

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON: 02.08.2018

PRONOUNCED ON: 28.08.2018

CORAM:

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

Crl.O.P. No.15697 of 2018

S.N.Kulasekaran

Petitioner

vs.

1 The Commissioner of Police
Chennai City
Egmore
Chennai - 600 008

2 The Inspector of Police (Law & Order)
V-5 Thirumangalam Police Station
Chennai

Respondents

Criminal Original Petition filed under Section 482 Cr.P.C seeking to issue a direction to the second respondent police to file a status report of the action taken, pursuant to the order passed by the High Court on 07.03.2018 in Crl.O.P.No.4983 of 2018 and submit the same before the High Court.

For petitioner Mr.S.Muthudurai
For respondents Mr.C.Iyyappa Raj
Addl. Public Prosecutor

ORDER

This Criminal Original Petition has been preferred seeking issuance of a direction to the second respondent police to file a status report of the action taken, pursuant to the order passed by the High Court on 07.03.2018 in Crl.O.P.No.4983 of 2018 and submit the same before the High Court.

2 The petitioner is an octogenarian and this is the second round of litigation by him before this Court in the criminal jurisdiction. Earlier, when he filed Crl.O.P.No.4983 of 2018 before this Court, the same was disposed of by a learned Judge vide order dated 07.03.2018, wherein, it was held as follows:-

"The prayer sought for by the petitioner is for a direction to the respondent to ascertain as to whether one Rajeswari who is residing at 24, Thangam Colony II

Street, Anna Nagar, Chennai - 40, is alive or dead. It is seen that no proper complaint has been made to the respondent herein, seeking for such relief and as such, without any complaint having been made to the respondent, it may not be proper to investigate the complaint.

2. Furthermore, the respondent herein may not be an appropriate authority, to consider such complaint and it would be the Jurisdictional police to enquire into it. With the above observation the Crl.O.P. is disposed of with liberty for the petitioner to approach the jurisdictional police seeking for such action by way of representation and on receipt of such information, the jurisdictional police shall pass appropriate orders within a period of six weeks from the date of receipt of a copy of this order."

3 The case of the petitioner is that he purchased a vacant site measuring 10 cents at Anna Nagar, Chennai, from one Robert through a registered sale deed dated 16.08.1969. The original owner of the said land was one Nagoor. During 1981, some strangers attempted to trespass into his land. Therefore, he filed a suit in O.S.No.1311 of 1981 on the file of the District Munsif Court at Poonamallee, against the trespassers for a declaration that he has the title to the property. He also sought a recovery of possession and permanent injunction. The said suit was decreed by order dated 25.11.1988 [sic]. Thereafter, he initiated execution proceedings before the Executing Court by filing E.P.No.181 of 1991 before the District Munsif Court, Poonamallee. In that Execution Petition, one S.Packiaraj, (who was the defendant in the suit), filed E.A.No.75 of 1996 under Section 47 C.P.C., which was dismissed by the Execution Court. The said Packiaraj filed C.R.P. No.2130 of 1993 challenging the maintainability of the Execution Petition filed by the petitioner, which was also dismissed by this Court on 14.09.1993. He filed a second application in E.A. No.319 of 1994 under Section 47 C.P.C. which was also dismissed. The said dismissal order came to be challenged in C.R.P. No.604 of 1995 which was also dismissed by this Court. Thereafter, the said Packiaraj filed E.A.No.75 of 1998 which was also dismissed by the Execution Court, challenging which C.R.P. No.1360 of 1999 was filed, which also ended in dismissal vide order dated 10.08.1999. Thereafter, the petitioner filed E.A.Nos. 78,79,84,85 & 86 of 1999 for various reliefs. However, all those applications as well as E.P.No.181 of 1991 were dismissed. Challenging the order passed in E.P.No.181 of 1991, the petitioner preferred C.R.P. No.142 of 2000 and against the dismissal of E.A.Nos.78,79,84,85 & 86 of 1999, he filed C.R.P. Nos.138 to 141 and 143 of 2000. This Court, by order dated 10.08.2000, allowed all the Revision Petitions filed by the petitioner. However, one S.Rajeswari challenged the order dated

