



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT
(Criminal Jurisdiction)

Thursday, the Twenty Second day of February Two Thousand Eighteen

WEB COPY

PRESENT

The Hon`ble Mr.Justice R.PONGIAPPAN

CRL OP(MD) No.717 of 2018

1 KULANDHAI ALIAS SAVARIMUTHU

2 SAVARIMUTHU JAMES

... PETITIONERS/ACCUSED No.1 & 2

Vs

STATE REP BY

THE INSPECTOR OF POLICE

DISTRICT CRIME BRANCH,

THANJAVUR DISTRICT

(IN CRIME NO.13/2017)

... RESPONDENT/COMPLAINANT

For Petitioners : M/S.C.ARUL VADIVEL ALIAS SEKAR Advocate

For Respondent : MR.A.ROBINSON, Govt. Advocate (Crl. Side)

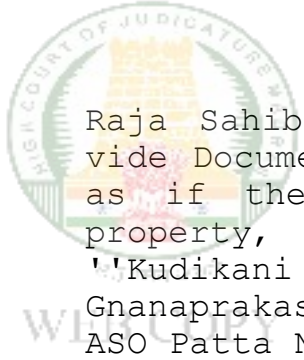
For Intervenor : M/S.B.JAMEEL ARASU, Advocate

PETITION FOR ANTICIPATORY BAIL Under Sec. 438 Cr.P.C.

ORDER : The Court Made the following order :-

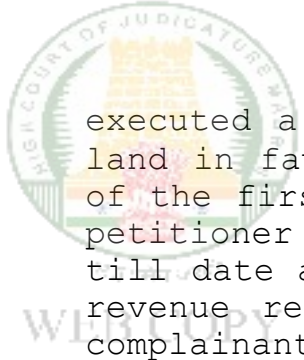
The petitioners, who are arrayed as Accused Nos.1 and 2, apprehend arrest at the hands of the respondent police for the alleged offences punishable under Sections 120(b), 419, 420, 468 and 471 IPC, in Crime No.13 of 2017 and hence, seek anticipatory bail.

2.The case of the prosecution is that the properties in Old Survey No.248, New Survey No.248/3, measuring an extent of 3.53 acres; Old Survey No.253, New Survey No.253/3, measuring an extent of 1.93 acres; and Old Survey No.253, New Survey No.253/4, measuring an extent of 1.95 acres, situated at Nilgiri South Thoottam, Lakshathoppu Village, Thanjavur, were allotted in favour of one Late.Pratapa Simha Raja Sahib by virtue of Judgment and Decree, dated 16.09.1925, made in O.S.No.3 of 1919, on the file of the Subordinate Court, Thanjavur. Subsequently, the said Pratapa Simha Raja Sahib executed a Deed of Kudikani on 19.05.1927 in respect of the rights of said properties in favour of one Veerappa Urthiyar, vide Document No.1381 of 1927, on the file of the Registrar, Thanjavur. Thereafter, the said Veerappa Urthiyar executed a registered sale deed without the knowledge of the said Pratapa Simha



Raja Sahib in favour of one Chinnappa Udaiyar, S/o.Domu Udaiyar, vide Document No.2294/1927 on the file of the Registrar, Thanjavur, as if the said Veerappa Urthiyar had absolute right over the property, though such right was conferred in the said deed of 'Kudikani Rights', dated 09.05.1927. While this being so, one Gnanaprakasa Udayar, S/o.Thomu Udayar created revenue records, as if ASO Patta No.389 was given to him by the Government under the Estate Abolition Act and added the petitioners herein as legal heirs in the connected revenue records. Thereafter, the de-facto complainant, who was appointed as the General Power of Attorney by one T.Serfoji Raja and five others, challenged the said Patta before the Tahsildar, Thanjavur. During enquiry, the petitioners claimed right over the said property on the strength of ASO Patta No.389, dated 12.09.1961, standing on their names. Further, it was stated in the counter affidavit filed on the side of the Government in W.P.No.34077 of 2012 that the said ASO Patta No.389 was given for the year 1962 to 1966 only, which revealed that the said ASO Patta said to have been issued in 1961, was a bogus one. Moreover, the records revealed that the aforesaid Pratapa Simha Raja Sahib was awarded a sum of Rs.4,985/- in respect of the said properties under the Estate Abolition Act on 20.08.1969, which revealed that the petitioners obtained the said ASO Patta illegally and fraudulently. Moreover, a person impersonated himself as Mariya Michael, S/o.Chinnappa Udayar and filed an undertaking during the DRO enquiry. That apart, the names of the petitioners and their forefathers were not found in any of the revenue records from 14.07.1927 to 12.09.1961. In order to add their names, the said Gnanaprakasam Udayar executed a Will in the year 1970 in favour of the first petitioner.

