

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 22.06.2018

CORAM:

THE HON'BLE MR. JUSTICE P.N. PRAKASH

Crl.O.P. No.3412 of 2017 & Crl.M.P. Nos.2477 & 2478/2017
and 3480 of 2018

- 1 Krishnan
2 K. Latha
3 K. Uma ...Petitioners/A4 to A6
- vs.
- 1 The Inspector of Police
Central Crime Branch
Land Grabbing Cell, Team No.1
Egmore
Chennai 600 008
Cr. No.174 of 2011 ...Respondent/Complainant
- 2 Henna Devayirakkam ...Respondent/Defacto Complainant

Criminal Original Petition filed under Section 482 Cr.P.C. seeking to call for the records pertaining to the final report in C.C. No.766 of 2016 in Cr. No.174 of 2011 on the file of the Judicial Magistrate, Alandur and to quash the same in view of the proceedings on the petitioners as accused 4 to 6.

For petitioners Mr. R. Balaguruswamy
For R1 Mrs. Kritika Kamal P.
Govt. Advocate (Crl. Side)
For R2 Mr. Sathiyaseelan

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ORDER

This Criminal Original Petition has been preferred seeking to call for the records pertaining to the final report in C.C. No.766 of 2016 in Cr. No.174 of 2011 on the file of the Judicial Magistrate, Alandur and to quash the same.

2 The property in question originally belonged to one Ramachandra Iyer, who had mortgaged it with Indo Commerce Bank. Ramachandra Iyer died without discharging the mortgage. Indo Commerce Bank got merged with Punjab National Bank and a suit in O.S. No.40 of 1965 was filed by the bank against Anantha Lakshmi Ammal, widow of Ramachandra Iyer and his other legal heirs. A decree was passed in favour of the bank in 1967 and the property was brought to sale in E.P. proceedings and the bank had purchased the property. The records of the Sub-Registrar's office show that the said property was transferred in the name of the bank. While so, the de facto complainant is said to have purchased the property on 20.02.1992 from Anantha Lakshmi Ammal.

3 It is alleged by the petitioners that one Vijaya had created documents to the effect that she was the adopted child of the late Ramachandra Iyer and Anantha Lakshmi Ammal and on the strength of such adoption deed, she had sold the property to Abdul Azeez and Rameeza Bhi in 1993 and subsequently from Rameeza Bhi, the petitioners have purchased the property in the year 2008. Thus, it is the contention of the learned counsel for the petitioners that the petitioners are innocent purchasers.

4 The learned counsel for the petitioners submitted that the de facto complainant herself has no title to the property, because, the said property was purchased by Punjab National Bank.

5 Be that as it may, Mr. Sathiyaseelan, learned counsel for the second respondent/de facto complainant submitted that Punjab National Bank had failed to initiate execution proceedings within a period of twelve years and therefore, the decree lapses.

6 This Court is unable to countenance this submission of Mr. Sathiyaseelan and further, this cannot be gone into either by this Court under Section 482 Cr.P.C. or by the Criminal Court. However, it is seen that the adoption deed and legal heirship certificate were created by Vijaya and this property was sold to Abdul Azeez and Rameeza Bhi from whom, the property has been purchased by the petitioners herein. The question as to whether the petitioners are innocent purchasers is a question of fact which can be determined only by the Trial Court and not by this Court. Since there are prima facie materials for framing charges, this is not a fit case to quash the prosecution. Liberty is given to the petitioners to raise all the points before the Trial Court, after charges are framed.

7 At this juncture, the learned counsel for the petitioners submitted that the presence of the petitioners 2 and 3 who are ladies before the Trial Court may be dispensed with.

8 Accepting the said submission, this Court directs that the petitioners shall appear before the Trial Court to receive the charge sheet under Section 207 Cr.P.C., for framing charges, for questioning under Section 313 of Cr.P.C. and on the date of judgment. For other hearings, if the petitioners 2 and 3 file an application under Section 317 of Cr.P.C. undertaking that they will not dispute their identity and that their counsel will cross-examine the prosecution witnesses on the day, they are examined in-chief, without adopting any dilatory tactics, their presence can be dispensed with. The Trial Court is directed to complete the trial within a period of six months from the date of receipt of a copy of this order, provided there is no other legal impediment.

This Criminal Original Petition is dismissed in the above terms. Connected Crl.M.Ps. are closed.

Sd/-
Assistant Registrar (CS-VI)

//True Copy//

Sub Assistant Registrar

cad

To

1 The Inspector of Police
Central Crime Branch
Land Grabbing Cell, Team No.1
Egmore, Chennai 600 008

2 The Judicial Magistrate
Alandur

3 The Public Prosecutor
High Court of Madras
Chennai 600 104

+1cc to Mr.G.JEHANATHAN Advocate, S.R.No.39726
+1cc to Mr.R.BALAGURUSWAMY, Advocate, S.R.No. 40309

Cr1.O.P. No.3412 of 2017

GMR (CO)
TR(02/07/2018)