10.08.2000 passed by this Court, before the Supreme Court in Civil Appeal No. 1417 of 2001. The said Civil Appeal was allowed by the Supreme Court vide judgment in S.Rajeswari vs. S.N. Kulasekaran and others [(2004) 4 SCC 412] holding that the Revision Petition filed against the order in E.A. No. 84 of 1999 in E.P.No.181 of 1991 was not maintainable and only, a regular appeal was maintainable against the said order. In paragraph no.12 of the judgment in Rajeswari (supra), it was observed as follows:-

"13.. . . .Respondent 1 did not appeal to the High Court and instead preferred a revision petition under Section 115 CPC. We have no doubt that in view of the provisions of Order 21 Rule 103 CPC which provide for appeal against the order passed by the executing court in such matters, no revision could be entertained by the High Court against that order in view of the clear prohibition contained in Section 115(2) CPC, which in clear terms provides that the High Court shall not under Section 115 vary or reverse any decree or order against which an appeal lay either to the High Court or to any other court subordinate thereto. The High Court appears to have interfered with the order of the executing court because it was under the impression that a long drawn out litigation, perhaps engineered by the judgment-debtor, would result in great injustice, and therefore, if some relief could be granted by cutting short the procedure of appeal, etc. the power under Section 115 could be exercised to do justice between the parties. In our view, the High Court could not have acted in a manner contrary to the express provision of Section 115(2) of the Code of Civil Procedure. Since an appeal was provided under Order 21 Rule 103 of the Code of Civil Procedure which treated the order passed by the executing court as a decree subject to the same conditions as to appeal against such decree, a revision petition under Section 115 CPC against such an order is not maintainable. We must, therefore, hold that the High Court exceeded its jurisdiction in entertaining a revision petition under Section 115 CPC against an order passed in proceeding under Order 21 Rule 97 CPC, even if we treat the application filed under Section 151 CPC to be an application under Order 21 Rule 97 CPC."

4 Thereafter, the present petitioner filed a Civil Miscellaneous Appeal with a Delay Condonation Petition before the VI Additional City Civil Court, Chennai. After the delay was condoned, the appeal was taken on file as C.M.A. No.56 of 2007 which was allowed vide order dated 21.10.2011. Thereagainst, S.Rajeswari filed C.M.S.A. No.36 of 2012 before this Court,

besides filing C.R.P. (NPD) No. 2779 of 2012 against the judgment and decree dated 03.07.2012 in E.A. No.2057 of 2012 and E.P.No.457 of 2007 in O.S.No.1311 of 1981 passed by the X Assistant City Civil Judge, Chennai. Both C.M.S.A. No.36 of 2012 and C.R.P. (NPD) No.2779 of 2012 were clubbed together and were heard by a learned Single Judge of this Court, who, by common judgment dated 22.04.2013, dismissed both the cases holding that:

- the petitioner herein has title to the property in question;
- the petitioner was initially having only 6 cents of land and by 1984, he had 10 cents of land;
- S.Rajeswari was not entitled to question the title of the petitioner;
- S. Rajeswari will not get any right over the decree holder, viz., the Petitioner since the property was purchased at an earlier point of time;
- The subsequent purchaser (Deva Anbu) from the original vendor Nagoor will not get any title;
- Therefore, she cannot validly obstruct the decree holder (petitioner).

5 The subsequent information brought to the notice of the court during the hearing of the above petition shows that the said S.Rajeswari died on 07.02.2003 and at the time of her death, she was living in a home for the aged. Notwithstanding the same, a Special Leave Petition was filed in her name being S.L.P. (Civil) Nos. 26165 and 26166 of 2013, in which, the Supreme Court, on 25.11.2013, ordered notice and passed an order of status quo. Thereafter, the said interim order was made absolute on 14.07.2014. In the meantime, due to the leave granted, the said cases were converted into Civil Appeals No.10613 and 10614 of 2013. It is stated by the petitioner that he had entered appearance through his counsel in the above appeals.

6 During the pendency of these proceedings, the petitioner claims that he has come into possession of certain crucial details about the case and he has furnished the details of the same in his affidavit dated 10.08.2018, the relevant portion of which reads as under:

“(a) Rajeswari, the obstructor who has been

contesting the suit from the year 1999 in Poonamalle District Munsif Court, City Civil Court, High Court and Supreme Court died as early as on 07.02.2003 at S.V.Home for aged, Chennai-106.

