

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 17.04.2017

CORAM

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

Cr1.O.P No.10455 of 2011

and

M.P.No.1 of 2011

R.Sathya Narayanan

... Petitioner

vs.

C.Daniel

... Respondent

Prayer: Criminal Original Petition filed under Section 482 of Cr.P.C., to call for the records relating to the Complaint dated 20.08.2009 filed in the C.C.No.786 of 2009, on the file of the Court of the Judicial Magistrate, Tambaram and quash the same in so far as the petitioner is concerned.

For Petitioner : Mr.S.Vadivel Murugan

For Respondent : No Appearance

JUDGMENT

The petitioners herein aggrieved over cognizance of a private complaint filed under Section 200 of Cr.P.C. by the Learned Judicial Magistrate, Tambaram over the respondent's complaint dated 20.08.2009 in C.C.No.786 of 2009 for the alleged offence under Sections 427, 471 and 506 (ii) of IPC, is before this Court challenging the above complaint.

2.I heard Mr.S.Vadivel Murugan, Learned Counsel for the petitioner and there is no representation for the respondent.

3.The contention in nutshell of the learned counsel for the petitioner is that originally the above complaint is filed by the respondent to sort out a civil dispute by way of using the instant private complaint as a tool of harassment and intimidation.

4. On perusal of the complaint it is seen that the complainant / respondent herein namely C. Daniel had lodged the above complaint as against the petitioner herein/2nd Accused and 2 others namely G.Ramesh and Anbazhagan. According to complainant he and his wife Sulochana are the owners of Agricultural lands situated in Kaasapuram Village Tambaram Taluk, Kanchepuram District. Their properties admeasured 1.16 acres and they were situated in survey Nos.14/5A1, 14/5C, 14/5D, 14/5E such that the above four survey Numbers measure in and around 29.5 cents.

5. Originally the properties were purchased from the legal heirs of A.Kandhasamy Thevar. Arumugam Thevar, Gopal Thevar and legal heirs of Velayutham, such that they derive title through a family partition dated 19.07.1973 previously the lands were under peaceful enjoyment of above said persons from 1960. Originally the said properties were allotted to the above persons towards the share of their father Appavu Thevar and the same was under his possession and enjoyment.

6. However, in the said circumstance the 2nd accused who do not have any title over the lands in survey No.14/5 by claiming title through an alleged will said to have executed in favour of his father Mr.Radhakrishnan Chetty sold the properties in survey Nos.16/3 and 14/5 in Kaasapuram village in favor of 3rd accused Mr. T.Santha Kumar. The said claim of the petitioner/2nd accused is false and he had no title over the properties. In the meantime the 1st accused namely G.Ramesh claimed rights over survey No.16/3.

7. In the mean time on 27.09.2006 the 2nd accused executed a General Power of Attorney empowering the accused No.3 Santha Kumar to deal with the property and to cause the Registration. The said General Power of Attorney is said to be registered as DOC No.294/2006 in book No.4 of 27.09.2006 of Sub Registrar Office, Pollachi. The said power granted was illegal and untenable for want of title over the property in survey No.16/3.

8. In the said circumstance the petitioner herein sold the above property to the 1st accused G.Ramesh through his power agent. Accordingly having dealt and executed deeds in respect of properties to which the accused have no title, the petitioners committed an offence of 467 IPC and therefore the above complaint came to be filed by the respondent.

9. On careful perusal of the complaint as well as the general power of attorney executed it is seen that the schedule of properties are totally different and description of the properties denoted in the complaint and the general power deed dated 27.09.2006 mismatch.

10. From page No.2 of the complaint vide para 3 the respondent / complainant claims title over S.Nos.14/5A1, 14/5C, 14/5D, 14/5E whereas the survey No's denoted in page No.4 under description of property under power deed denoted Survey Numbers are 14/5F, 14/5G, 14/5H and 16/3 of Kaasapuram village.

11. Therefore, it is needless to say that the sale deeds executed in as much the above survey No's denoted in General Power of Attorney cannot have any barring upon the title of the respondent in respect of the survey No's mentioned as belonging to him.

12. Furthermore on repeated reading of the complaint, it is the case of the respondent that the petitioner has no title over the lands and he cannot have any claim through the alleged will. It is also his case that the accused trespassed into the defacto complainant's property.

13. It is seen that in the said factual background the above private complaint was lodged as against the accused for an alleged offence under Section 467 of IPC. In my opinion certainly for the purpose of forgery there should be some documents forged and created illegally. In the case on hand there is no such averment that the documents executed by the accused were forged or such that the documents came to be executed relying upon forged (or) bogus documents created for the purpose of execution of document. Whereas it is the categorical claim of the respondent that the 2nd accused without title and right had alienated the above properties stated in general power of attorney deed. In this regard it is equivalent to state that there is already a suit pending in O.S.No.500 of 2009 on the file of Sub-Court, Tambaram.

