

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.10.2018

CORAM

THE HON'BLE MR.JUSTICE P.RAJAMANICKAM

CRL.O.P.No.19813 of 2014

ADMK Ravi @ K.Ravi

... Petitioner /Accused No.3

Vs.

1. State rep. by its
Inspector of Police,
Anti-Land Grabbing Special Cell,
Dharmapuri District,
Dharmapuri.

... 1st Respondent / Complainant

2.P.G.Prabhakar

3.Mrs.Vaijeyanthi

...2 to 4 Respondents/Defacto complainant

PRAYER: Criminal Original Petition filed under Section 482 of Cr.P.C., to call for the records comprised in Cr.No.32 of 2011 dated 05.12.2011 on the file of the Inspector of Police, Anti-Land Grabbing Cell, Dharmapuri and to quash the same.

For Petitioner : Mr.S.Thirumavalavan

For R1 : Mr.T.Shunmugarajeswaran

Government Advocate (Crl.Side)

For R2 & R3 : No Appearance

सत्यमेव जयते

O R D E R

This petition has been filed by the accused No.3 to quash the FIR in Crime No.32 of 2011 which is pending on the file of the first respondent.

2. The learned counsel for the petitioner has submitted that the third respondent herein has executed a registered power of attorney in favour of the accused No.1 namely Varadappan on 26.03.2003 and based on the said power of attorney, the first accused has entered into a registered sale agreement with the second accused namely Athayee on 17.04.2003. He further submitted that based on the said agreement, the first accused

has sold the property through a registered sale deed on 03.02.2004 in favour of the second accused and thereafter, the second accused has sold the property to the petitioner herein under a registered sale deed dated 31.05.2006 for a valid consideration of Rs.8,12,500/-. He further submitted that after execution of the sale agreement by the first accused in favour of the second accused, the principal namely the third respondent herein has cancelled the power of attorney, which was executed in favour of the first accused dated 26.03.2003 and thereafter, executed another registered power of attorney in favour of the second respondent on 07.08.2008. He further submitted that before cancelling the power of attorney, the third respondent has not issued any notice to the first accused. He further submitted that since already agent has acted as per the power of attorney and entered into a registered sale agreement with the second accused, the third respondent cannot cancel the power of attorney which was executed in favour of the first accused. He further submitted that the sale agreement which was entered by the first accused with the second accused will bind upon the third respondent and therefore, she should not have cancelled the power of attorney. He further submitted that the petitioner herein is the bonafide purchaser and therefore, he cannot be prosecuted.

3. Though private notice were served on the respondent Nos.2 and 3, they have not appeared either in person or through counsel and hence, the matter has been posted today by printing their names in the cause-list. Even today, they have not appeared either in person or through counsel.

4. The learned Government Advocate (Crl.side), who is appearing for the first respondent has submitted that only after cancelling the power of attorney which was executed in favour of the first accused, the first accused has executed the sale deed in favour of the second accused, who is none other than the wife of the first accused. He further submitted that after cancelling the first power of attorney, which was executed in favour of the first accused, the third respondent has executed the second registered power of attorney in favour of the second respondent and only thereafter, the petitioner herein has purchased the property from the second accused and hence, he cannot claim that he is a bonafide purchaser. Therefore, he opposed this petition.

5. In the FIR, the second respondent has stated that he has been appointed as power of attorney as per the registered power of attorney executed by the third respondent. He further stated that on 26.03.2003, the third respondent has executed a registered power of attorney in favour of the first accused and based on the said power of attorney, the first accused has entered into a sale agreement with his wife namely Athayee (A2)

on 17.04.2003. He also admitted in the said FIR that the said sale agreement has been registered. He further stated that on 03.02.2004, the third respondent has cancelled the power of attorney which was executed in favour of the first accused on 26.03.2003. So, it is clear that the second respondent himself has admitted in the complaint that only after entering a registered sale agreement by the accused No.1 with the accused No.2, the third respondent has cancelled the earlier power of attorney which was executed on 26.03.2003.

6. At this juncture, it would be relevant to refer to Section 204 of the Indian Contract Act, 1872, which reads thus:

'204. Revocation where authority has been partly exercised. - The principal cannot revoke the authority given to his agent after the authority has been partly exercised, so far as regards such acts and obligations as arise from acts already done in the agency.'

