

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 27.07.2018

CORAM

THE HONOURABLE MR.JUSTICE P.N.PRAKASH

Crl.O.P.No.18657 of 2018

- 1 D.Krishnakumar
- 2 P.Chithirai Pandian
- 3 N.Kalayanarasundaram

... Petitioners

Vs.

- 1 The State represented by the
Inspector of Police,
S-15 Selaiyur Police Station,
New No.108 Old No.104, Velacheri Main Road,
Selaiyur, Chennai-600 073

- 2 V.Muthiah
- Respondents

Prayer: Criminal Original Petition filed under Section 482 of Cr.P.C. praying to call for the records and quash the charges against the petitioners in C.C.No.553 of 2014 on the file of the learned Judicial Magistrate, Tambaram.

For Petitioners : Mr.P.Ramamraj

For Respondent-1 : Mr.C.Iyyapparaj
Additional Public Prosecutor

For Respondent-2 : Mr.P.Palaniyandi

ORDER

Plot Nos.49 and 50, Sri Palaniappa Nagar, Gowrivakkam totally measuring 6545 sq. ft., originally belonged to one Azhagammai. The said Azhagammai died on 03.12.1990, leaving behind her legal heirs M.Venkatachalam, the husband of the said Azhagammai, V.Muthiah and V.Ramasamy are the sons of the deceased and Shantha and Mageswari are the sisters of the de-facto complainant. Most of the legal heirs of late Azhagammai are settled in Malaysia and they were not devoting much attention to the said property. This was taken advantage of by one M.V.Sekar(A1), who created a fake death certificate and legal heir certificate of Azhagammai to that effect, he is the sole heir to the properties of late Azhagammai.

2. On the strength of the fabricated documents, Sekar sold plot No.49, document No.1653/2013 to Krishnakumar(A2) and plot No.50, document No.1652/2013 in the name of Kalyanasundaram

(A3) and Chithiraipandian (A4) on the file of the Sub Registrar, Selaiyur. Thereafter, Sekar vanished into thin air and still in abscondence. On coming to know of this, Muthiah, one of the sons of late Azhagammai, lodged a complaint, based on which, the first respondent registered a case in Crime No.1363 of 2013 on 29.08.2013 and after completing the investigation, charge sheet was filed in C.C.No,553 of 2014 before the Judicial Magistrate at Tambaram against Sekar (Absconding accused A1), Krishnakumar (A2), Kalyanasundaram (A3), Chithirai Pandian (A4), for quashing which, this petition has been filed on the ground that the parties have arrived at a compromise.

3. In normal circumstances, this Court would not quash the prosecution, where the documents have been fabricated. However, investigation conducted by the police shows that Krishnakumar (A2), Kalyanasundaram (A3) and Chithirai Pandian (A4) were innocent purchasers and they believed that Sekar was the legal heir of late Azhagammai and therefore, they purchased the property for valuable consideration.

4. Admittedly, Sekar is still in abscondance as stated above. The legal heirs of late Azhagammai namely her husband M.Venkatachalam, daughters Mageshwari and Shantha and sons Ramasamy and Muthiah have together executed a Power of Attorney dated 19.04.2008, registered as document No.41 of 2018 on the file of the Joint.II, Karaikudi, Sivagangai in favour of Muthiah, who is also one of the sons of Azhagammai for dealing with the property and also to represent them in the prosecution.

5. On the strength of the said Power of Attorney, Muthiah has entered into a joint compromise memorandum dated 25.07.2018 with Krishnakumar (A2), Kalyanasundaram (A3) and Chithirai Pandian (A4), the terms which are under:-

" JOINT COMPROMISE MEMO

This MEMORANDUM OF JOINT COMPROMISE executed at Chennai on this the 25th day of July, 2018

BETWEEN

1. Mr. M. VENKATASALAM CHETTIAR, S/o V. Muthiah, residing at #12 Anna Nagar, 2nd Street, Karaikudi, Sivagangai Dist., 2. Mrs. MAGESHWARI W/o. A.L. Ramasamy and D/o M. Venkatasalam residing at #12 Aruna Nagar, 2nd Street, Karaikudi, Sivagangai Dist., 3. Mr. V. RAMASAMY S/o M. Venkatasalam Chettiar residing at #12 Aruna Nagar, 2nd Street, Karaikudi, Sivagangai Dist., represented by their Power Agent Mr. V. MUTHIAH, S/o. M. Venkatasalam Chettiar, residing at #12 Aruna Nagar, 2nd Street, Karaikudi,