(b) So, it is very clear that some unknown offender has been conducting the cases in all courts, impersonating the deceased Rajeswari, after the death of Rajeswari on 07.02.2003. Hence, the two Civil Appeals now pending before the Supreme Court, have been filed not by original Rajeswari but by an unknown impersonator.

(c) The main culprit behind all these illegal and criminal activities is one G.Ratna Raj. G. Ratna Raj is a Criminal, involved in several cases, such as cheating and land grabbing in Madras City. He is very cunning and cautious. He never allowed his name to be known to the police especially to the police in his involvement in criminal activities. Rajeswari is his benami and his concubine. Ratna Raj is residing near the suit property in his own house. He knows the entire history of the suit property at Thangam Colony. Because he is the most faithful servant of Nagoor, the original owner of the suit property.

(d) Nagoor sold the suit property to one John Nadar by a duly registered sale deed dated 26.11.1960. John Nadar transferred the suit property by a registered settlement deed dated 22.05.1967 to one Robert. I purchased the suit land from Robert by a registered sale deed dated 16.08.1969. I had obtained patta for the land and I had been in possession of the said land till 1981, when one S.Packiyaraj trespassed into my property and constructed a shed in my vacant site.

(e) After purchasing the suit property, I left Chennai for Bangalore to look after my business activities. Taking advantage of my continued absence, both Ratna Raj and his Master Nagoor, the original owner of the suit property hatched a plan to re-sell my land, in spite of the fact that Nagoor, the original owner of the suit land, had lost all right, title and interest in the suit property by virtue of the first sale made by Nagoor in favour of John Nadar, as early as on 26.11.1960.

(f) Nagoor and Ratna Raj both joined together and resold my property in two portions in favour of two persons namely Packiyaraj and Deva Anbu. Since Ratna Raj wanted to grab one portion of my property,

he purchased a portion of the property, already sold to Deva Anbu, in the name of his benami Rajeswari. Ratna Raj started obstructing the delivery of possession in the execution proceedings before the execution court at Poonamallee only in the year 1999 through his benami Rajeswari who was introduced as an obstruction obstructor for the first time even though she claims to have purchased her portion of the suit property in the year 1993 itself.

(g) Rajeswari was only a name lender. The entire legal expenses for all the legal proceedings before the City Civil Court, High Court and Supreme Court were looked after by Ratna Raj. At the time of purchasing the property changed the Ratnaraj name of Rajeswari's husband as Shanmuga Mudaliar, But the original and real name of Rajeswari's husband is Subash Chanda Bose Nadar [sic]. He purposely effected the name change in all documents relating to Rajeswari before the courts, in order to grab and enjoy the property purchased in the name of Rajeswari solely by himself and to prevent Rajeswari from making any claim or title over the property at a later period. Ratna Raj successfully executed his plan by engaging a flat promoter to construct 6 flats in the portion standing in the name of Rajeswari and grabbing 3 flats for his family and giving the balance of 3 flats to the promoter.

(h) Rajeswari was looked after till her death only by Ratnaraj. Even after her death in the year 2003, he continued to contest all the proceedings before various courts in the name of Rajeswari, suppressing the fact of her death with the help of his advocates who are all well aware of Rajeswari's death. Even though Rajeswari is shown as the owner of the suit land for purposes of record, Ratnaraj alone, had been dealing with the suit land as the leading man, before the public. Ratnaraj never projected Rajeswari as the owner of the suit property.

(i) Now Ratna Raj is no more. He died recently, but the proceedings continue before all the courts in the name of Rajeswari. Some unknown person impersonating Rajeswari has preferred the two Civil Appeals before the Supreme Court by suppressing the fact of Rajeswari's death before the Supreme Court. It is very clear that proceedings have been initiated, conducted and contested in the name of

dead person since 2003 for nearly 15 years by cheating all the courts successfully. The said cheating continues till today."

