

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE: 18..11..2016

CORAM:

THE HONOURABLE MR.JUSTICE P.N.PRAKASH

Criminal Original Petition No.15871 of 2016  
and  
Crl.M.P.No.7836 of 2016

Selvaraj

... Petitioner

-Versus-

State by its

(1)The Inspector of Police,  
Walajabad Police Station,  
Walajabad,  
Kanchipuram District.  
[Crime No.193 of 2016]

2.Miss.Kanimozhi

... Respondents/Complainant Defacto Complainant

Prayer: This petition is filed under Section 482 Cr.P.C. praying to call for the entire records relating to the case in Crime No.193 of 2016 pending on the file of the 1st respondent police and to quash the said case.

For Petitioner : Mr.E.L.Kannan

For Respondents : Mr.C.Emalias, APP for R1

MrK.Rajasekaran for R2

सत्यमेव जयते

ORDER

This original petition has been filed praying to quash the case in Crime No.193 of 2016 pending on the file of the 1st respondent police.

2. On the complaint lodged by Kanimozhi, the 1st respondent police have registered a case in Crime No.193 of 2016 for offences under Sections 420, 465, 468 and 471 of IPC against (1) Selvaraj and (2)Duraivel. It is the case of the de facto complainant that his father M.E.Durairaj died leaving behind

himself, his mother and sisters as the legal heirs and that they are the owners of the land comprised in S.No.269/3 at Keezhottimbakkam Village, Valajabad Taluk, having inherited from his father and that the same has been sold by the petitioner/accused to one Duraivel (A2) on 23.11.2010.

3. It is admitted by both parties that Kanimozhi's father M.E.Durairaj owned some immovable properties and he had mortgaged 1/3rd undivided share of the properties to one Lakshmi Ammal and on his failure to repay the loan amount, Mrs.Lakshmi Ammal filed a suit in O.S.No.1052 of 1981 for recovery of money. In the said suit a preliminary decree was passed on 05.03.1983. Thereafter, a final decree has also been passed and that in an execution proceedings initiated by Lakshmi Ammal, the property was brought for sale in the court auction. The petitioner/accused purchased the property. Thereafter, the petitioner/accused filed a suit in O.S.No.354 of 1991 for partition by metes and bounds wherein a preliminary decree was passed on 26.02.1992. Thereafter, an interlocutory application was filed by the auction purchaser - Selvaraj Mudaliar for passing final decree wherein an Advocate Commissioner was appointed to divide the properties into three equal shares by metes and bounds as per the preliminary decree and allot one such share to him. Accordingly, a final decree was passed on 13.03.1995 under which Selvaraj was allotted lot 'A' property mentioned in the schedule therein. According to Selvaraj, he was allotted the land in S.No.269/2B2A covered under lot 'A' which is strongly refuted by the learned counsel for the 2nd respondent.

4. The case of the 2nd respondent is that Selvaraj had sold the land comprised in S.No.269/3 which was not allotted to him in the partition decree and it belongs to the de facto complainant.

5. Per contra, the learned counsel for the petitioner contended that from the earlier patta proceedings of the Tahsildar it could be seen that S.No.269/2B2A has been converted as S.Nos.269/2B2A1 and 263/3. On the strength of the pata proceedings dated 17.11.1999, he contended that on account of change of survey numbers, he had sold his own property to Duraivel. This is disputed by the learned counsel for the 2nd respondent.

6. The investigation is at initial phase. This court cannot step into the shoes of the investigating officer and decide all such dispute questions of fact while deciding the petition under Section 482 of Cr.P.C. It is for the investigating officer to thoroughly investigate the matter and proceed in accordance with law. Thus, the petition deserves only to be dismissed.

7. In the result, the criminal original petition is dismissed with a direction to the 1st respondent police to thoroughly inquire into the matter including the genuineness of patta proceedings and it if is found that the land allotted to Selvaraj in the partition decree is covered in S.No.269/3, it is needless to state that further action against him should be dropped. Consequently, connected MP is closed.

Sd/-  
Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

kmk

To

(1)The Inspector of Police, Walajabad Police Station,  
Walajabad,  
Kanchipuram District.

(2)The Public Prosecutor,  
High Court, Madras.

+1cc to Mr.K.G.Senthilkumar, Advocate Sr.67298  
+1cc to Mr.K.Rajasekaran, Advocate Sr.67362

Cr1.O.P.No.15871 of 2016

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srg 03/01/2017

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