Sivagangai Dist. Under Registered Special Power vide Document No.41 of 2018, Dated 19.4.2018, on the file of Joint II Karaikudi, sivagangaiDist, 4. Mrs.V.SANTHA, W/o. A.N.Narayanan and D/o M.VenkatasalamChettiar residing at #10 Jalan PJS 10/24A, 46000 Bandar Sri Subang, 46000 Jaya, Selangor, Malaysia represent by her Power Agent Mr.V.MUTHIAH, S/o. M.VenkatasalamChettiar, residing at #12 Aruna Nagar, 2nd Street, Karaikudi, Sivagangai Dist. Under General Power of Attorney executed at Kualalumpur, Mlaysia on 26th March 2018. 5. Mr.V.MUTHIAH, S/o. M.VenkatasalamChettiar, residing at #12 Aruna Nagar, 2nd Street, Karaikudi, SivagangaiDist,,hereinafter to be referred as the PARTIES OF THE FIRST PART, which expression shall unless it be repugnant to the context or meaning thereof, be deemed to mean and include its successors, legal representatives, nominees or assigns of the ONE PART

AND

(1) Mr. D.KRISHNAKUMAR, S/o. Mr. Lakshmanan, residing at No. 19, AndiyappaGramani Street, Royapuram, Chennai - 600 013,

(2) Mr. P.CHITHIRAI PANDIAN, S/o. Mr.Periyasamy, residing at No.1/744, Nehru Street, JalladiyanPettai, Medavakkam, Chennai - 600 100, and

(3) Mr. N.KALYANASUNDARAM, S/o. Mr. Narayanan, residing at Flat No. A/28, Sri Lakshmi Flats, No.71, 6th Main Road, Nanganallur, Chennai - 600 061, hereinafter to be referred as the PARTIES OF THE SECOND PART, which expression shall unless it be repugnant to the context or meaning thereof, be deemed to mean and include its successors, legal representatives, nominees or assigns of the OTHER PART. सत्यमेव जयते

WHEREAS, Plot Nos.49 and 50, Palaniappa Nagar, Gowrivakkam Village, the then Saidapet Taluk, presently Tambaram Taluk, which is more fully described in the Schedule hereunder was owned and possessed by one Mrs. M.V. Alagammai, she having purchased the same from one Mr. V. Kuppusamy and three others, under the two Sale Deeds dated 24.12.1979, registered as Document Nos.5172/1979 and 5173/1979 respectively, on the file of the Sub Registrar Office, Tambaram; and

WHEREAS, the aforesaid Mrs.M.V.Alagammai who continued to be in absolute possession and enjoyment of the said property, died intestate on 03.12.1990 leaving behind

her husband Mr.VenkatasalamChettiar, two sons Mr.Muthiah, Mr. Ramasamy and two daughters Mrs. V. Santha& Mrs. Mageswari, the PARTIES OF THE FIRST PART herein, as her surviving legal heirs to inherit her estate; and

WHEREAS, taking advantage of the fact that the PARTIES OF THE FIRST PART, often travelled to Malaysia and stayed there for a long period, one Mr.M.V.Sekar crated a fake Legal Heir Ship Certificates as though Mr.VenkatachalamChettiar, the first person of the PARTIES OF THE FIRST PART also died and that he was the only son of the aforesaid Mrs.Alagammai and Mr.VenkatachalmChettiar and based on the said fake Legal Heir ship Certificate and title deeds, the said Mr.M.V.Sekar had also conveyed the schedule mentioned property in two portions to and in the joint names of the PARTIES OF THE SECOND PART under two different Sale Deeds and registered as Document Nos.1652/2013 and 1653/2013, on the file of the Sub-Registrar Office, Selaiyur, and

WHEREAS, on immediately coming to know about the fraudulent transactions, the PARTIES OF THE FIRST PART lodged a Police complaint, which was registered as Crime No. 1363/2013 against Mr.M.V.Sekar and also the PARTIES OF THE SECOND PART by the Inspector of Police, Selaiyur Police Station.

WHEREAS, due to some reasons, the Sub-Registrar Office, Selaiyur had refused to hand over the said registered Sale Deeds to the PARTY OF THE SECOND PART which had resulted in the PARTIES OF THE SECOND PART, filing two Writ Petitions in the W.P. No.7133 of 2013 and W.P. No.7626 of 2013 before the Hon'ble Madras High Court seeking for a direction against the Sub Registrar, Selaiyur Sub-Registrar Office to release the title deeds to them; which is pending before the Hon'ble High Court.

