

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.09.2017

CORAM:

THE HONOURABLE MR. **JUSTICE RAJIV SHAKDHER**
and
THE HONOURABLE MR. **JUSTICE ABDUL QUDDHOSE**

W.A.No.1034 of 2017

D.Muthukumarasamy .. Appellant/Respondent No.2

Vs.

1. N.Senthil Kumar .. Respondent No.1/Petitioner

2. The Inspector of Police,
E-8, Kelambakkam Police Station,
Kanchipuram District. .. Respondent No.2/
Respondent No.1

* * *

Prayer : Writ Appeal filed under Clause 15 of Letters Patent,
against the order dated 22.02.2017, passed in W.P.No.12052 of
2016.

For Appellant : Mr.G.Masilamani, Senior Counsel
for M/s.V.Venkkatasamy

For Respondents : Mr.J.Shivanandaraj,
for M/s.V.Sankaranarayanan for R1

Mr.R.Rajarathinam for R2

JUDGMENT

[Judgment of the Court was made by **RAJIV SHAKDHER, J.**]

1. On the previous date, i.e., 07.09.2017, we had recorded

the following, in respect of the aforementioned matter :

"1.To be noted, vide impugned Judgment, the learned Single Judge has cancelled the missing certificate issued by respondent No.2.

1.1.Missing certificate is dated 30.09.2013. The record is suggestive of the fact that missing certificate was issued by respondent No.2 without making due enquiries. The missing certificate was issued with respect to the title deeds of the property located at Sholinganallur Village, situate in Survey Nos.451/1 & 452/2B1.

2.The original title deeds are, admittedly, available with respondent No.1. The rights in the aforementioned property, were bequeathed, as it appears, by one Shri.R.K.Dhanakoti Mudaliar, i.e. the grandfather of respondent No.1 in favour of the father of the said respondent.The father of respondent No.1, is, one Mr.D.Nedunchezian. Mr.Nedunchezian, evidently, executed a registered Will being : Document No.10/1989 and, settled the said property in favour of respondent No.1 and his brother, one, Mr.Ramachandran. To be noted, Mr.Ramachandran is not a party to the present proceedings.

2.1.Therefore, quite clearly, even, while, the original title deeds were available with respondent No.1 and his brother, a false complaint was filed by the appellant with the Police, based on which the missing certificate dated 30.09.2013, was issued.

3.In order to obtain the aforementioned missing certificate, the ruse put forth by the appellant was that he was travelling in his vehicle on 16.09.2013, it met with an accident, in and around Vandalur, while, he was proceeding towards Kelambakkam Road, and that,

in the melee, the title deeds of the aforementioned property were taken away by an unknown person.

4.The records and the facts, which have been etched out above, clearly establish that the complaint lodged was false and, that, without due enquiry, the missing certificate was issued by respondent No.2.

5.The learned counsel for the respondent No.1 has placed before us, an enquiry report dated 06.11.2016, of the Deputy Superintendent of Police, Mahabalipuram, Sub Division, Kanchipuram District, which supports the conclusion reached by the learned Single Judge and, what has been stated about by us herein above.

5.1.Therefore, without much ado, the learned Additional Public Prosecutor, who appears for respondent No.2, shall obtain necessary instructions as to how the department proposes to carry the matter further, having regard to the aforementioned enquiry report. Furthermore, learned Additional Public Prosecutor will file a status report in this behalf, before the next date of hearing.

6.At this stage, the learned counsel for the appellant, says, he wishes to withdraw the appeal.

6.1.According to us, the matter cannot end here. Counsel for the appellant says, that he would want to take further instructions from his client.

7.The appellant and respondent No.1 shall remain present in Court on the next date of hearing.

8.Accordingly, at request of the learned counsel for the appellant, re-notify the matter on 13.09.2017."

