



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 09.03.2018

CORAM:

THE HONOURABLE MR.JUSTICE **P.N.PRAKASH**

Cr1.R.C. (MD) No.744 of 2017

D.Thomas

: Petitioner

Vs.

1.S.Guberan Nadar

2.S.Dhanaraj

3.Efsibai Thilagar

4.Nagarajan

: Respondents

PRAYER: Criminal Revision Case is filed under Section 397(1) r/w 401 of the Criminal Procedure Code praying to call for the records in Cr.M.P.No.4409 of 2017 in C.C.No.140 of 2012 on the file of the learned Judicial Magistrate No.II, Thoothukudi, Thoothukudi District and set aside the order dated 17.07.2017.

For Petitioner

: Mr.A.Thiruvadi Kumar

For Respondents

: Mr.A.K.Manickam,

For Mr.D.Nallathambi

ORDER

Thomas filed a private complaint in C.C.No.140 of 2012 before the learned Judicial Magistrate No.II, Thoothukudi against his niece and nephews [A-1 to A-3 and one Nagarajan (A-4)] alleging that he is the owner of the land in Survey No.500/1A6 in Mullakkadu Village measuring 0.11.00 Hectares; that he had acquired the property by way of a relinquishment deed dated 12.05.1971 from his mother and brothers; that his brother Selvaraj died subsequently; that A-1, A-2 and A-3 are the children of Selvaraj; and that A-1, A-2 and A-3 had sold the said land to A-4 on 16.11.2011. Hence, the complaint.

2. The Trial Court recorded the evidence of two witnesses, namely Thomas and Ramesh under Section 244 of the Code of Criminal Procedure. Thereafter, the accused filed an application under Section 245 of the Code of Criminal Procedure in Cr.M.P.No.4409 of 2017 in C.C.No.140 of 2012 praying for discharging them from the prosecution and the same has been allowed by the Trial Court on 17.07.2017, aggrieved by which, the petitioner/complainant is before this Court.



3. Heard Mr.A.Thiruvadi Kumar, learned counsel for the petitioner/complainant and Mr.A.K.Manickam, learned counsel for the respondents/accused Nos.1 to 4.

4. Mr.A.Thiruvadi Kumar, learned counsel for the petitioner submitted that the learned Trial Judge had erred in holding that there are no *prima facie* materials to frame a charge, which is factually incorrect. He took this Court through the relinquishment deed dated 12.05.1971 and submitted that the property in question was originally Survey No.500/1A and that the complainant's mother and brothers including Selvaraj had relinquished their rights in favour of the complainant. He further submitted that Survey No.500/1A was subsequently sub-divided into Survey Nos.500/1A1 to 1A6. He brought to the notice of this Court the Certificate given by the Village Administrative Officer, which shows that the property in Survey No.500/1A6 is in the possession of the complainant. Hence, Mr.A.Thiruvadi Kumar, learned counsel for the petitioner submitted that the sale of Survey No.500/1A6 by A-1 to A-3 to A-4 would attract the provisions of Section 420 of the Indian Penal Code.

5. Per contra, Mr.A.K.Manickam, learned counsel for the respondents refuted the contentions.

6. This Court gave its anxious consideration to the rival submissions.

7. The fact remains that the property in question is the ancestral property in the hands of the complainant. On a perusal of the impugned sale deed, by which A-1, A-2 and A-3 had allegedly sold to A-4, it is seen from the recitals that they have traced the title to a joint patta bearing No.2181.

8. Mr.A.K.Manickam, learned counsel for the respondents submitted that joint patta bearing No.2181 stands not only in the name of A-1 to A-3, but it also includes the name of the complainant. Therefore, what was sold was only a share in the joint family property and that cannot attract criminal prosecution.

9. There appears to be some force in the submissions of Mr.A.K.Manickam, learned counsel for the respondents. The learned Trial Judge has also noted this aspect and has held that a criminal prosecution cannot be launched in a case of this nature, where both sides claim title to a property with *bona fide* intention each believing that they have right over the property. Admittedly, A-1, A-2 and A-3 are not strangers to the complainant. They are either the niece and nephews of the complainant. In such view of the matter, this Court does not find any infirmity in the order passed by the Court below warranting interference.



10. In the result, this Criminal Revision Case is devoid of merits and accordingly, the same is dismissed.

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Sd/-

Assistant Registrar (CS-II)

Sub Assistant Registrar

To

The Judicial Magistrate No.II,
Thoothukudi,
Thoothukudi District.

+1cc to Mr.D.Nallathambi, Advocate Sr.No.54353
+1cc to Mr.A.Thiruvadi Kumar, Advocate Sr.No.54251

SML

VB/SV/MMS/SAR2/23.03.2018/3P/4C

Order made in
Cr1.R.C. (MD) No.744 of 2017
09.03.2018