IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 13.10.2017

CORAM

THE HONOURABLE MR.JUSTICE M.V.MURALIDARAN

CRL.O.P.No.22290 of 2011
and
M.P.No.1 of 2011

1.A.Anand Sha
2.A.Nandakumar Sha .. Petitioners

Vs.

1.The State of Tamil Nadu,
Rep. By its Inspector of Police,
Central Crime Branch Police,
Chennai Rural,
St. Thomas Mount,
Chennai – 600 016.

2.M/s.Precision Homes Pvt. Ltd.,
Rep. by its Manager Bogaiah,
No.30/1A, Abdul Razak 1st Street,
Saidapet,
Chennai – 600 015. .. Respondents

Prayer: Criminal Original Petition filed under Section 482 of Cr.P.C., to call for the records relating to the proceedings in C.C.No.69 of 2011 on the file of the learned Judicial Magistrate No.I, Poonamallee and quash the same.

For Petitioners : Mr.S.Subbiah, Senior Counsel
for Mr.P.Raja

For Respondents : Mr.B.Ramesh Babu (for R1)
Government Advocate (Criminal Side)

Mr.S.Ashok Kumar (for R2)

O R D E R

This petition is filed to call for the Records in C.C.No.69 of 2011 on the file of the learned Judicial Magistrate No.I, Poonamallee and quash the same as illegal.

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2.The Case of the petitioners is that the 1st petitioner and 2nd petitioner are arrayed as the 1st and 3rd accused in the above C.C.No.69 of 2011 on the file of the Leaned Judicial Magistrate, No I, Poonamallee.

3.It is the further case of the petitioners that they own a piece of land measuring an extent of 0.86 cents situated in Ward No.D, Block 25, Zamine Pallavaram Village corresponding to old S.No.142/3 and corresponding to New S.No 142/6 in Kancheepuram Taluk and District. Originally the property stood purchased by their grandfather namely A.N.Ganapathy Sha under a registered sale deed in Doc. No.383/1946 on the file of Sub-Registrar, Periamedu. Thereafter while family partition, the subject property remained allotted as petitioner's father A.G.Ashkapathy Sha's share and all the revenue records remain reflecting his name. In the year 2011, petitioner's father A.G.Ashkapathy Sha died intestate and thereupon the property devolved upon the petitioners and their brother Gajendra Sha and the same continued to be their joint family property. The subject property is in their possession and enjoyment and in the meantime they appointed one Prabakaran as their power of Attorney and the same was subsequently revoked.

4.In the meantime, it was shocking to find that one Annammal fraudulently created a document of sale, as if the above property during the life time of petitioner's father A.G.Ashkapathy Sha's was alienated in her favor for a sum of Rs.500/- vide a sale deed dated 15.03.1963. It was further appalling to see that a deed was executed as if Annammal's legal heirs namely Vedachalam Naicker and Veeraputhiran have partitioned the above property vide Partition deed in Doc. No.1700 of 1965 dated 24.06.1988. It was further disgusting that one Ramamurthi claiming to be a purchaser of the above property from Annammal's legal heirs on the day of Partition dated 24.06.1988, vide a sale deed dated 24.06.1988, effected a sale deed in favour of one Sangeetha vide a registered sale deed dated 28.12.1992 in Doc.No.5428 of 1992 and one Saravathy vide sale deed dated 28.12.1992 in Doc.No.5429 of 1992. Again the 2nd respondent claiming to be the purchaser of whole extent of 86 cents from said Sangeetha and Saravathy (each 43 cents) lawlessly claimed the property.

5.In fact the property was not alienated by the petitioner's father. Since the property remained as a vacant site and taking advantage of the absence of petitioners' father, the above fraud came to be played by the persons stated above. In the meantime the 2nd respondent lodged a complaint before the 2nd respondent and the same came to be registered in Crime No.56 of 2009 as if the petitioners along with their brother Gajendra Sha and the

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power agent Prabakaran and one Babu as if an offence was committed attracting Offences under Sections 465, 466, 468 r/w Sections 471 and 420 of IPC and the corresponding final report was filed by the 2nd respondent in C.C.No.69 of 2011 on the file of the Leaned Judicial Magistrate No.I, Poonamallee. It is the case of the petitioners that the complaint does not point out to any offence against the petitioners herein. Moreover even if the entire averment read as a whole, the FIR does not make out any offence as against the petitioners, whereas erroneously the final report was taken on file by the Learned Magistrate.

