



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

Reserved on : 09.03.2018

Delivered on : 19.03.2018

WEB COPY

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**THE HONOURABLE MR. JUSTICE R.PONGIAPPAN**

Crl.O.P. (MD) No.12752 of 2013

R.Mookaiah

... Petitioner/Petitioner

**Vs.**

1. The State rep. by  
The Inspector of Police,  
Anti Land Grabbing Special Cell,  
Tirunelveli District.

2. Vellathai  
3. Kasi  
4. Subbiah Thevar  
5. Kutti Raja  
6. Murugan

... Respondents/Respondents

**PRAYER:** Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure, to call for the entire records pertaining to the order passed by the learned Special Judicial Magistrate, Special Court for Land Grabbing Cases, Tirunelveli, in Cr.M.P.No.33 of 2012, vide her order dated 22.04.2013 and set aside the same and further direct the first respondent to register the petitioner's complaint as an F.I.R.

|                |   |                                                         |
|----------------|---|---------------------------------------------------------|
| For Petitioner | : | Mr.R.Anand                                              |
| For R1         | : | Mr.A.Robinson<br>Government Advocate<br>(Criminal side) |
| For R2 to R6   | : | Mr.M.Mohamed Sharbudeen                                 |

**ORDER**

The petitioner herein is the petitioner in Cr.M.P.No.33 of 2012 on the file of the learned Special Judicial Magistrate [Special Court for Land Grabbing Cases], Tirunelveli. Now, this petition has been filed by the petitioner seeking the relief to set aside the order dated 22.04.2013, passed in Cr.M.P.No.33 of 2012 by the learned Special Judicial Magistrate [Special Court for Land Grabbing



Cases], Tirunelveli and for a direction to the first respondent police to register an FIR on the basis of the complaint given by the petitioner.

2.The case of the petitioner is as follows:

Initially, in Tenkasi Taluk, Subramaniyapuram, Poigai Village, the property measuring an extent of 9.5 cents in New Survey No.149/28 is owned by one V.Gomathi Ammal. She is having two daughters viz., Shanmugam Ammal and Lakshmi Ammal. After the death of Gomathi Ammal, being the daughters, they partitioned the abovesaid property as 5 cents and 4.5 cents. After such partition, being the legal heir of Shanmugam Ammal, one part of the property viz., 4.5 cents came to the hands of the petitioner. In the same way, being the legal heir of Lakshmi Ammal, the second respondent - Vellathai Ammal had received the property measuring to an extent of 5 cents, through ancestral means. Subsequent to that, on 24.01.2011, the second respondent created a forged Gift Deed, in which, she bequeathed the entire property of 9.5 cents in favour of the third respondent, who is her son. The said deed has been registered as Document No.367 of 2011. Immediately, after knowing the creation of such a Gift Deed, the petitioner lodged a complaint before the Superintendent of Police, Tirunelveli. Since no action was initiated, he filed a complaint before the learned Special Judicial Magistrate [Special Court for Land Grabbing Cases], Tirunelveli, which was taken on file as Cr.M.P.No.33 of 2012.

3.After considering the factual aspects, the learned Special Judicial Magistrate came to the conclusion that the dispute between the petitioner and the respondents 2 to 6 are civil in nature and declined to grant the relief prayed by the petitioner herein.

4.Aggrieved over the same, the petitioner has preferred the present petition to set aside the abovesaid order. Now, on going through the order passed by the learned Special Judicial Magistrate [Special Court for Land Grabbing Cases], Tirunelveli, it is seen that the learned Magistrate came to the opinion that the alleged settlement deed was executed between the legal heirs of Gomathi Ammal and therefore, the dispute is civil in nature. Of course, the said conclusion arrived at by him may be true. In a petition filed by the petitioner before the lower Court, he made an allegation that the second respondent herein is having right over the property, measuring to an extent of 5 cents alone. But, she executed a settlement deed for the entire extent of 9.5 cents. Only after registration of the case, the Court can come to a conclusion, whether the second respondent is having dishonest intention in order to grab the property, in which, the petitioner is having the right. Further, the petitioner, in his complaint, requested the Court to forward the same for registration of a case against the respondents 2 to 6, which was negatived. Subsequent to that, the very same petitioner approached the Principal District Munsif Court, Tenkasi, by way of filing O.S.No.101 of 2014 against the respondents 2 and 3, for the relief of permanent injunction, in which, he pleaded that



the property measuring to an extent of 4.5 cents, which was mentioned in the complaint, is in his possession. The said claim made by the petitioner was not accepted by the Court and the suit filed by the petitioner was dismissed on 18.12.2017.

5. Considering the fact that the Civil Court also negatived the claim made by the petitioner, setting aside of the order passed by the learned Special Judicial Magistrate [Special Court for Land Grabbing Cases], Tirunelveli, will be creating one more dispute between the petitioner and the second respondent. Hence, a direction to initiate investigation will be a waste of time for both the first respondent police and the Court. Accordingly, this Court confirms the order dated 22.04.2013, passed in Cr.M.P.No.33 of 2012, by the learned Special Judicial Magistrate [Special Court for Land Grabbing Cases], Tirunelveli, and this Criminal Original Petition is dismissed.

Sd/-

Assistant Registrar (CS-II)

/True Copy/

Sub Assistant Registrar

**To**

1. The Special Judicial Magistrate,  
Special Court for Land Grabbing Cases,  
Tirunelveli.
2. The Inspector of Police,  
Anti Land Grabbing Special Cell,  
Tirunelveli District.
3. The Additional Public Prosecutor,  
Madurai Bench of Madras High Court,  
Madurai.

+ 1 CC TO Mr.M.MOHAMED SHARBUDEEN, ADVOCATE IN SR No. 56873  
+ 1 CC TO Mr.R.ANAND, ADVOCATE IN SR No. 56592

SMN2

TE/KK/SAR-4 : 03/04/2018 : 3P/6C

order in  
Cr1.O.P. (MD) No.12752 of 2013  
19.03.2018