

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 03.09.2018

DELIVERED ON: 05.10.2018

CORAM:

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

Crl.O.P. No.6365/2018 & Crl.M.P. Nos.3241, 3242 and 11745/2018

S. Chandra Baskaran ... Petitioner

vs.

1 The Inspector of Police
Central Crime Branch 17th Team
Land Grabbing Special Cell
Vepery
Chennai 600 007

2 P. Subbiah ... Respondents

Criminal Original Petition filed under Section 482 Cr.P.C. seeking to call for the connected records in C.C. No.199 of 2017 on the file of the Judicial Magistrate No.I, Poonamallee and quash the same as illegal.

For petitioner : Mr. R. Sankara Subbu

For R1 : Mrs. M. Prabhavathi
Additional Public Prosecutor

For R2 : Mr. M. Ramamoorthi

For intervening
petitioner : Mr. C.M. Mohanasundaram

ORDER

This Criminal Original Petition has been preferred seeking to call for the connected records in C.C. No.199 of 2017 on the file of the Judicial Magistrate Court No.I, Poonamallee and quash the same as illegal.

2 For the sake of clarity, the parties are referred to by their name.

3 On the complaint lodged by Subbiah, the second respondent herein, the Inspector of Police, T-4, Maduravoyal Police Station (Crimes), registered a case in Cr. No.1910 of 2014 and the case was later transferred to the file of the first respondent police. The first respondent police completed the investigation and filed a charge sheet in C.C. No.199 of 2017 before the Judicial Magistrate No.I, Poonamallee, for the offences under Sections 420,467,468,471,193 and 120-B IPC against seven accused, for quashing which, Chandra Baskaran (A4) is before this Court.

4 Heard Mr. R. Sankara Subbu, learned counsel for Chandra Baskaran (A4), Mrs. M. Prabhavathi, learned Additional Public Prosecutor appearing for the first respondent-State, Mr. M. Ramamoorthi, learned counsel for Subbiah (de facto complainant) and Mr. C.M.Mohanasundaram, learned counsel for Ponnuramgam (Intervener).

5 To appreciate the rival contentions, it may be necessary to delineate the facts of the case.

5.1 The property in question measuring 5,609 sq. ft. of land in Vanagaram Village in S. No.303/2A and 303/2B originally belonged to one Krishnaswamy Naicker and he had executed a Will bequeathing the said property in favour of his wife Sampoorname on 05.02.2001 vide document no.12 of 2001.

5.2 After the demise of Krishnaswamy Naicker in 2003, his widow Sampoorname sold a major portion of the property to one Dakshinamoorthy in 2004 by a sale deed bearing document no.6542 of 2004, which included 0.46 cent in S. Nos.303/2A and 303/2B. Dakshinamoorthy sold 0.18 cent to one Muthuvel Raja, 0.18 cent to one Sangamitra and 0.10 cent to one Ponnuramgam. Madana, daughter of Subbiah, purchased 0.18 cent from Sangamitra vide document no.4980 of 2012.

5.3 While so, Sulochana (A2), D/o Krishnaswamy Naicker and Sampoorname fabricated a Will dated 05.02.2001, as if executed by Krishnaswamy Naicker bequeathing the property to her. The said Will is an un-registered one. On the strength of the said Will, Sulochana (A2) executed a settlement deed dated 20.01.2012 in favour of her daughter Seethalakshmi (A1). Seethalakshmi (A1), in turn, registered a sale deed dated 23.02.2012 bearing Document No.1194 of 2012 in favour of Vivekanandan (A6).

5.4 Seethalakshmi (A1) and Vivekanandan (A6) filed a suit in O.S.No.236 of 2013 before the Additional District Munsif Court, Poonamallee, claiming title to the property through the forged Will. In the said suit, Sampoorname, grand mother of

Seethalakshmi (A1), Dakshinamoorthy, Sangamitra, Muthuvel Raja, Ponnurangam, Madana and the Joint Sub Registrar, Saidapet, were shown as defendants. The said suit was filed through Advocate Chandra Baskaran (petitioner herein), a close relative of Vivekanandan (A6).

5.5 In the trial, the alleged Will was sent for expert opinion to the Forensic Science Department and the result showed that the Will was a forged one. Thus, on the strength of a forged Will, the accused had conspired to create encumbrance on the properties of Madana, Ponnurangam and Muthuvel Raja. Hence, the FIR and the consequential charge sheet.

6 On a thorough reading of the statements of witnesses, it is apparent that Sulochana (A2) and her daughter Seethalakshmi (A1), in connivance with two witnesses, had fabricated the Will dated 05.02.2001 in order to usurp the property. In order to create further encumbrance to the property, Seethalakshmi (A1) executed a sale deed dated 23.02.2012 in favour of Vivekanandan (A6). As stated above, Seethalakshmi (A1) and Vivekanandan (A6) have filed a frivolous suit in O.S. No.236 of 2013 to entangle the lawful owners of the property in a litigation.