6.I heard Mr.S.Subbiah, learned senior counsel for Mr.P.Raja, learned counsel for the petitioners, Mr.B.Ramesh Babu, learned Government Advocate (Criminal Side) for the 1st respondent and Mr.S.Ashok Kumar, learned counsel for the 2nd respondent.

7.According to the prosecution, the alleged offence is said to have taken place in the year 1963, during the life time of the petitioners' father. The crux of the alleged Offence is that despite of alienation of the subject property to the predecessors of 2nd respondent in title, the petitioners' father again included the subject property in their family partition. The records disclose that after the demise of the petitioners' father, the petitioners herein claim to enjoy the same as the property on devolution.

8.Therefore, in the opinion of this court, unless the Criminal act of petitioners' father A.G.Ashkapathy Sha is established, the above said transaction of inheritance would not attract criminal prosecution and in fact it is purely a civil in nature. If at all the petitioners' father had played fraud, it would be appropriate to take action against him. Whereas, admittedly till the life time of the petitioners' father the issue was never touched upon. The entire dispute is found happened much after decades of his demise. In real, majority of transactions claimed by the 2nd respondent are found to be taken place in the same day vide subsequent transactions of title obtaining and selling the property on the very day and it creates severe cloud upon the transactions.

9.On careful perusal of the Case records, it is further appears that the case of the 2nd respondent as projected by him involves a sequence of acts and transactions from the year 1963, which according to the 2nd respondent form the basis of the above complaint and corresponding final report. Either party rely upon the title deeds from the year 1980's. On careful perusal of the complaint and the contentions absolutely there is no material available on record to establish that an offence of forgery was committed by the petitioners herein. Though the complaint and

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corresponding FIR allege the involvement of the petitioners herein in respect of the disputed land, neither the charge sheet nor any official witness speaks about the alleged forgery committed by the petitioners herein. Hence there is no material available on record against the petitioners herein to prove the offences under Sections 34 r/w 467, 468, 471 and 474 of IPC.

10.It is seen that even according to the FIR, Charge and statements the alleged offence is said to have taken place in the year 1963, during the life time of petitioners' father. There is no material evidence against petitioners to prove that they had any dishonest or fraudulent intention to defraud and in actual a civil dispute has been given a criminal color and therefore no offence under Section 420 IPC is made out against the petitioners herein.

11.The record further reveals that already a Suit in O.S.No.950 of 2010 before the District Munsif Court, Alandur is being filed by the petitioners herein seeking to declare the Partition Deed executed by the predecessors in title of the 2nd respondent in Doc No:1700 of 1965 dated 02.08.1965 on the file of Sub-Registrar, Pallavaram, Chennai and further seeking to declare the subsequent sale deeds executed having reliance over it.

12.At this juncture, attention of this Court was drawn to the proceedings of DRO, Kancheepuram wherein while dealing with patta claim of the parties on hand in respect of the subject property had held that since either of the parties have Title deeds claiming title and there exists a title dispute, thereby relegated the parties to the civil court, so as to establish their title adducing oral and documentary evidence.

13.The above facts would demonstrate that the 2nd respondent herein is trying to give a criminal color to a civil dispute. Hence in view of the above disputed facts and rebuttable arguments and in the light of the uncertain transactions, which are required to be established by sufficient oral and documentary evidence by either side proving their claim of title, this Court deems fit that the issue on hand deserves a full fledge trial by a Civil Court. In other words a Criminal Trial cannot be a Shortcut route adopted to sort out an issue, requiring complete adjudication of rights of parties.

14.It is well settled proposition of law that when there is no prima facie case made out against the petitioners herein and there is no materials available on the record to get the accused convicted even at the end of criminal proceeding, they need not undergo the ordeal of trail and hence the above criminal proceedings against them are liable to be quashed.

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15.In the result, for the reasons stated supra, this Criminal Original Petition stands allowed and the C.C.No.69 of 2011 on the file of the Leaned Judicial Magistrate, No.I, Poonamallee, is hereby quashed as abuse of process of law. Consequently, connected miscellaneous petition is closed.

16.It is made clear that any observation made in the above Criminal Original Petition shall not have any impact on the Civil Litigations, if any pending between the parties herein.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

vs

To

1.The Judicial Magistrate No.I, Poonamallee.

2.The inspector of Police
Central Crime Branch Police,
Chennai Rural, St.Thomas Mount, Chennai 600016.

+1cc to Mr.P.Raja, Advocate, S.R.No.74210

CRL.O.P.No.22290 of 2011
and M.P.No.1 of 2011

RSK(CO)

RRK(17/04/2018)

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