 22.12.2006. On execution of the agreement of sale, the petitioner has received a sum of Rs.2,00,000/- out of Rs.3,00,000/- towards advance sale consideration. Further, on execution of the agreement of sale, the petitioner has handed over possession of the land to the first respondent herein. Thereafter, the petitioner has received another sum of Rs.90,000/- and only a sum of Rs.10,000/- was payable by the first respondent. The receipt of the amount has been duly entered in the reverse of the agreement of sale. Therefore, the court below concluded that the dispute between the parties is a civil dispute which has to be resolved only in the Civil Forum. In such circumstances, the trial Court found that the direction as prayed for in the complaint to register a criminal case against the respondents does not arise.

5. I heard the counsel for both sides and perused the materials placed on record. On careful consideration of the order passed by the Court below, the court below has taken note of the emergence of the agreement of sale agreement between the petitioner and the first respondent on 22.12.2006 and on execution of such agreement, the petitioner had received major sale consideration from the first respondent. The first respondent has to pay only a sum of Rs.10,000/- out of the total sale consideration of Rs.3,00,000/- and the payments received by the petitioner has been duly endorsed on the reverse of the agreement of sale dated 22.12.2006. It is seen from the records that the title deeds pertaining to the suit property are in the custody of the first respondent. Admittedly, so

far, the first respondent has not filed any suit for specific performance of the agreement dated 22.12.2006 and the period for filing such suit also lapsed. In any view of the matter, the court below has rightly refused to take cognisance of the complaint given by the petitioner and I do not find any reason to interfere with the same. Accordingly, the Civil Revision Case is dismissed.

-Sd/-

Assistant Registrar

//True copy//

Sub Assistant Registrar

To

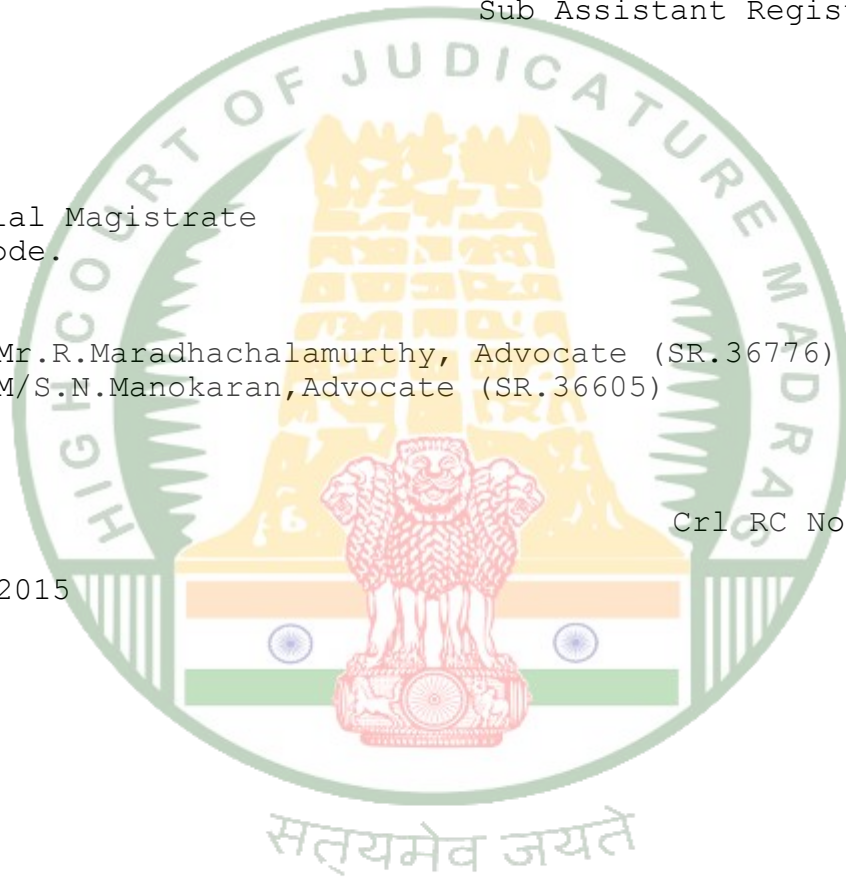
The Judicial Magistrate
Tiruchengode.

+1 cc to Mr.R.Maradhachalamurthy, Advocate (SR.36776)

+1 cc to M/S.N.Manokaran, Advocate (SR.36605)

GP(co)
cp 07.08.2015

Cr1 RC No.616 of 2009



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