WHEREAS, thus the various litigation have cropped up and the PARTIES OF THE SECOND PART had also realized that the schedule mentioned property is absolutely owned by the PARTIES OF THE FIRST PART, and the same was illegally conveyed by one M.V.Sekar to them based on fake documents; and

WHEREAS, in the circumstances both the PARTIES have decided to settle the afore said issues among themselves and report the same to the Hon'ble Madras High Court and arrived at certain terms and conditions

as to the settlement arrived at and have decided to reduce the same in writing.

NOW THIS JOINT COMPROMISE MEMO WITNESSETH AS FOLLOWS:

1. The SECOND PARTIES hereby confirm that the sale deed Nos.1652/2013 and 1653/2013 which had been executed in favour of the parties of the SECOND PART and registered in the Sub-Registrar Office, Selaiyur, is hereby cancelled and revoked under this Joint Compromise Agreement.

2. The SECOND PARTIES hereby confirm that the endorsements of the said sale transactions (Sale deed Nos.1652/2013 and 1653/2013 entries) shall be removed from the records of Sub-Registrar Office, Selaiyur, under this Joint Compromise Agreement.

3. The SECOND PARTIES hereby agree that the said sale deed Nos.1652/2013 and 1653/2013 shall be received by the FIRST PARTY or Prospective Purchaser from the concerned Authorities. And the SECOND PARTIES agree to hand over whatever documents which were received from one M.V.Sekar to the FIRST PARTY or Prospective buyer.

4. The SECOND PARTIES hereby agreed to execute the necessary/required documents to secure the clear title of the First Party or Prospective buyer, and they agreed to sign necessary/required papers/Document whenever required.

5. On completion of all the above tasks, both the PARTIES OF THE FIRST PART and PARTIES OF THE SECOND PART shall jointly take steps to quash the CC 553/2014 in FIR 1363/2013 pending before the Hon'ble judicial Magistrate, Tambaram, that has been registered against one M.V.Sekar and THE SECOND PARTIES based on the Police Complaint given by the FIRST PARTY.

6. The PARTIES OF THE FIRST PART, have identified one Mr.G.Anandan, A.R.Murugesan as the prospective Purchasers of the Schedule mentioned Property and entered a sale agreement. The SECOND PARTY hereby agrees to co-operate with the PARTY OF THE FIRST PART, for the said sale transaction in respect of the Schedule property.

7.As the token of their confirmation in the PARTIES OF THE FIRST PART, conveying their schedule mentioned property to the said Mr.G.Anandan and A.R.Murugesan or their nominees, the PARTIES OF THE SECOND PART agree to sign as witnesses or conforming party in the Sale Agreement/Sale deed to be entered into by the PARTIES OF THE FIRST PART with the said prospective Purchasers.

8. Both the PARTIES shall co-operate with each other and file necessary petitions / applications, either in the Review Petitions or in the Writ Petitions or file separate applications/petitions before the Court, for the smooth settlement of the issues in respect of the Schedule property.

9. Both the PARTIES shall cooperate and resolve the issue completely and amicably. It is mutually agreed by both the parties that the MOU dated 30.04.2018 is recorded for the mutual benefits of all the parties concerned and there shall not be any money transaction in connection with the completion of the entire understanding in this Joint Compromise Memo and the parties concerned shall bare all expenses in connection with their obligations under this Joint Compromise Memo.

10. The PARTIES OF THE FIRST PART and PARTIES OF THE SECOND PART also confirm and declare that the legal quietus to the issue is to confirm that the property absolutely stands in the names of the PARTIES OF THE FIRST PART and that the PARTIES OF THE SECOND PART are completely third parties to the property.

11. This Joint Compromise Memo is executed in two copies, each of which shall be deemed to be original and the PARTIES OF THE FIRST PART and the PARTIES OF THE SECOND PART which together will constitute one and the same instrument.

12. Both the PARTIES herein mutually agree that every one of them shall perform their obligation under this Joint Compromise Memo without any default on their part as stated above shall take into effect without any lacuna.

SCHEDULE

All that piece and parcel of vacant land bearing Plot Nos. 49 and 50, Palaniappa Nagar, Gowrivakkam Village, Tambaram Taluk, Kancheepuram District, measuring total extent of 6545 Sq.ft., comprised in Old Survey No. 6/18, New Survey Nos. 6/30 and 6/31 of Gowrivakkam Village, total property being bounded on the

North by : Plot Nos.51 and 52;

South by : 20 feet Road;

East by : Plot No.48; and

West by : 20 feet Road

situate within the Sub-Registration District of Selaiyur and Registration District of South Chennai.

