

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.12.2016

CORAM

THE HONOURABLE MR.JUSTICE P.N.PRAKASH

W.P.No.14114 of 2013
and M.P.No.1 of 2013

C.Kaliaperumal

Petitioner

Vs

1.The Inspector of Police
District Crime Branch
Cuddalore, Cuddalore District.

2.Manivannan

Respondents

Prayer:- Writ Petition filed under Article 226 of the Constitution of India to issue a writ of mandamus forbearing the 1st respondent from taking any further action on the basis of the FIR in Cr.No.5 of 2012 dated 16.02.2012.

For petitioner Mr.V.Selvaraj

For R1 Mr.V.Jayaprakash Narayan
Special Government Pleader

For R2 Mr.P.Gubendra Gunabalan

RESERVED ON	PRONOUNCED ON
08.12.2016	14.12.2016

ORDER

For the sake of convenience, the parties are referred to by their name.

2. The dispute is in respect of a land measuring 2400 sq.ft. in S.No.2/1 in Usupur village. Originally, the land belonged to Kaliaperumal [the petitioner herein], who sold the same to one Kalidhasan on 27.09.1980, by Document No.2368 of 1980 on the file of the Office of the Sub Registrar, Chidambaram. Later, Kalidhasan sold the land to Sugitha, wife of Manivannan, by a Deed of Sale in Document No.4124 of 2008 dated 04.09.2008 on the file of the Office of the District Registrar, Chidambaram. Kaliaperumal, the original owner also had some property adjacent to the land in question. On 26.06.2009, Kaliaperumal executed a Deed of Settlement to his daughter K.Poothalir, settling the land in question belonging

to Sugitha, with other lands. Under such circumstances, Sugitha's husband Manivannan filed a complaint, based on which, the respondent police registered a case in Cr.No.5 of 2012 against Kaliaperumal and his daughter Poothalir on 16.02.2012 for offences u/s 420, 465 and 471 IPC. Thereafter, Kaliaperumal has filed the present writ petition with the following prayer:

"To issue a writ of mandamus forbearing the 1st respondent from taking any further action on the basis of the FIR in Cr.No.5 of 2012 dated 16.02.2012."

3. Heard Mr.V.Selvaraj, learned counsel for Kaliaperumal, Mr.V.Jayaprakash Narayan, learned Special Government Pleader for the first respondent and P.Gubendra Gunabalan, learned counsel for the second respondent.

4. At the outset, this Court posed a question to Mr.Selvaraj, learned counsel, as to how the aforesaid prayer restraining the police from proceeding with the investigation is maintainable?

5. To this query, Mr.Selvaraj, learned counsel submitted that this Court is a constitutional Court and has wide powers, both under Article 226 of the Constitution of India and Section 482 Cr.P.C.

6. In the considered opinion of this Court, this argument does not cut ice, inasmuch as no Court can injunct the police from proceeding with an investigation, which is a statutory duty of the police, enjoined by Chapter XII Cr.P.C.

7. Mr.Selvaraj, learned counsel contended that the land in question originally belonged to a Trust and that one of the Trustees, by name, Paradesi Mudaliar filed a suit against Saravana Mudaliar and others in O.S.No.293 of 1977 before the District Munsif, Chidambaram, claiming a common share for the said property.

8. Mr.Selvaraj, learned counsel contended that during the pendency of the suit, Kaliaperumal had sold the property to Jesudas and therefore, the sale was lis pendens. He further submitted that the suit was decreed on 12.04.1982. Pursuant to the decree, Paradesi Mudaliar and Saravana Mudaliar released the said land in favour of Kaliaperumal, by a Release Deed dated 12.04.1993 and thus, Kaliaperumal acquired absolute right over the property, on the strength of which, he settled the said property in favour of his daughter Poothalir. Therefore, it is the contention of Mr.Selvaraj that, Kalidhasan himself did not have any title and that Kalidhasan had sold the property to Sugitha, wife of the de facto complainant and hence, the de facto complainant cannot maintain the present prosecution.

