

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.08.2016

CORAM:

THE HON'BLE MR.JUSTICE P.N.PRAKASH

Cr1.O.P. No.12626 of 2014

1 P. Ramadoss Pillai
2 R. Muthukumarasamy ..Petitioners/Accused 1&2

Vs.

1 State represented by
District Crime Branch
Kancheepuram
2 Bhuvaneshwari ..Respondents

Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure seeking to call for the records relating to C.C. No.197 of 2011 on the file of the Judicial Magistrate No.II, Chengalpet and quash the same.

For petitioners Mr.Ar.L. Sundaresan, Sr. Counsel
for Mr. T. Vijayaraghavan

For R1 Mr. C. Emalias
Addl. Public Prosecutor

For R2 Mrs. K. Gajalakshmi - Party-in-person
for Mrs. K. Bhuvaneshwari

ORDER

This Criminal Original Petition is filed seeking to call for the records relating to C.C. No.197 of 2011 on the file of the Judicial Magistrate Court No.II, Chengalpet and quash the same.

2 For the sake of convenience, the parties will be referred to by their name.

3 On the complaint lodged by Bhuvaneshwari, the first respondent police registered a case in Crime No.104 of 2010 on 14.12.2010 and after completing the investigation, has filed a final report in C.C. No.197 of 2011 before the Judicial Magistrate Court No.II, Chengalpet against Ramadass Pillai (A1) and Muthukumarasamy (A2) for offences under Section 420 read

with Section 34 IPC.

4 It is the case of the prosecution that the land in question belongs to the de facto complainant and that Ramadoss Pillai (A1) had used the power of attorney dated 14.07.2000 said to have been given by the de facto complainant on the strength of which, he executed a sale deed in favour of his son Muthukumarasamy (A2) on 19.03.2009 registered as Document No.1188 of 2009 in the Sub Registrar's Office, Madurantagam, challenging which prosecution, Ramadoss (A1) and Muthukumarasamy (A2) are before this Court in the present petition.

5 Heard Mr. AR.L. Sundaresan, learned Senior Counsel, appearing for the petitioners and Mrs. K. Gajalakshmi, who appeared as party-in-person for her mother Bhuvaneshwari.

6 When the matter came up for hearing before this Court on 05.03.2015, this Court passed the following order:

"It is submitted by the learned counsel for the petitioners in the main Criminal Original Petition the petitioners are prepared to cancel the sale deed registered as Doc. No.1188/2009 executed by the first accused in favour of the second accused and also agreed to hand over the power deed executed by the de facto complainant's husband Kamalakannan and his son Kalidoss dated 06.01.2000 registered as Doc. No.4/2000, the agreement of sale registered as Doc. No.34/2000, within a period of ten days from today. Post on 24.03.2015."

7 Again, when the matter was taken up for hearing on 01.04.2015, the following order was passed:

"It is submitted by Mr.AR.L. Sundaresan, learned Senior Counsel that as undertaken earlier, Mr. B. Ramadoss, Son of Mr. Balasubramani, acting as Power Agent of Mr. K.M. Kamalakannan, Mrs. Bhuvaneshwari, Mr. Kalidass, Ms.K.Gajalakshmi, executed a cancellation deed in favour of Mr.R.Muthukumarasamy and registered the same as Doc. No.2015/15 dated 16.03.2015. He also submitted that the original power of attorney is available in the Sub-Court and they will get return of the documents and hand over the same to the petitioner. A copy of the cancellation deed was also handed over to the petitioner for verification. Call on 09.04.2015."

8 From the above, it is clear that Ramadoss Pillai (A1) has cancelled the sale deed in Document No.1188 of 2009 by a deed of cancellation dated 16.03.2015 registered as Document

No.2275 of 2015 in the Sub-Registrar's Office, Madurantagam.

9 When copies of these documents were furnished to Gajalakshmi and Bhuvaneshwari, they were not happy with the same and Gajalakshmi submitted that there is discrepancy in the signature of the parties.

10 The learned Senior Counsel appearing for the petitioners submitted that on account of old age, there is possibility of signature of Ramadoss Pillai (A1) varying, however, his thumb impression has been obtained by the Registrar in the document, beyond which Gajalakshmi need not doubt about the genuineness of the document.