7 Mr. M. Ramamoorthi, learned counsel for Subbiah, submitted that Chandra Baskaran (A4), who is a close relative of Vivekanandan (A6) knew full well that Seethalakshmi (A1) and Vivekanandan (A6) had no title to the property and that it was he (Chandra Baskaran) who had engineered the fabrication of the Will and filing of the suit in O.S. No.236 of 2013.

8 Per contra, Mr. R. Sankara Subbu, learned counsel for Chandra Baskaran (A4) refuted the contentions.

9 It is true that Chandra Baskaran (A4) is the counsel on record for Seethalakshmi (A1) and Vivekanandan (A6), the plaintiffs in O.S.No.236 of 2013. Vivekanandan (A6) was arrested by the police and in his confession statement, he has graphically disclosed the role played by Chandra Baskaran (A4) in the case. Vivekanandan (A6) has stated that Chandra Baskaran (A4) is none other than his maternal uncle and that at his instance, a sham sale deed was registered by Seethalakshmi (A1) in favour of Vivekanandan (A6) without passing of any consideration. He has further stated that the original sale deed is in the custody of Chandra Baskaran (A4). Chandra Baskaran (A4) was not arrested by the police. Except the confession statement of Vivekanandan (A6) to the police, there is no other legally admissible evidence on record to implicate Chandra Baskaran (A4). Hence, this Court is of the view that the prosecution as against Chandra Baskaran (A4) is liable to be

quashed not because he is innocent, but, because of want of legally admissible evidence against him and it is accordingly quashed qua Chandra Baskaran (A4) alone.

10 Coming to Crl.M.P. No.11745 of 2018, the said petition has been filed by Chandra Baskaran (A4) for taking perjury action under Sections 195 and 340 Cr.P.C. against Subbiah, the de facto complainant and his advocate Mr. M. Ramamoorthi, for making certain false averments in the counter affidavit filed by them in the quash application in Crl.O.P. No.6365 of 2018.

11 In the affidavit dated 03.09.2018 sworn to by Chandra Baskaran (A4) in respect of Crl.M.P. No.11745 of 2018, at paragraph no.11, he has stated as under:

"11 I submit that (1) Mr. Subbiah, de facto complainant and (2) his advocate Mr. R. Ramamoorthy appeared in this case wantonly gave false statement before this Hon'ble Court, making false allegations against me in the above case. The documents narrated in para (4) and (5) of the counter mentioned in this above case Crl.O.P. No.6365 of 2018 by de facto complainant Mr. Subbiah and his counsel Mr. R. Ramamoorthy will prove beyond doubt that they have committed perjury thereby they have interfered with administration of justice."

12 In the above paragraph, Chandra Baskaran (A4) refers to paragraph nos. 4 and 5 of the counter dated 14.03.2018 filed by Subbiah in the quash application, which read as under:

"4. It is submitted that the said Krishnaswamy Naicker during his life time, had conveyed an extent of 30 cents in S.No.303/2A and in S.No.303/2B to his grandson Veeraraghavan by a sale deed dated 25.09.2000 registered as D. No.425 of 2000 and sold another 16 cents to one Mr. Neelakandan vide sale deed dated 14.02.2003 and thus had sold an extent of 46 cents out of 91 cents and retained 45 cents with him. This balance 45 cents was bequeathed by him to his wife Sampooornammal under the registered will dated 05.02.2001 registered as Document No.12 of 2001.

5. It is submitted that the land in S.No.303/2A3 and in S.No.303/2B3 measuring 36 cents were purchased by M/s. Sangamithira and P. Muthuvelraj under the sale deeds dated 25.06.2008 and 31.07.2008 registered in D.No.4227 of 2008 and D. No.5106 of 2008 from the said Mr. Dakshinamoorthi. Along with the lands in S.No.303/1, Patta No.389 owned by P. Muthuvelraj and others in S.No.303/2A3 and in

S.No.303/2B3 measuring 36 cents was merged and they have developed housing plots over the same and sold them to various parties. The de facto complainant has purchased plot no.1 in the said S.No.303/2A3 and 303/2B3, Vanagaram Village under the sale deed dated 29.06.2012 registered as D.No.4980 of 2012 at the office of the South Chennai District Registrar's office. The land is originally owned by Smt. M. Sangamithira and P. Muthuvelraj and they legally own the property measuring 36 cents in S.No.303/2A3 and in S.No.303/2B3 and therefore, they are very well within their rights to form the layout and sell the same and the de facto complainant is having absolute rights over the property she has purchased from them."

13 In the opinion of this Court, paragraph nos.4 and 5 of the counter affidavit filed by Subbiah, extracted above, which are impugned by Chandra Baskaran (A4), are narration of certain facts, which Subbiah believes to be true. This can, by no stretch of imagination, amount to perjury. The gravamen of the allegation against the accused in C.C. No. 199 of 2017 is that they had fabricated a Will dated 05.02.2011, as if Krishnaswamy Naicker had bequeathed the property in question to Sulochana (A2), on the strength of which, Sulochana (A2) registered the said property in favour of her daughter Seethalakshmi (A1), who, in connivance with Chandra Baskaran (A4), had created a sham sale deed in favour of Vivekanandan (A6).