3.The learned counsel appearing for the petitioners submitted that the land comprised in Survey No.248/3 and 253/4, Neelagiri Therku Thottam Village, Thanjavur, measuring an extent of 5 acres and 48 cents originally belonged to one Pratapa Simha Raja of Thanjavur Palace. The entire extent of 69 acres and 7 cents was later sold by the said Raja Pratapa Simha Raja in favour of one Veerappa Oorthiyar vide registered sale deed of the year 1927 [Kudikanipathiya Kirayam]. Thereafter, out of the same, the said Veerappa Oorthiyar sold 22 acres and 22 cents in favour of one Chinappa Udayar on 14.07.1927 [Document No.2294/1927]. Subsequently, in oral partition acted upon among brothers, 5 acres and 48 cents were allotted to Gnanaprakasa Udayar, the younger brother of Chinappa Udayar. The said Chinappa Udayar had purchased the property out of the funds contributed by all the four brothers. Gnanaprakasa Udayar had been paying the kist and other statutory dues in respect of the land in his own name from Fasali 1357 onwards and enjoying the land by cultivating the same. After settlement proceedings, the Thanjavur Palace paid compensation and the order passed in O.P.No.43/1959 filed by Pratapa Simha Raja Sahib substantiates the same. Thereafter, Patta was issued in favour of Gnanaprakasa Udayar, since he was in physical possession and occupation and was cultivating the land. The Gnanaprakasa Udayar

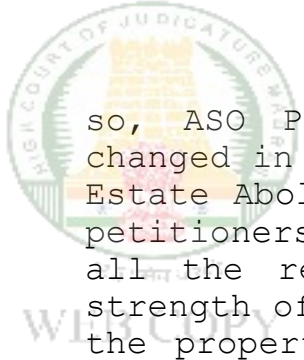


executed a Will on 10.12.1970, in which, he bequeathed the subject land in favour of his son, viz., the first petitioner. The father of the first petitioner passed away in 1972. Thereafter, the first petitioner is in continuous possession and uninterrupted enjoyment till date and patta pass book was also issued in his favour and the revenue records also stand in his name. While so, the de-facto complainant claiming to be the Power Agent of one Murugappa Chettiar of Devakottai claims on this land. Finding that such a claim is unsustainable on facts and law, he gave up the same and began to claim in the name of T.Serfoji Raja Vagaiyara and wanted mutation of revenue records. He made a representation before the RDO, Thanjavur and a notice was issued to the petitioners by the RDO, Thanjavur. Thereafter, the petitioners filed W.P.(MD)No.11706 of 2011 before this Court and the same was allowed. He further submitted that the petitioners have been maliciously roped in by the de-facto complainant by brushing criminal colour only in order to tarnish their image and to spoil their reputation. The de-facto complainant preferred the complaint frivolously in order to harass the petitioners herein and accusations have been made only with the object of injuring or humiliating the petitioners by arresting them. He also submitted that the entire case of prosecution is based on documentary evidence as such the question of custodial interrogation does not arise and no prejudice would be caused if the petitioners are released on anticipatory bail. The petitioners are innocents and they have not committed any offence as alleged by the prosecution and they have been falsely implicated in this case. The first petitioner is aged about 91 years and the second petitioner is aged about 69 years, who is ailing from kidney problem and taking treatment.

4.The learned counsel for the Intervenor/de-facto complainant reiterated the averments made in the complaint and prayed for dismissal of the criminal original petition.

5.The learned Government Advocate (Criminal side) appearing for the State submitted that the investigation is in progress.

6.The submissions made by the learned counsel on either side are considered. Initially, as per the judgment and decree, dated 16.09.1925, passed in O.S.No.3 of 1919 on the file of the Subordinate Court, Thanjavur, the land in question was allotted in favour one Late.Pratapa Simha Raja Sahib. Subsequently, the said Late.Pratapa Simha Raja Sahib executed a deed of Kudikani on 09.05.1927 in favour of one Veerappa Urthiyar, vide Document No.1381 of 1927 on the file of the Registrar, Thanjavur. Thereafter, the said Veerappa Urthiyar without having any right over the property in question, executed a registered sale deed in favour of one Chinnappa Udaiyar, S/o.Domu Udaiyar, vide Document No.2294/1927 on the file of the Registrar, Thanjavur. The said sale deed was effected without knowledge of the said Late.Pratapa Simha Raja Sahib. So according to the prosecution, the said Veerappa Urthiyar is not having any right over property and he is having only Kudikani rights. While



so, ASO Patta No.389 relating to the property in question was changed in favour of one Gnanaprakasa Udayar, S/o.Thomu Udayar under Estate Abolition Act and thereafter, in the Patta, the names of the petitioners were also added and thereby, mutations were effected in all the revenue records. According to the petitioners, on the strength of revenue records, the petitioners are claiming right over the property. On the other hand, the de-facto complainant claims that the right of the property was concocted by the petitioners and others by creating false documents under the Estate Abolition Act. So, it is necessary to find out who is the person having absolute right over the property in question. In order to show their *bona fide*, the petitioners herein enclosed much documents related to the orders passed by the Estate Officer. However, the alleged transactions are initiated in the year 1919 and only, now the case has been registered as per the direction. Since so much of transactions are completed and also the plea of fraud is alleged against the petitioners, custodial interrogation is necessary for completing the investigation. If anticipatory bail is granted to the petitioners, there will be a chance for tampering the witnesses and hampering investigation. Hence, this Court is not inclined to grant anticipatory bail to the petitioners.

Accordingly, this Criminal Original Petition is dismissed.

sd/-
22/02/2018

/ TRUE COPY /

Sub-Assistant Registrar (C.S.)
Madurai Bench of Madras High Court,
Madurai - 625 023.

TO

- 1 THE SUBORDINATE JUDGE
THANJAVUR
- 2 THE INSPECTOR OF POLICE
DISTRICT CRIME BRANCH, THANJAVUR DISTRICT
- 3 THE ADDITIONAL PUBLIC PROSECUTOR,
MADURAI BENCH OF MADRAS HIGH COURT,
MADURAI

+1. CC to M/S.C.ARUL VADIVEL ALIAS SEKAR Advocate SR.No.2859
+1 cc to M/S.B.JAMEEL ARASU, Advocate SR.No.2955

ORDER
IN
CRL OP(MD) No.717 of 2018
Date :22/02/2018