14. At this juncture this court noticed from para 4 of the complaint which is extracted here under:

"4. Since there was some cloud in the title of the vendors to the complainant they purchased the above said extent of land from Mr.R.Sathyannarayanan the 2nd accused

represented by power of attorney Mr.N.N.Natarajan by separate sale deeds. The particulars of the sale deeds are as follows:-

Sl.	Date	Doc. No.	Parties
1.	17/5/1994	1764/94	R.Sathya Narayana to Arumugam Devar
2.	17/5/1994	1765/94	R.Sathya Narayanan to Kandasamy Devar
3.	17/5/1994	1766/94	R.Sathya Narayanan to Vadivelu Devar, Son of Velayutham
4.	17/5/1994	1767/94	R.Sathya Narayan to Gopal Devar

Further it is submitted that the lands were allotted by a Koorchit among the legal heirs of late Appavoo Devar on 19.07.1973 since the date of purchase the complainant and his wife have been in lawful possession and enjoyment of the lands by raising paddy crops, through their agricultural labourers."

15.From the above pleading of the respondent/complainant, it is precise that there is a cloud in the title of the vender to the complainant even according to the version of complainant himself. More so the complainant's property is previously held by the petitioner Mr. R.Sathyanarayanan and was sold to the vendors of the complainant.

16.Therefore, it is obvious for this court to see that the properties mentioned in the general power of attorney deed and as well the properties purchased by the complainant are adjacent and pre- owned by the 2nd petitioner. Besides that the survey No's stated in both the deeds differ. The above facts and circumstances involved in the case on hand would precisely demonstrate that there is a title dispute and as well as the identification of properties. In such circumstance this court has no hesitation to hold that the complaint on hand is an abuse of process of law for having given a criminal color to a civil dispute.

17.It is needless to say that for setting a civil dispute a criminal complaint cannot be used as a short cut technique. Such practice (or) intention in setting the criminal law in motion over a civil dispute should be deprecated. The allowing of any such proceeding will also be an abuse at process of law.

18.In the result, the Criminal Original Petition stands allowed and the proceedings in C.C.No.786 of 2009 on the file of the Learned Judicial Magistrate, Tambaram is hereby quashed. Consequently, connected miscellaneous petition is closed.

-s/d-
Deputy Registrar

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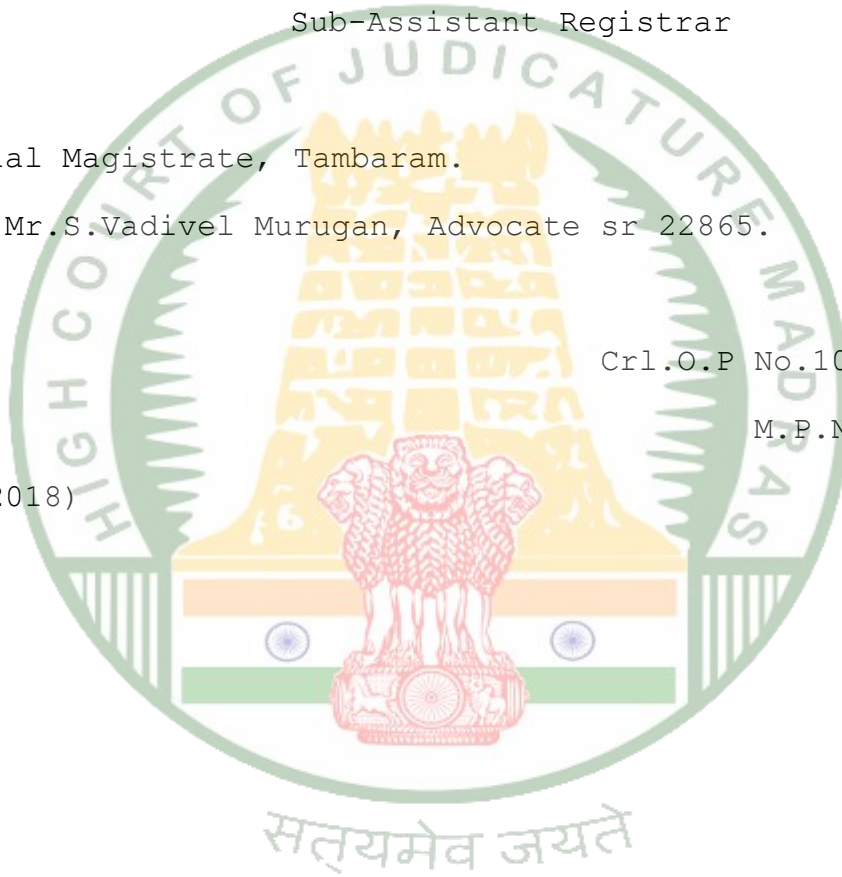
Sub-Assistant Registrar

To
The Judicial Magistrate, Tambaram.

+1 CC to Mr.S.Vadivel Murugan, Advocate sr 22865.

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SP(09/11/2018)



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