

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 02.11.2018

Pronounced on : 14.03.2019

CORAM :

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Cr1.O.P.No.20202 of 2011

and

M.P.No.1 of 2011

1.Vasu, S/o.Ambu.

2.Ratheesh, S/o.Vasu.

3.Satheesh, S/o.Vasu.

4.Roopesh, S/o.Vasu.

5.Santhy, W/o.Vasu. ... Petitioners/Respondents

Vs.

Chithra.C.K.,
W/o.Late.Lohithakshan @ Dasan ...Respondent/Petitioner

PRAYER: Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure, to call for the records pertaining to the pending proceedings in M.C.No.17 of 2010 on the file of the learned Judicial Magistrate, Mahe, Puducherry and quash the same.

For Petitioners : Mr.V.Chinnasami

For Respondent : Mr.S.Marshall

O R D E R

This Criminal Original Petition has been filed to quash the proceedings in M.C.No.17 of 2010 on the file of the learned Judicial Magistrate, Mahe, Puducherry.

2.The petitioners are the respondents in M.C.No.17 of 2010 filed by the respondent herein, who had filed a case under Section 12 of Protection of Women from Domestic Violence Act and sought for Protection order U/s.18 and Residence order U/s.19 and Monetary relief U/s.20 of the said Act.

3.The gist of the case is that the respondent's husband one Lohithaksan @ Dhasan died on 02.04.2005 and her late husband owned 18 Cents of land, as per gift deed No.557/2000 at SRO, Mahe. From the 18 Cents of land 12 Cents of land has been given to the 5th petitioner, who is the sister of respondent's late husband, as per Settlement deed No.219 of 2005, SRO, Mahe, on an undertaking that a house would be built for the respondent and her family. The 5th petitioner has constructed the basement of the house before the death of the respondent's husband. Thereafter, though the 5th petitioner promised to continue the construction in presence of mediators, she failed to do so. The respondent had applied for financial assistance from Puducherry Government, Rs.70,000/- (Rupees seventy thousand only) sanctioned by the Government was handed over to the 5th petitioner, who brought some lacerate stones and dumped in the site. Thereafter no other work was done. The basement partially constructed remains as such. The 12 Cents of land was sold to the 5th petitioner at the rate of Rs.75,000/- (Rupees seventy five thousand only) per cent and sale agreement was executed receiving Rs.1,00,000/- (Rupees one lakh only) as advance consideration and promise to pay the balance amount, while registering the document. The petitioners agreed to deposit the balance amount in the bank in the name of the respondent's son Dhanush doss after constructing the house.

4.Instead, the petitioners 1 to 5 with their associates fraudulently and dishonestly sold the land and appropriated the entire amount. The respondent, where he is residing in Kuniyil house, Moolakkadav, (PO) Pandakkal, Mahe, is the house of the petitioners. After selling the 12 Cents of the respondent husband's land the respondent has been compelled by the petitioners to vacate the house in which she had been residing. The house is owned by petitioners, who are residing at Chennai. When the respondent resisted the move, the petitioners had abused and threatened her to vacate the house, otherwise, she would be done away, and thereafter all her household belongings were thrown away, and the house have been locked and taken possession by the petitioners.

5.The 5th petitioner by sale of respondent husband's 12 Cents of land for Rs.9,25,000/- (Rupees nine lakh twenty five thousand only), spent only Rs.50,000/- (Rupees fifty thousand only) for construction and the balance amount have been appropriated by the 5th petitioner and other petitioners. Hence a case has been filed before the Judicial Magistrate, Mahe, Puducherry on 13.08.2010, which was taken on file in M.C.No.17 of 2010.

6.The contention of the petitioners is that the proceedings

initiated by the respondent does not come under the purview of the Domestic Violence Act, since it is the admitted case of the respondent that the petitioners are Permanently residing for the past several years at No.24, Thanikachalam Road, T.Nagar, Chennai-17. The petitioners and the respondent never lived and shared joint house hold and the petitioners are carrying on with their avocation at Chennai. Further, they have produced the Settlement Deed Doc.No.219 of 2005, dated 21.02.2005 and the Gift deed No.557 of 2000 dated 18.10.2000. The gift deed of the year 2000 was executed by the 5th petitioner's mother along with a residential house situated in the said property in old Survey No.86 and Re-survey No.14 Sub-division-4 with the description of the property. It is seen from Annexure-II to the said document, the existence of the house has been recorded.

7.In document No.219 of 2005, it is found that it is a vacant land. This property is situated at Old Survey No.92/1, Resurvey No.15, and the property mentioned in this settlement deed and the gift deed of the year 2000 are not one and the same. After the settlement of the property by the 5th petitioner's brother, the property was in possession and enjoyment of the petitioners. According to the petitioners, though as per document, it is a settlement deed the 5th petitioner had paid entire consideration and purchased the same from her brother. For the purpose of avoiding stamp duty, the document has been registered as settlement deed. The respondent was well aware of the sale and only for the purpose of the above case, the respondent had made allegations, as though there was an agreement for construction of house and the 5th petitioner without fulfilling the same had sold the property.

8.It is further submitted that after the death of her husband, the respondent along with her son left to Puducherry and from the year 2008, the respondent was living in her parental house in Kerala and she was possessing other property of her late husband. She is a working women and she has got sufficient income. The respondent through her relative, who has been working in Police department had attempted to trespass and damage the petitioners property, for which the petitioners lodged a complaint before the learned Judicial Magistrate, Mahe, Puducherry, which was taken on file as C.C.No.224 of 2011 for offences under Sections 427, 448 of IPC against the respondent's son Haridoss. As a counter blast, the present complaint came to be filed.

9.The respondent had reiterated his submissions made in the complaint and further submitted that, she had prepared a complaint before the learned Judicial Magistrate, Mahe only

after all the efforts have been taken for re-approachment failed and the petitioners have usurped the property of the respondent's husband and failed to construct the house as promised by them and enriched themselves. Further, the respondent is now, without any proper residence and without any source of income. Therefore, she sought for Protection Order of residence and Monetary relief.

10.This court considered the rival submissions and perused the documents produced before it. On perusal of the materials, it is found that it is the admitted case of the respondent that, the petitioners are residing at No.24, Thanikachalam Road, T.Nagar, Chennai-17 for the past 40 years. The petitioners and the respondent never shared any domestic relationship, when the respondent lived together in a shared household at any point of time. The execution of the settlement deed of the respondent's husband towards the 5th petitioner is not denied. There is no materials to show that, the 5th petitioner promised to construct a house and deposit balance amount. If any, in the account of the respondent's son.

11.Further, there is a house, as per the Annexure-II report of the document of the year 2000. This document pertains to the property which was settled by the mother of the 5th petitioner to her in the gift deed document of the year 2005 was only a vacant land. Further, there is no domestic relationship at any point of time, when the respondent lived together in a shared household and hence, the question of Resident order and the Monetary Relief order does not arise.

12.Considering the facts and circumstances, this court finds that there is no domestic relationship between the parties. Therefore, the proceedings, which is pending before the Court below cannot be sustained and it is liable to be quashed.

13.In view of the above fact, the continuation of the proceedings before the Court below will result in abuse of process of Court. In the result the proceedings in M.C.No.17 of 2010 pending on the file of the Judicial Magistrate Court, Mahe, Puducherry is hereby quashed and accordingly, this Criminal Original Petition is allowed. Consequently, the connected Miscellaneous Petition is closed.

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Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

To

The Judicial Magistrate Court,
Mahe, Puducherry.

Crl.O.P.No.20202 of 2011

Kak(06/05/2019)



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