7 It was under these circumstances, the petitioner filed Crl.O.P.No.4983 of 2018 before this Court seeking a direction to the Commissioner of Police, Chennai, to make a thorough investigation and to ascertain the fact as to whether the said Rajeswari, who filed the petition before the Supreme Court is alive or dead. This Court directed him to make a representation before the police and they were directed to pass appropriate orders, as noted above. Accordingly, the petitioner addressed a representation dated 02.04.2018 together with a copy of the order passed by this Court in Crl.O.P. No.4983 of 2018. Since the time frame of six weeks granted by this Court had elapsed, the petitioner is once again before this Court seeking a status report on the representation made by him.

8 When the matter came up for hearing on 19.06.2018, this Court gave the following direction:

"Today, Mr.E.J.Lokesh Babu, attached to V-5 Thirumangalam Police Station, Law and Order, Chennai is present before this Court.

2. The 2nd Respondent Police is directed to file a report, in terms of the order passed by this Court in Crl.O.P.No.4983 of 2018 dated 07.03.2018 with regard to the whereabouts of the said Rajeswari.

3. The petitioner is directed to appear before the 2nd respondent Police and furnish all the particulars relating to Rajeswari, so as to assist the Police in tracing Rajeswari and filing a report.

4. For filing the said report, post the matter on 03.07.2018."

9 The Inspector of Police, (L & O) Thirumangalam, has filed a report dated 03.07.2018, wherein, at paragraph nos.5,6 and 8, it has been stated as under:

"5. I respectfully submit that discreet enquiry were made in this regard. Enquiry revealed that the Petitioner herein Thiru.S.N.Kulasekaran is having a vacant land at Thangam Colony in V.5 Thirumangalam PS limit. Some years ago, Thiru Rathen Raj has given Power

of Attorney to Tmt.Rajeswari, W/o. Shanmuga Mudaliar and the petitioner herein has filed a case before the Supreme Court of India stating that in this case, Tmt.Rajeswari was impersonated before the Court and stay obtained. One Tmt.S.Rajeswari, W/o.Subash Chandra Bose Nadar was residing in Perambur Market Street, her native place and she has two sons and a daughter. All are residing separately with their family. Subsequently, after the death of Thiru.Subash Chandra Bose Nadar, Tmt.Rajeswari was staying alone and subsequently she was admitted in the S.V.Homes for Senior Citizens and where she died on 07.02.2003. Sons of the deceased Rajeswari has stated that their mother was not having any property at Anna Nagar Thangam Colony.

6. I respectfully submit that the alleged impersonated person before the Supreme Court of India viz. Tmt.Rajeswari, W/o Shanmuga Mudaliar is said to be residing at No.24, 2nd Street, Thangam Colony. When enquiry was made at the place, one Thiru.Yovan, S/o. Rathen Raj is residing at that place and it is their hereditary property and that his father Thiru Rathen Raj and his mother Tmt. Elizebeth are not alive now. Thus Tmt. Rajeswari, W/o. Shanmuga Mudaliar is not residing at the address.

8. In this connection, it is submitted that the Power of Attorney executed in favour of Tmt.Rajeswari, W/o.Shanmuga Mudaliar and further sale deeds are to be collected from the S.R.O. and verified for fixing the correct identity of Tmt. Rajeswari. It is humbly prayed that this Hon'ble Court may be pleased to grant time to submit full fledged report before the court."

10 Under the said circumstances, it is clear that S.Rajeswari, who preferred the appeals in Civil Appeal Nos.10613 and 10614 of 2013 and Civil Appeal No.1417 of 2001 is no longer alive. It is seen from the death certificate issued by Corporation of Chennai that the said person died as early as on 07.02.2003. The Special Leave Petitions were preferred only after that date. The affidavit filed in support of the Special Leave Petition was verified at New Delhi on 03.08.2013 describing the said Rajeswari, W/o. Shanmugam was about 88 years old even on that date. Interim order of status quo was obtained before the Supreme Court on 25.11.2013 and the same was made

absolute on 14.07.2014. The status report filed by the Inspector of Police (Law and Order) Thirumangalam, also confirm this fact.