11 That apart, the learned Senior Counsel submitted that if Gajalakshmi and Bhuvaneshwari are not happy with it, Ramadoss Pillai (A1) is ready and willing to execute a fresh sale deed in their favour at his cost.

12 This offer was not accepted by Gajalakshmi, who submitted that trial in the case should proceed and it should come to a logical conclusion. Of course, this Court cannot force settlement on the de facto complainant. However, the conduct of the accused in cancelling the document and even offering to execute a fresh sale deed in favour of the de facto complainant is indeed very relevant to show their bona fides and which will have to be borne in mind by the Trial Court.

13 In view of the above, this petition for quash is closed with a direction to the Trial Court to proceed with the trial in accordance with law, bearing in mind, the aforesaid observation of this Court. All defences available to the petitioners/accused are left open. Ramadoss Pillai (A1) is directed to be present for receiving the charge, for answering the charge, at the time of questioning under Section 313 Cr.P.C. and at the time of passing judgment. He shall also file an affidavit of undertaking, before the Trial Court; that he will not dispute his identity; that his counsel will cross-examine the prosecution witnesses on the day they are examined-in-chief and that he will not adopt dilatory tactics. On such undertaking, the Trial Court shall dispense with his personal appearance, on account of his ill health. If he adopts dilatory tactics, the Trial Court can insist on his presence.

-s/d-

Assistant Registrar(CCC)

True Copy

Sub-Assistant Registrar

cad

To

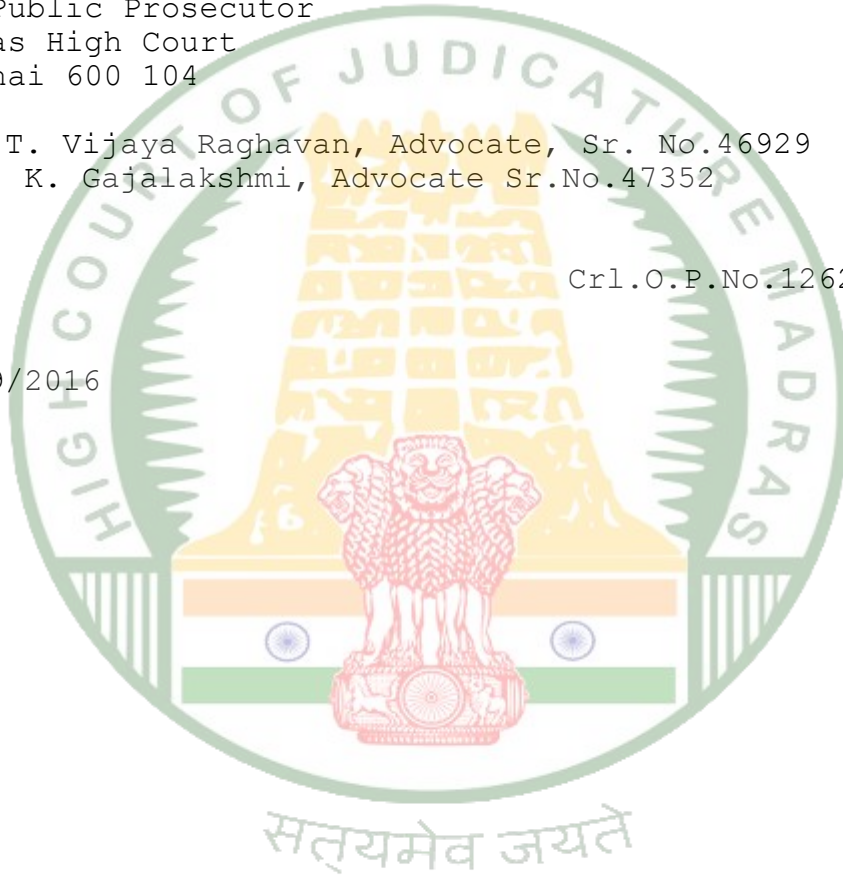
- 1 The District Crime Branch
Kancheepuram
- 2 The Chief Judicial Magistrate, Chengalpet
- 3 The Judicial Magistrate No.II
Chengalpet
- 4 The Public Prosecutor
Madras High Court
Chennai 600 104

+1 CC Mr. T. Vijaya Raghavan, Advocate, Sr. No.46929

+1 CC M/s. K. Gajalakshmi, Advocate Sr.No.47352

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CTK (CO)
MD : 07/09/2016



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