7. From the aforesaid provision, it is clear that the principal cannot revoke the authority given to his agent after the authority has been partly exercised. In this case, admittedly the first accused being the agent has acted upon the power of attorney and entered into a registered sale agreement with the second accused on 17.04.2003. In such a case, the said agreement would bind upon the principal namely the third respondent herein. But, the third respondent ignoring the aforesaid agreement, has cancelled the power of attorney which was executed in favour of the first accused. Further, before cancelling the said power of attorney, she has not issued any notice to the first accused. Under the said circumstances, the third respondent cannot revoke the power of attorney which was executed in favour of the first accused.

8. As per the sale agreement entered by the first accused in favour of the second accused, the first accused as well as the principal namely the third respondent are bound to execute the sale deed in favour of the second accused. If the third respondent is disputing the powers of the first accused, she should have filed a suit against the first accused and also the second accused. Instead of that, she cannot cancel the power of attorney without issuing notice to the first accused. The petitioner herein, being the subsequent purchaser from the second accused, cannot be prosecuted. He is a bonafide purchaser. Therefore, the FIR against the petitioner herein has to be quashed.

9. In the result, this Criminal Original Petition is allowed. FIR in Crime No.32 of 2011 is quashed against the petitioner is concerned.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

To

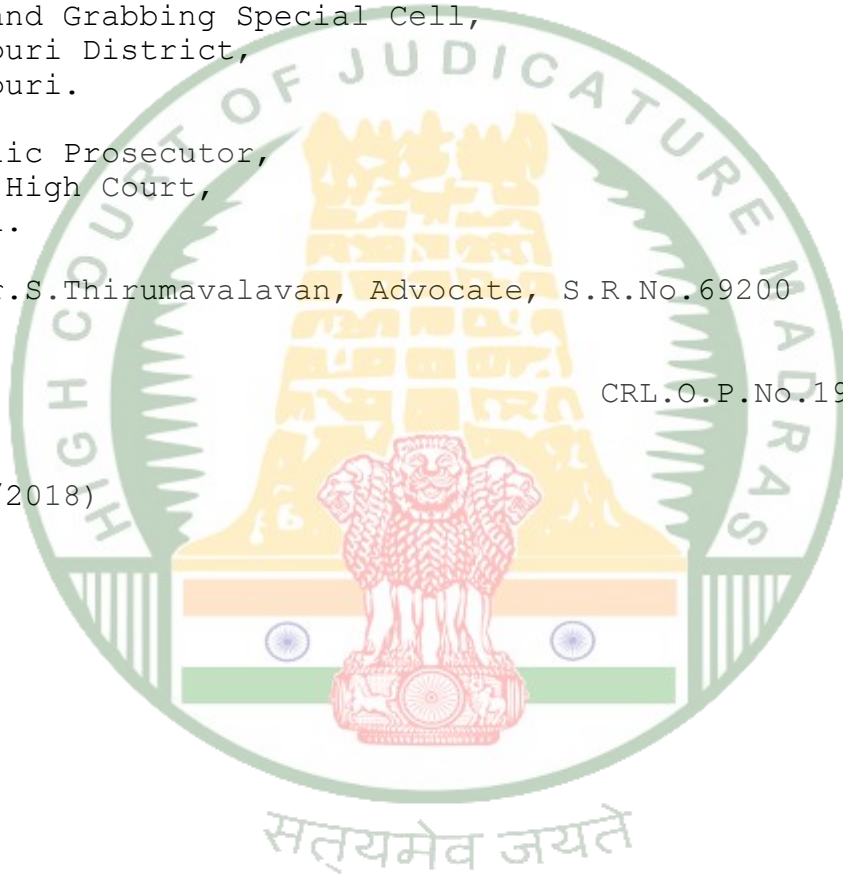
1.Inspector of Police,
Anti-Land Grabbing Special Cell,
Dharmapuri District,
Dharmapuri.

2.The Public Prosecutor,
Madras High Court,
Chennai.

+1cc to Mr.S.Thirumavalavan, Advocate, S.R.No.69200

CRL.O.P.No.19813 of 2014

NRI (CO)
GSP (15/11/2018)



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