14 There are sufficient materials on record to show that the Will of Krishnaswamy Naicker was a fabricated one and there are also materials to show that it was Chandra Baskaran (A4), who had appeared as counsel for Seethalakshmi (A1) and Vivekanandan (A6) in O.S. No.236 of 2013 filed by them based on the forged Will dated 05.02.2001. As stated above, the proceedings against Chandra Baskaran (A4) in C.C. No.199 of 2017 is quashed by this Court not because he is innocent, but, for want of legally admissible evidence. In the opinion of this Court, Crl.M.P. No.11745 of 2018 has been filed by Chandra Baskaran (A4) only to checkmate Subbiah and keep him under pressure. Hence, Crl.M.P. No.11745 of 2018 stands dismissed with costs of Rs.10,000/- payable by Chandra Baskaran (A4) to the Tamil Nadu State Legal Services Authority, Chennai, within a period of two weeks from the date of receipt of a copy of this order.

In fine, the proceedings in C.C. No.199 of 2017 on the file of the Judicial Magistrate Court No.I, Poonamallee, is quashed qua Chandra Baskaran (A4) alone and as a sequel, Crl.O.P. No.6365 of 2018 filed by Chandra Baskaran (A4) stands allowed. However, Crl.M.P. No.11745 of 2018 filed by Chandra Baskaran

(A4) stands dismissed with costs, as indicated above. CrI.M.P. Nos.3241 and 3242 of 2018 are closed.

Sd/-
Assistant Registrar(CS V)

//True Copy//

Sub Assistant Registrar

cad

To

- 1 The Inspector of Police
Central Crime Branch 17th Team
Land Grabbing Special Cell
Vepery
Chennai 600 007
 - 2 The Judicial Magistrate No.I
Poonamallee
 - 3 The Member Secretary
The Tamil Nadu State Legal Services Authority
High Court Buildings
Chennai 600 104
 - 4 The Public Prosecutor
Madras High Court
- +1 cc Mr.R.Sankara Subbu, Advocate, SR.No. 69222
+4 cc Mr.M.Ramamoorthi, Advocate, SR.No. 68724

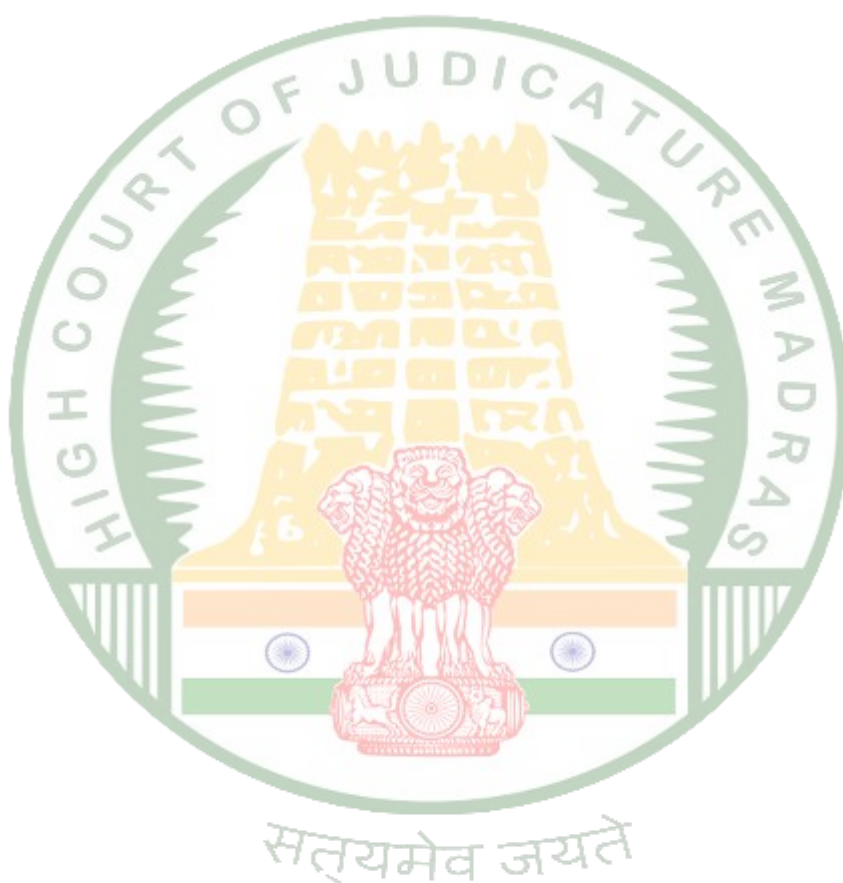
CrI.O.P. No.6365 of 2018

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