

THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD.

CRIMINAL APPLICATION NO. 6042 OF 2014

1. Shaikh Musa Shaikh Karim,
Age: 52 years, Occ: Business,
R/o: Watur, Tq. Partur, Dist. Jalna.
2. Bharat Ambarsingh Chavan,
Age: 43 years, Occ: Service,
Village Development Officer,
Grampanchayat, Watur,
R/o. At Post, Akani, Tq. Mantha,
Dist. Jalna,
At present R/o: Mauli Nagar,
Ambad Road. Jalna.

... APPLICANTS

VERSUS

1. The State of Maharashtra,
Through Police Inspector,
Police Station, Partur, Dist. Jalna.
2. Ganesh s/o. Madhukar Wayal,
Age: 30 years, Occ: Medical Officer,
R/o: Sambhajinagar, Jalna.
Tq. & Dist. Jalna.
Presently at Watur, Tq. Partur,
Dist. Jalna.

... RESPONDENTS

...
Mr. V. D. Salunke, Advocate for Applicants.
Mrs. V. S. Choudhari, APP for Respondent No.1 / State.
Mr. A. A. Nimbalkar, Advocate for Respondent No.2.

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CORAM : **T. V. NALAWADE &
K. L. WADANE, JJ.**

DATE : 26th July, 2018.

JUDGMENT: (Per T. V. Nalawade, J.)

. The proceeding is filed for relief of quashing of C.R. No.15 of 2014 dated 9th October, 2014, registered with Partur Police Station, District Jalna, on the basis of order of investigation made by the Judicial Magistrate First Class, Partur in M.A. No.205 of 2014. The proceeding is filed under Section 482 of the Code of Criminal Procedure.

2 Both the sides are heard.

3 Crime is registered on the basis of complaint filed by one Ganesh Wayal, resident of Jalna. His family lives at Sambhajinagar, Jalna. One Vithabai Chavan was his aunt on paternal side. It is his contention that in the year 1987, Vithabai had purchased open space from Shaikh Muneer Peer Mohammad. It is contended that the document of transfer was executed on stamp paper and many witnesses had signed on that document. On the date of FIR, Shaikh Muneer was dead. It is the contention of first informant that as heir of

Vithabai, his family is entitled to get that property. It is contended that though the property was purchased in the name of Vithabai, during her lifetime, her name was not entered in the village record and after the death of Vithabai, the name of the family of first informant was not entered in the record as they are residents of other place. It is the contention that they were, however, in possession of the space and they were occasionally visiting the said place.

4 Allegations are made by the first informant that as they had not entered their names in the village record and as they had not made complete construction on the said space, false record of ownership is created by the present Applicant No.1 with the help of village officer. It is contended that assessment record, Namuna No.8 is created in favour of Applicant No.1 and space is given House No.658. It is contended that on 6th September, 2014, when the first informant went to the place to erect wire fencing, threats were given to him by Applicant No.1 and then he realized that false record of ownership was created by the Applicant No.1 with the help of Applicant No.2, village officer.

5 Police have collected the record, which is used by Applicant Nos.1 and 2 and also the record, which was created in favour of deceased Vithabai. Record in favour of Vithabai was created first in time and Shaikh Muneer, admittedly owner of the disputed property, had executed document of sale in favour of Vithabai. Legality of this document or the document, which is shown to be executed in favour of Applicant No.1 need not be considered at this stage as both the documents were not registered and proper stamp duty was not paid. In any case, in view of the aforesaid contentions, it can be said that Shaikh Muneer had sold the property though proper record was not created in the year 1987 to the predecessor of the first informant. The witnesses, who had signed on that documents are alive. The statements of both the witnesses and neighbours are recorded by Police and they support the allegations made by the first informant. The submissions made and record show that Applicant No.1 was the member of village Panchayat for some time and he has misused that position. Record shows that some construction was already made by Vithabai and first informant and the construction to the basement level was made long back, in the year 1990. The document in favour of Applicant No.1 was shown to be

executed on 6th January, 1989 and the assessment record was created first time for the year 2013-14. As there is more than sufficient material in support of the allegations made by the first informant in the present matter, this Court holds that it is not possible to grant relief in the present matter. It can be said that proper procedure, which needs to be followed before creation of assessment record, was not followed by Applicant No.2 and that circumstance also supports the allegations. In the result, the following order is passed:

ORDER

- I. The application is dismissed.
- II. Interim relief is vacated.
- III. Rule is discharged.
- IV. Criminal Application No.3402 of 2016 is also disposed of.

[K. L. WADANE, J.]

[T. V. NALAWADE, J.]