

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 12.09.2017

CORAM

THE HONOURABLE MR. JUSTICE R. SURESH KUMAR

Crl.R.C.No.1173 of 2017

P.N.Mohan

... Petitioner

Vs.

1. State rep.by
Inspector of Police,
District Crime Branch Police Station,
Pollachi,
Coimbatore District,
Crime No.57/2011.

2.Sadasivam

... Respondents

Criminal Revision filed under Section 397 read with 401 Cr.P.C., to set aside the order passed by the learned Judicial Magistrate No.I, Pollachi, in Crl.M.P.No.6115 of 2016 dated 10.01.2017 in Crime No.57 of 2011.

For Petitioner : Mr.M.N.Balakrishnan
For Respondents: Mr.R.Sekar,
Government Advocate (Crl.Side)
for R1.

ORDER

This revision case has been filed against the order passed by the Judicial Magistrate No.I, Pollachi, in Crl.M.P.No.6115 of 2016 dated 10.01.2017.

2.The short facts which are required to be considered for disposal of this revision case are as follows:

That the petitioner is a third party in respect of the aforesaid criminal case, which was pending before the trial Court. According to the petitioner, one Sadasivam, the 2nd respondent, was the owner of the property to an extent of 1.80 acres, out of which, he had already sold 1.10 acres to four persons and the remaining 70 cents is concerned, he had made minor charges. However, the said (accused) Sadasivam had executed a Power of Attorney to and in favour of one

Ramachandran on 30.06.2011 giving power to him to sell the property of 70 cents, which had been created minor charges.

3.However, without knowing this factor, the said Ramachandran in the capacity of Power of Attorney holder had sold the said property of 70 cents on 26.08.2011 to one Krishnasamy, from whom, the petitioner had purchased the said property on 28.03.2011, by thus, the petitioner who is the third party, has become the owner of the said 70 cents of landed property, as a bonafide purchaser.

4.Since the said Ramachandran, the Power of Attorney holder of Sadasivam, subsequently came to know the above fact, who alerted Krishnasamy that the 70 cents of property had been created minor charges and without disclosing the same, it had been sold to him.

5.In view of this, the said Ramachandran seems to have given complaint against the said Sadasivam, the original owner of the properties and based on the said complaint, the police has registered a case for offences punishable under Sections 420, 465, 471, 423 and 182 of IPC in Crime No.57 of 2011 on the file of the respondent police and the same is pending investigation. During the investigation, the respondent police for the purpose of enquiry has collected the said two documents i.e., the Power of Attorney document in favour of the said Ramachandran as well as the Sale Deed executed by the said Ramachandran towards Krishnasamy, as considered to be the Parent documents for the properties, which have been subsequently sold to the petitioner by the said Krishnasamy.

6.Since the petitioner has to obtain loan from the Bank, those parent documents are required to be produced before the Banking authority. Therefore, he moved, before the trial Court, with a petition for custody or return of documents in the aforesaid Miscellaneous Petition. The said petition, after having been heard by the trial Court, has been dismissed through the impugned order. Against which, the present revision has been filed.

7.I have heard Mr.M.N.Balakrishnan, learned counsel appearing for the petitioner as well as Mr.R.Sekar, learned Government Advocate (Criminal Side) appearing for the 1st respondent.

8.It is the submission of the learned counsel appearing for the petitioner that, though initially minor charges had been created in respect of the said properties of 70 cents, subsequently, the very same owner i.e., the said Sadasivam (R2), who is the accused in this case, has cleared all these minor

charges by settling or bequeathing his other properties. Therefore, the title become clear and there can be no quarrel at least in respect of 70 cents of landed properties which is ultimately purchased by the petitioner herein.

9. Since the petitioner, being the real owner of the subject property, who having the valid documents, would be entitled to get back the other two documents, which are parent documents, which had been, in fact given to the respondent police during investigation. However, those documents would be required to be marked as exhibits during the trial pending before the trial Court, the same has been rejected. Hence, interference of this Court in this revision against the impugned order is very much required, as without these documents the petitioner cannot process his application for getting loan from the bank authority.

10. The learned Government Advocate (Criminal Side) appearing for the 1st respondent would state that since the trial is pending and these two documents, which are sought to be returned to the petitioner, are very relevant documents for the purpose of trial and these two documents would be marked as exhibits before the trial Court and if the same is given to the petitioner, he may not return or produce, at the time of requirement before the trial Court and only in this context, it was objected. Taking into account this aspect, the trial Court has rightly rejected the petition for return of documents and therefore, the same requires no interference by this Court.

11. There is no dispute that the petitioner has now become the absolute owner of the subject landed property, which has been sold for a valid sale consideration. Even as on date, the petitioner is having title over the said property as the sale Deed through which he purchased the property from his vendor and therefore, the petitioner is very much entitled to seek the parent documents, without which, he cannot process his application for getting loan from the bank authority. As has been rightly pointed out by the learned counsel appearing for the petitioner, he cannot process his application for getting loan from the bank authorities. Therefore, the said documents if required to mark as exhibits, at that time, either the same can be directed to be brought in or directed to get certified copy and produce by the petitioner for the purpose of leading evidence.

12. In view of the facts and circumstances of this case, the following orders are passed in this revision:

That the impugned order is set aside. The said two documents i.e., Document No.569/2011 and Document No.7635/2011 (Power of Attorney Deed as well as Sale Deed) shall be given custody to the

petitioner on condition that the petitioner shall produce the same as and when required by the trial Court. In this regard, if require, certified copy of those documents can also be obtained from the petitioner and produced before the trial Court for the purpose of taking those documents as evidence. On further condition that the petitioner shall execute a bond for a sum of Rs.1,00,000/- (Rupees one lakh only) to the satisfaction of the learned Judicial Magistrate No.I, Pollachi.

With these conditions, this Criminal Revision Case is allowed.

s/d-

Assistant Registrar(J)

True Copy

Sub-Assistant Registrar

mps

To

1. The Judicial Magistrate No.I,
Pollachi.
2. The Inspector of Police,
District Crime Branch Police Station,
Pollachi,
Coimbatore District.

+1 CC to Mr.M.N.Balakrishnan, advocate sr 66573.

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Cr1.R.C.No.1173 of 2017

RJ(CO)
SP(15/11/2017)

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