9. The first respondent police have filed their counter narrating the entire sequence of events.

10. This Court gave its anxious consideration to the rival submissions.

11. The argument of Mr.Selvaraj that Kalidhasan himself did not have the title and therefore, Sugitha, wife of the de facto complainant would not have better title and hence, the prosecution should be quashed, deserves to be rejected in limine for the following reasons:

- On a reading of the sale deed dated 26.09.1980, under which Kaliaperumal had sold the property to Kalidhasan, it is stated therein that Kaliaperumal is the absolute owner of the property and that he had sold the property for a valuable consideration.
- He has not stated in the sale deed that he has no title to the property and that the property is subject to litigation in O.S.No.293 of 1977, which means that, even at the outset, Kaliaperumal has played fraud on Kalidhasan. Thus, Kalidhasan appears to be an innocent purchaser, who in turn, had sold the property to Sugitha, wife of the de facto complainant, who is also an innocent purchaser.
- If the version of Kaliaperumal that he himself acquired title to the property only by the Release Deed dated 12.04.1993, is to be believed, it is antithetical to his stand that he was the owner of the property in 1980.
- That apart, in order to create encumbrance to the property, Kaliaperumal has settled the property to his daughter Poothalir, subsequently on 26.06.2009.
- The contention of Mr.Selvaraj that this is purely a civil dispute and therefore, Sugitha should have filed a suit for specific performance within three years from the date of the decree in O.S.No.293 of 1977 is indeed intriguing.
- The fact remains that with the pendency of the writ petition, Kaliaperumal has managed to stay the investigation from 2013 onwards.

12. In State of Haryana v. Bhajan Lal [AIR 1992 SC 604], the Supreme Court has stated the circumstances under which an FIR can be quashed. The facts of this case do not pass muster the law laid down in the said judgment, inasmuch as Kaliaperumal, claiming himself as the owner of the property, has sold it to Kalidhasan and after Kalidhasan has sold the property to Sugitha on 04.09.2008, Kaliaperumal has once again settled his own property to his daughter Poothalir on 26.06.2009, which clearly shows the mala fide intention of Kaliaperumal.

In the result, this petition is dismissed as being devoid of merits. No costs. Consequently, connected miscellaneous petition is closed. The police is directed to proceed further with the investigation and take action in accordance with law.

Sd/-

Asst.Registrar

/true copy/

Sub Asst. Registrar

gms

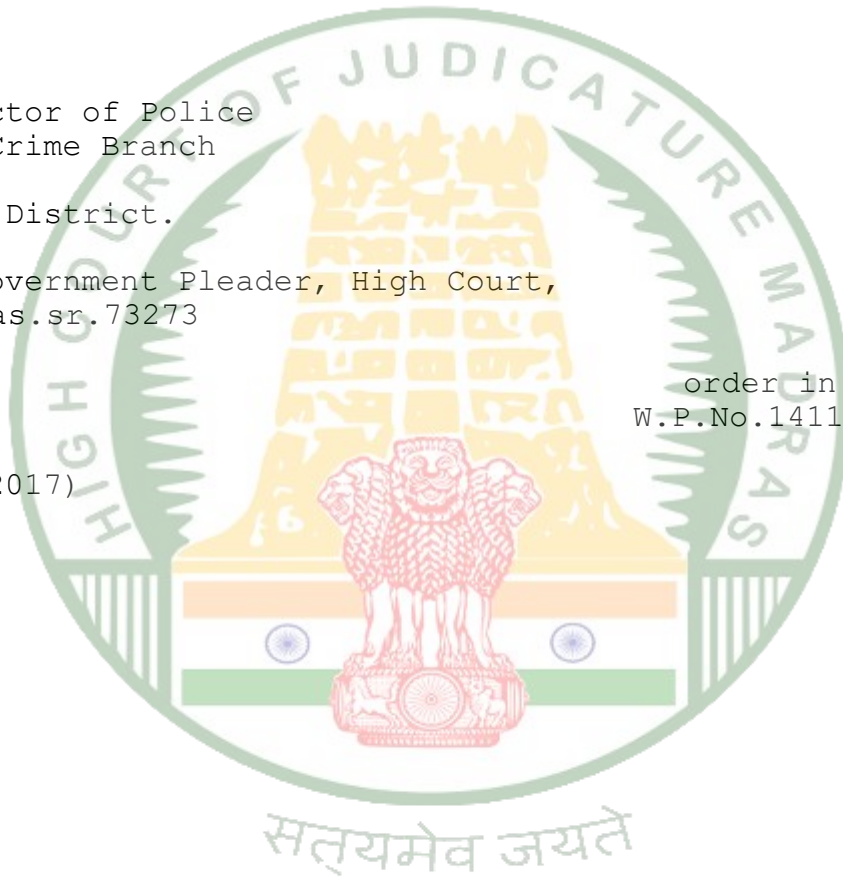
To

The Inspector of Police
District Crime Branch
Cuddalore,
Cuddalore District.

+1cc to Government Pleader, High Court,
Madras.sr.73273

nri(co)
ss(12/01/2017)

order in
W.P.No.14114 of 2013



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