11 Under the said circumstances, it can be believed that certain persons with vested interest are conducting litigations in the name of a dead person and are freely forging documents and are filing the same before the Supreme Court. It must also be noted that the petitioner before this Court, having purchased property as early as 50 years ago and at present, running 82 years, is unable to enjoy the fruits of his property. The persons who are responsible in conducting such litigations in the name of a dead person and forging documents must be punished by the long arm of the law. But for the Civil Appeals, the present petitioner would have enjoyed the property which was also supported by the orders of the Court. His attempt to execute the decree obtained by him from a competent Civil Court was thwarted by the obstructing game played by the criminals who are still at large.

12 It must be noted that the Supreme Court, in S.P.Chengalvaraya Naidu (Dead) by LRs Vs. Jagannath (Dead) by LRs and another [(1994) 1 SCC 1], had observed as follows:-

"5. We do not agree with the High Court that "there is no legal duty cast upon the plaintiff to come to court with a true case and prove it by true evidence". The principle of "finality of litigation" cannot be pressed to the extent of such an absurdity that it becomes an engine of fraud in the hands of dishonest litigants. The courts of law are meant for imparting justice between the parties. One who comes to the court, must come with clean-hands. We are constrained to say that more often than not, process of the court is being abused. Property-grabbers, tax- evaders, bank-loan-dodgers and other unscrupulous persons from all walks of life find the court - process a convenient lever to retain the illegal-gains indefinitely. We have no hesitation to say that a person, who's case is based on falsehood, has no right to approach the court. He can be summarily thrown out at any stage of the litigation.

. A litigant, who approaches the court, is bound to produce all the documents executed by him which are relevant to the litigation. If he withholds a vital document in order to gain advantage on the other side then he would be guilty of playing fraud on the court as well as on the opposite party."

13 Similarly, the Supreme Court, in A.V.Papayya Sastry and Others Vs. Government of Andhra Pradesh and Others [(2007) 4 SCC 221], had observed as follows:-

"21 Now, it is well settled principle of law that if any judgment or order is obtained by fraud, it cannot be said to be a judgment or order in law. Before three centuries, Chief Justice Edward Coke proclaimed; "Fraud avoids all judicial acts, ecclesiastical or temporal".

22 It is thus settled proposition of law that a judgment, decree or order obtained by playing fraud on the Court, Tribunal or Authority is a nullity and non est in the eye of law. Such a judgment, decree or order by the first Court or by the final Court has to be treated as nullity by every Court, superior or inferior. It can be challenged in any Court, at any time, in appeal, revision, writ or even in collateral proceedings."

14 It must be noted that since the three Civil Appeals are pending before the Supreme Court and there is also interim stay of the execution of the decree obtained by the petitioner, there is very limited scope for this Court to exercise its extraordinary jurisdiction vested under Section 482 Cr.P.C.

15 Under the said circumstances, this Court directs:

a) the second respondent police to register an F.I.R and to proceed to investigate the persons who forged documents and filed cases in the name of a dead person, viz., S.Rajeswari and file a final report before the jurisdictional Court within six months from the date of receipt of a copy of this order and also submit a compliance report before this Court.

b) the Registry of this Court to forward a copy of this order to the Registrar General of the Supreme Court, with a request to place the matter before the Hon'ble Chief Justice of India and to take appropriate action in respect of Civil Appeal No.1417 of 2001 and Civil Appeal Nos. 10613 and 10614 of 2013 (S.Rajeswari Vs. S.N.Kulasekaran) as well as against persons who were responsible in filing the Special Leave Petition in the name of a dead person and pursuing the same without disclosing the material facts before the Supreme Court.

With the aforesaid directions, this Criminal Original Petition is disposed of with liberty to the petitioner to pursue the criminal complaint, as well as to continue the execution proceedings, after the disposal of the Civil Appeals pending before the Supreme Court.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

To

1. The Commissioner of Police
Greater Chennai
No. 132, EVK Sampath Road
Vepery
Chennai - 600 007
 2. The Inspector of Police (Law & Order)
(V-5) Thirumangalam Police Station
Chennai - 600 101
 3. The Registrar General
Supreme Court of India
Tilak Marg
New Delhi - 110 001 -
(with a request to place the matter before
the Hon'ble Chief Justice of India for appropriate action)
 4. The Public Prosecutor, High Court, Madras.
- +3cc to Mr.S.Muthudurai, Advocates sr.no.58598

CrI.O.P. No.15697 of 2018

nr 28/08/2018

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