

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT****Reserved on: 28.07.2017****Delivered on: 06.06.2018**

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CORAM:**THE HONOURABLE MR.JUSTICE S.S.SUNDAR****CRL.O.P. (MD) .No.9652 of 2017****and****CRL.M.P. (MD)No.6593 of 2017**

1.Muthurakku
2.Karuppasamy
3.Subramaniyan

...Petitioners/Accused 3,7&8

Vs.

1.State through
The Inspector of Police,
District Crime Branch,
Sivagangai.

...Respondent/Complainant

2.Amirtha Rajan

...Respondent / Defacto Complainant

PRAYER: Criminal Original Petition is filed under Section 482 of Criminal Procedure Code, to call for the records and quash the charge-sheet in C.C.No.11 of 2017 on the file of the Judicial Magistrate Court No.II, Sivagangai.

For Petitioners	:	Mr.N.S.Ponnaiah
For R1	:	Mr.C.Ramesh
		Additional Public Prosecutor.
For R2	:	Mr.R.Udhayakumar

ORDER

This Criminal Original petition is filed to quash the charge sheet in C.C.No.11 of 2017 on the file of the Judicial Magistrate Court No.II, Sivagangai.

2.The brief facts that are necessary for the disposal of this criminal original petition are as follows:

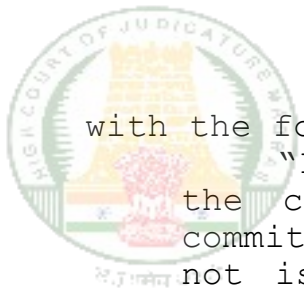
2.1.A land measuring to an extent of 0.60.5 hectare equivalent to 1 acre 50 cents in S.No.106/2 in Theppaliyenthal Village, Manamadurai Taluk, Sivangangai District, originally belonged to one Periyasamy, by virtue of an assignment made in his favour in the year 1980. The said Periyasamy executed a registered sale deed in the name of Kasthuri Ammal, wife of the second respondent herein. It is not in dispute that patta in respect of the property was also transferred in the name of Kasthuri Ammal, as patta No.199.



2.2.The said Periyasamy, original owner, died on 14.09.1996. However, suppressing the sale that was executed by Periyasamy in favour of the wife of the second respondent herein, it appears that the first petitioner herein has obtained a sale deed in his favour from Periyasamy's daughter, one Poomayil, wife of Murugan. It is stated in the sale deed dated 12.08.2015, (executed by Poomayil, the second accused) that the property belonged to Periyasamy, that the same devolved on his wife and daughter and that by virtue of a release deed executed by the first accused (wife of Periyasamy) in favour of the second accused, the second accused became the absolute owner of the property. It is also stated that patta was transferred in the name of the vendors of the first petitioner. Thereafter a complaint was lodged by the second respondent herein against the wife and daughter of Periyasamy, who are the accused Nos.1 and 2 and the petitioners herein, who are accused 3, 7 and 8.

2.3.In the complaint, it is stated that the petitioners made an attempt to prevent the defacto complainant from enjoying the property on the strength of the fraudulent sale deed dated 12.08.2015. Since patta was standing in the name of the wife of defacto complainant, it is further stated that a fraudulent release deed was executed by the wife of Periyasamy, in favour of her daughter only for the purpose of getting patta in the name of the daughter of Periyasamy. It is, thereafter, patta was obtained in the name of Poomayil, the second accused. It appears that no notice was issued to the wife of the second respondent. The patta was transferred in favour of first petitioner pursuant to the registered sale deed dated 12.06.1995.

2.4.After the complaint was lodged, the first petitioner herein filed a suit in O.S.No.68 of 2016 on the file of the District Munsif Court, Manamadurai for declaring the sale deed dated 12.06.1995 as forged, illegal and null and void and for permanent injunction restraining the defendant from interfering with the peaceful possession and enjoyment of the property. The wife of the second respondent herein is the first defendant and the second respondent is the second defendant in this suit. The allegations in the complaint would clearly show that it is a case of land grabbing, sought to be executed cleverly by the petitioners and others in connivance with the revenue officials and the legal heirs of Periyasamy, the original owner of the property. A registered sale deed executed by Periyasamy in the year 1995, is challenged on the ground of forgery, nearly after 21 years, that too by the recent purchaser, who may not have any knowledge about the transaction that was completed in 1995. It appears to be one instituted to convert a criminal case into a civil dispute. The complaint was registered in Cr.No.13 of 2016 for the offences punishable under Sections 406, 468, 471, 420 and 120(B) of IPC. Earlier, the petitioners herein filed CrI.O.P.(MD)No.21154 of 2016, before this Court to quash the first information report in Cr.No.13 of 2016, registered by the Inspector of Police, District Crime Branch, Sivagangai. The said petition was ultimately dismissed by this Court by order 16.03.2017