1.1. We may only note that in paragraph 2 of the aforesaid order, i.e., 07.09.2017, the following has been, *inter alia*, recorded : “.... Mr.Nedunchezian, evidently, executed a registered Will being : Document No.10/1989 and, settled the said property in favour of respondent No.1 and his brother, one, Mr.Ramachandran....”, whereas, instead, it should read as : “.... Mr.Nedunchezian, evidently, executed two settlement deeds being : Document No.510 and 511/2010, whereby, the said property was settled in favour of respondent No.1 and his brother, one, Mr.Ramachandran.”

1.2. Accordingly, the order dated 07.09.2017, is corrected to that extent. The other observations/directions contained in the order dated 07.09.2017, shall remain unaltered.

1.3. As directed, both the appellant and respondent No.1 are present in Court. Furthermore, Mr.P.Rajarathinam, learned Public Prosecutor appears on behalf of respondent No.2.

2. The learned Public Prosecutor has filed a status report before us, which is dated 12.09.2017. In so far as the appellant is concerned, he was represented by Mr.G.Masilamani, learned Senior counsel instructed by Mr.V.Venkkatasamy.

3. Mr.G.Masilamani, at the outset, says that he has

3.1. The learned Senior Counsel, however, informs us that six (6) settlement deeds, which have been executed by the aunts of respondent No.1 herein, have a history behind them.

4. To be noted, these settlement deeds were executed between 01.10.2013 and 03.10.2013. Furthermore, one of the settlement deeds has been executed by Ms.Dhanalakshmi, wife of the appellant herein.

4.1. As would be evident from what has been recorded by us on the previous date, i.e., 07.09.2017, the missing certificate was issued on 30.09.2013.

5. Counsel for respondent No.1 states that the said six (6) settlement deeds were executed, immediately, after the appellant had obtained the fraudulent missing certificate.

6. Mr.G.Masilamani, has informed us, a fact, which is not disputed by learned counsel for respondent No.1, that proceedings were taken out by respondent No.1 before the South Chennai District Registrar (Administration) [in the cadre of Assistant Inspector General] for cancellation of the aforementioned settlement deeds. The learned Senior Counsel has also taken us

authority, which is indicative of the fact that the concerned authority disposed of the proceedings, relegating the parties to a civil remedy.

7. Respondent No.1, being the aggrieved party with the order dated 04.01.2016, carried the matter in appeal; which is pending adjudication before the Inspector General of Registration. Therefore, in so far the legal tenability of the settlement deeds is concerned, that can, perhaps, be examined only in those proceedings. What concerns us, and, which is why we had convened a hearing for today, is to ascertain as to whether there is any criminality in the action of the appellant in obtaining the missing certificate from respondent No.2.

8. Furthermore, we also wanted to know whether the police department had initiated any departmental enquiry against respondent No.2.

8.1. The status report filed by the learned Public Prosecutor, *inter alia*, indicates the following :

"..... 8. It is submitted that, recently I took up charge as Inspector of Police and on perusal of scrutiny and careful records I found that,

(i) the then Special Sub-Inspector of Police, has no right to issue Missing Certificate, but he

issued the same without the knowledge of his higher official.

(ii) Further before conducted enquiry, he has to follow the procedures laid down as per rules, but he failed to do so.

(iii) For the above said reasons, I gave representation to the Deputy Superintendent of Police, Mamallapuram Sub Division, to initiate Departmental action against Tr.Ramesh/HC 1167 in Chengalpet Town Police Station and Tr.Ganapthy/Special Sub-Inspector of Police in Vishnukanchi Police Station (both are formerly in E8 Kelambakkam PS)

(iv) Further I sent a letter to Deputy Director of Prosecution, Kancheepuram District, sought opinion for whether FIR have to be lodged against the *defacto complainant* Tr.Muthukumarasamy for his complaint dated 23.09.2013. On receipt of his opinion, I will register a FIR."

8.2. The aforesaid extract of the status report shows that follow up action has, indeed, been taken in as much as departmental proceedings have been initiated against Head Constable Ramesh and Mr.Ganapathy, Special Sub Inspector.

