

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL WRIT PETITION NO. 810 OF 2013

Geetabai w/o. Shankarlal (named as .. Petitioners
Shankarrao) Totla & ors.

Versus

The State of Maharashtra & Anr. .. Respondents

Mr. S.G. Ladda, Advocate for the petitioners.

Mrs.R.K. Ladda, A.P.P. for respondent/State.

Mr.V.B. Jogdand h/f. Mr.N.S. Ghanekar, Advocate for R-2.

CORAM : A.V.NIRGUDE, J.

DATED : 01.03.2016

P.C. :-

1. Heard. Rule, made returnable forthwith and heard finally with the consent of learned Counsel appearing for the parties.

2. The petitioners are accused Nos.1 to 11 in criminal case bearing R.C.C. No.30 of 2008, which is pending before the Court of J.M.F.C., Parli Vaijnath. Respondent No.2 is the complainant. He narrated facts of the case and alleged that the petitioners/accused had committed offences punishable under sections 417, 418, 420, 423, 465, 468, 511, 447 r/w 34 of the Indian Penal Code. The petitioners/accused and the complainant are belonging to one family. Long back their grand-father

was owner of certain land. It is case of the complainant that some land situated at Parli Vaijnath came to the share of their branch in 1966 and they are in possession of the same. They also asserted that the land was divided into plots and they are utilizing this plot for their use. Prior to 1996 or so, the land was shown in 7/12 extract as property belonging to some other ancestors. The applicants are belonging to other branch whose ancestor was shown as owner of the land in question in 7/12 extract. Because of land record and city survey record, dispute arose between these two branches of this family and two civil suits are already filed and are pending in the Civil Court. During pendency of the suits apparently applicants sold few pieces of land to outsiders who were made accused Nos.12 & 13. Respondent No.2-complainant alleged that such transaction amounted to cheating and forgery.

3. I do not see any error in it. A piece of land, which is in dispute, generally is not sold in open market for it does not have clear title. A purchaser will not venture into buying such piece of land. Despite this, other accused who purchased the land probably took risk of purchasing this property. But such transaction obviously will not make any difference to actual title of the land. The parties are now in Civil Court, where

title of the land in question would be decided. Whoever will succeed in the suit, would get title of the land and eventually he would establish his possession.

4. The transaction in question could also be bad for it occurred pending the litigation for title. The complainant may raise an objection to this transaction. He may assert that it was bad and not binding on any one.

5. But by no stretch of imagination, it can be said that the transaction amounted to any criminal offence. Even if such transaction has taken place, respondent No.2-complainant did not suffer any loss. He may still establish clear title to the land.

6. In view of this, no offence as contemplated under section 415 and 463 of the Indian Penal Code is made out. The learned Magistrate ought not to have issued process in this case.

7. The Criminal Writ Petition is allowed. The complaint initiated by respondent No.2 stands quashed. Rule made absolute accordingly.

[A.V.NIRGUDE, J.]