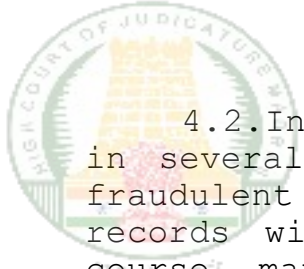
with the following observations:

"In view of the above circumstances, this Court is of the considered view that whether the petitioners have committed offence as alleged by the prosecution is true or not is the issue to be decided only after full fledged trial and it cannot be decided in this quash petition, since prima facie materials are available against the petitioners. Hence, the relief sought for by the petitioners cannot be granted at this stage."

3.The learned Counsel for the petitioners submitted that a civil dispute is sought to be converted as a criminal case. It was further argued that the sale deed obtained by the wife of second respondent was in fact a fraudulent one and that therefore, a civil suit has been filed by the first petitioner. It is also submitted that the complaint is concocted and based on surmise and falsely narrated facts and events. Stating that the first petitioner has purchased the property from the rightful owner and has also obtained patta, it is argued that the complaint is based on a forged document is unsustainable in law as against the owner of the property, namely the daughter of Periyasamy.

4.As against the submission of the learned Counsel for the petitioners, the learned Counsel appearing for the second respondent relied upon the order passed by this Court in CrI.O.P(MD)No.21154 of 2016, dated 16.03.2017 and the alleged fraudulent transaction narrated in the complaint. This Court is not, of course, convinced that the offences punishable under Sections 420, 468, 471 and 406 of IPC are made out against the petitioners for getting a document of sale in 2015 from the second accused in the criminal case. However, this Court is not inclined to entertain this quash petition for the following reasons:

4.1.In this case, it is not in dispute that Periyasamy is the original owner of the property. He died in the year 1996. Before his death, he executed a sale deed in favour of the wife of the defacto complainant in the year 1995. Based on this document, patta was transferred in the name of the wife of defacto complainant. In these circumstances, in 2005, a registered release deed is stated to have been executed by the wife of Periyasamy in favour of the daughter of Periyasamy. The truth and genuineness of this document has to be seen. This Court has serious doubt as to the genuineness of the transaction, as it may be for the purpose of getting patta for the property without the knowledge of the wife of defacto complainant. This might be a fraudulent transaction and patta had been transferred in the name of the second accused. On the basis of this document, without notice to the original owner, the patta transfer order is illegal and improper and the Zonal Deputy Tahsildar who has given patta in favour of the second accused and subsequently in favour of the first petitioner has committed a serious irregularity in violation of the specific provisions of Tamil Nadu Patta Pass Book Act, 1983.



4.2. In cases relating to land grabbing, this Court has noticed in several cases that the revenue officials are involved to aid fraudulent transactions so as to make entries or mutation in revenue records without notice to the real owners. The real owners, of course, may succeed in Court ultimately. But the property is made litigious by unscrupulous elements in connivance with the revenue officials and on many occasions, the real owner out of frustration tends to agree for some settlement outside Court. Though a "Special Wing" is created by the State to deal with land grabbing cases, there is no special enactment to curtail land grabbing by clever criminals. In the case on hand, though there is no factual foundations to invoke Sections 406, 468 and 471 of IPC against the petitioners, the fraudulent nature of transaction, if proved, may lead to invoking other provisions of IPC involving corrupt revenue officials who are responsible for the fraudulent mutation of revenue records. The genuineness of the alleged release deed, cannot be proved without evidence. In such circumstances, this Court is not inclined to entertain this petition to quash the charge sheet.

5. It is open to the defacto complainant or the learned Judicial Magistrate No.II, Sivagangai to re-frame the charges involving the revenue officials concerned, who has transferred patta in the name of Poomayil or in the name of the first petitioner in utter disregard to the provisions of Tamil Nadu Patta Passbook Act, 1983.

6. As a result, this criminal original petition is dismissed. Consequently, connected miscellaneous petition is closed.

Sd/-

Assistant Registrar (AS)

/True copy/

Sub Assistant Registrar

To

1. The Judicial Magistrate Court No.II, Sivagangai.

2. The Inspector of Police,
District Crime Branch, Sivagangai.

3. The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+1cc to Mr.N.S.Ponnaiah, Advocate, SR.No.67162.

+1cc to Mr.R.Udhayakumar, Advocate, SR.No.66876.

order
CRL.OP. (MD) .No.9652 of 2017
06.06.2018