

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 24.04.2015

CORAM:

THE HONOURABLE MR.JUSTICE R.S.RAMANATHAN

Cr1.O.P. No.2305 of 2009

and

M.P.No.1 of 2009

1.K.Mohan

2.Ganthi

... Petitioners

vs.

Nachimuthu Gounder

... Respondent

PRAYER : Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure praying to call for the records in C.C.No.136 of 2008 on the file of the Judicial Magistrate Court, Dharapuram and quash the same.

For Petitioners: Mr.R.Asokan

For Respondent : No appearance

O R D E R

Initially, this petition was filed by A.6 and A.7 in C.C.No.136 of 2008 on the file of the Judicial Magistrate, Dharapuram. On 03.02.2009, when matter was listed, the learned counsel appearing for the petitioners sought permission of this Court to withdraw this petition in respect of the second petitioner/A.7 and accordingly, by order of this Court dated 03.02.2009, this petition was dismissed as withdrawn in respect of the second petitioner/A.7 alone. The sixth accused is prosecuting the respondent by this petition.

2. The respondent filed the above private complaint against 8 persons stating that the property of an extent of 3.80.0 Hectare in Survey No.121, Old Survey No.139 in Dalavayapattinam Village, Dharapuram Taluk, Erode District, which was originally belonged to Muthu Gounder and his brother Ramiah Gounder, and they entered into a partition of the property on 26.7.1926 and as per the partition, the said property was allotted to the share of the respondent's father and after the death of the respondent's father, the respondent and his brothers were enjoying the property by paying kist and the property stands in the name of the respondent and Patta Number is 737 and the respondent's father was Muthu Gounder, whose brother was Ramiah Gounder and the said Ramiah Gounder had 3 sons, namely, Muthusamy Gounder, Nachimuthu Gounder and Palanisamy Gounder and

Accused 1 to 3 are the legal heirs of Nachi Muthu Gounder and Accused 4 and 5 are the legal heirs of Palanisamy Gounder. By executing a registered partition deed on 10.4.1949, Ramaiah Gounder gave the property to his sons, Muthusamy Gounder, Nachimuthu Gounder and Palanisamy Gounder and in that partition, Old Survey No.139 and new Survey No.121 was not mentioned. The respondent/defacto complainant was enjoying the property in New Survey No.121 and old Survey No.139 of an extent of 9.85 acres. While so the Accused 1 to 5 and 8 sold the property to the petitioner herein as if they were the owners of the property and they got the property ancestrally and executed a registered sale deed on 29.3.2007 and the said document was prepared and typed by the seventh accused and the eighth accused who is the son of the fourth accused attested the document. As the Accused 1 to 5 and 8 have no right over the property and sold the property to the sixth accused who also purchased the same knowing fully well that Accused 1 to 5 and 8 have no title over the property, the private complaint was filed stating that the accused have committed offences punishable under sections 467, 468, 471 and 420 of the IPC.

3. It is submitted by the learned counsel for the petitioner that the petitioner is A.6 and he is a bona fide purchaser of the property from A.1 to A.5 and he was not aware of the defect in title as alleged by the respondent in the complaint. He further submitted that after the purchase of the property from A.1 to A.5, he filed a suit in O.S.No.181 of 2010 on the file of the Subordinate Court, Dharapuram against 41 persons for partition stating that under the Sale Deed dated 29.3.2007, he purchased 3.13 acres in Survey No.121 Old Survey No.139 out of total extent of 9.85 acres and therefore, his 3.13 acres had to be partitioned in that property and in that suit, the respondent/defacto complainant was arrayed as seventh defendant. The suit was dismissed by the Subordinate Court, Dharapuram and the petitioner filed an Appeal in A.S.No.41 of 2011 on the file of the Third Additional District Judge, Dharapuram, who allowed the Appeal by judgment dated 03.06.2013 and a preliminary decree was passed. He further submitted that he filed an Application for passing final decree and the same is pending. Therefore, having regard to the decree passed in A.S.No.41 of 2011 by the Third Additional District Judge, it cannot be stated that the petitioner has committed the various offences as the petitioner was declared as owner of the property of an extent of 3.13 acres in the suit property.

4. The respondent was served and his name is also printed in the cause list and there is no appearance for the respondent and therefore, the respondent is set exparte.

5. It is seen from the complaint filed by the respondent that no allegation has been stated against the petitioner that he purchased the property from A.1 to A.5 and A.8 knowing fully well that A.1 to A.5 and A.8 have no title over the same. It is further stated in

Paragraph 4 that A.1 to A.5 and A.8 with a mala fide intention of making profit sold the property to the petitioner stating that the said property belonged to them ancestrally. Therefore, in the absence of any evidence or proof against the petitioner that he purchased the property knowing fully well that his vendors had no title, it cannot be stated that the petitioner has committed the offences as alleged.

6. Further, as rightly submitted by the learned counsel for the petitioner, the petitioner already filed a suit for partition on the basis of the sale deed and in the Appeal, his claim was upheld and preliminary decree was passed to an extent of 3.13 acres. Hence, it cannot be stated that the petitioner has committed the offences as alleged.

7. In the result, the petition is allowed and the proceedings in C.C.No.136 of 2008 on the file of the Judicial Magistrate Court, Dharapuram is quashed as against the petitioner/A.6. The connected Miscellaneous Petition is closed.

asvm

s/d-
Deputy Registrar(J)

True Copy

Sub-Assistant Registrar

To

1. The Judicial Magistrate Court,
Dharapuram.
2. -do- thro' Chief Judicial Magistrate,
Erode.

rsy(co)
prk15/5

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