8.3. Furthermore, the matter, it appears, is also pending before the Deputy Director of Prosecution, Kancheepuram District, to obtain an opinion as to whether an First Information Report needs to be lodged against the appellant herein qua the complaint

dated 23.09.2013 lodged by him, based on which, the missing certificate dated 30.09.2013 came to be generated.

9. Thus, having regard to the action taken by the police department, we are of the view that we can permit the appellant to withdraw the appeal, subject to the police department carrying the matter further.

10. We make it clear, if, that the police department finds that there is criminality involved in the appellant lodging a false complaint, they would take the matter further to its logical conclusion.

10.1. The outcome of the deliberations of the Deputy Director of Prosecution, Kancheepuram District, shall be conveyed to both, the appellant as well as respondent No.1.

10.2. The Deputy Director of Prosecution, Kancheepuram District, will render his opinion in the matter within four (4) weeks from today.

11. The writ appeal is, accordingly, dismissed as withdrawn, *albeit*, with the observations made hereinabove.

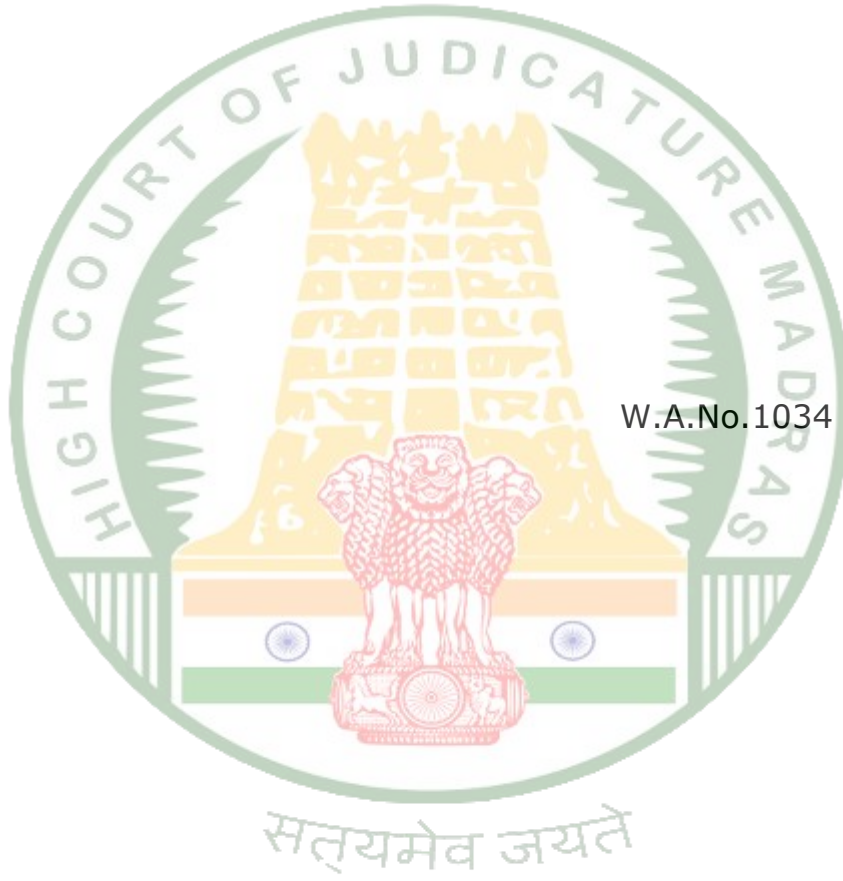
To

1. The Public Prosecutor,
Madras High Court,
Chennai.
2. The Deputy Director of Prosecutor,
Kancheepuram District.
3. Inspector of Police,
E-8, Kelambakkam Police Station,
Kanchipuram District.



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**RAJIV SHAKDHER, J.
and
ABDUL QUDDHOSE, J.**



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