IN WITNESS WHEREOF the parties hereto have set and subscribed their respective hands to this MEMORANDUM OF UNDERSTANDING on the day, month and year first hereinabove written."

6 Today Mr.M.Udayakumar, HC 36463, Selaiyur Police Station is present before this Court. The parties Krishnakumar(A2), Kalyanasundaram(A3), Chithirai Pandian (A4) and the de-facto complainant are present and they are identified by the police.

7 In view of the aforesaid compromise, this petition is allowed and the proceedings in C.C.No.553 of 2014 pending on the file of the learned Judicial Magistrate, Tambaram is quashed as against Krishnakumar (A2), Kalyanasundaram(A3) and Chithirai Pandian (A4). As and when Sekar is arrested, he will have to face the music. The police can also enlist Krishnakumar(A2), Kalyanasundaram(A3) and Chithirai Pandian (A4) as prosecution witnesses to prove the case. The petitioners are directed to pay a sum of Rs.1,000/- each as costs [Total Rs.3,000/-] to the credit of the Chief Justice Relief Fund [Payable in Accounts Section of the High Court Registry], within a period of two weeks from the date of receipt of a copy of this order and file a photocopy of the receipt along with a memo reporting compliance in the Registry.

Sd/-
Assistant Registrar

//True copy//

Sub Assistant Registrar

rpl

To

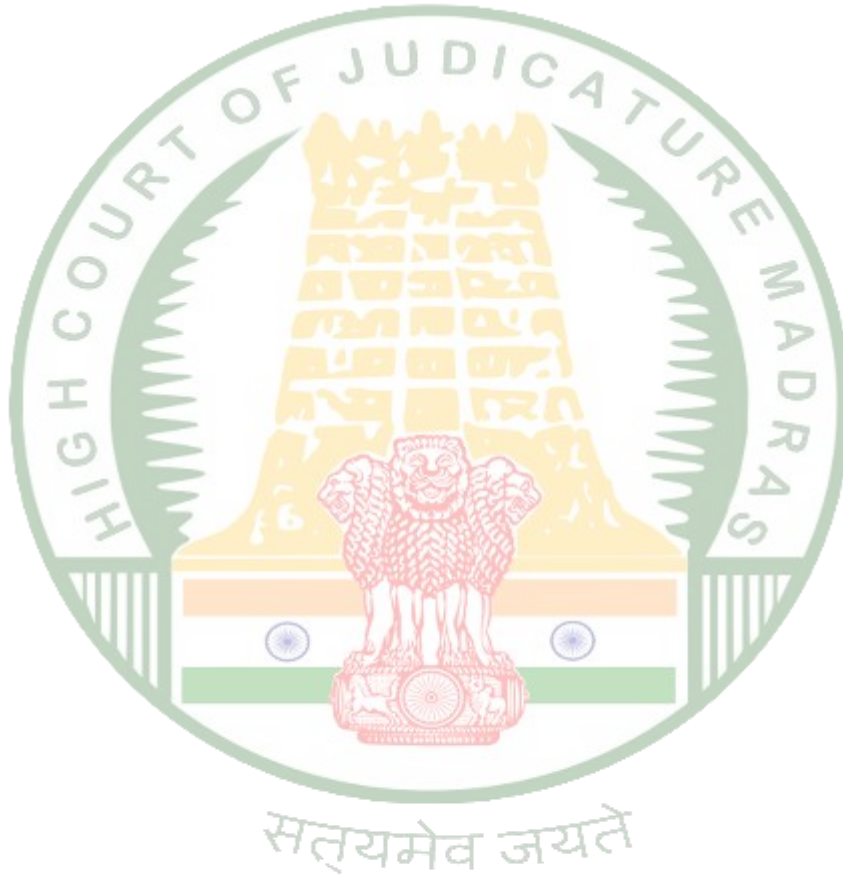
- 1 The Judicial Magistrate,
Tambaram.
- 2 The Inspector of Police,
S-15 Selaiyur Police Station,
New No.108 Old No.104, Velacheri Main Road,
Selaiyur, Chennai-600 073
- 3 The Public Prosecutor,
High Court, Madras.

4 The Section Officer,
Accounts Section,
High Court, Madras.

+3cc to Mr.P.Palaniandy, Advocate SR.No.51230

CrI.O.P.No.18657 of 2018

GN(14/08/2018)



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