IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 24.08.2018

Pronounced on : 10.01.2019

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Crl.O.P.No.5494 of 2011
and
M.P.No.1 of 2011

1.M.Manoharan,
S/o.Murugesan.

2.V.Rajappan,
S/o.Vellaichamy. ... Petitioners/Accused Nos.4 & 5

Vs.

1.State rep. by
the Inspector of Police,
District Crime Branch,
Coimbatore,
[Crime No.24 of 2009]. ... Respondent/Complainant

2.Sathiya Bhama,
W/o. Easwaran. ... Respondent/Defacto-Complainant

[Impleaded the second respondent as per the Order of this Court dated 20.03.2017 in M.P.No.3 of 2011 in Crl.O.P.No.5494 of 2011]

PRAYER: Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure, to call for the records relating to C.C.No.127 of 2010 on the file of the Judicial Magistrate, Avinashi and quash the same in so far as the petitioners are concerned.

For Petitioners: Mr.D.Ravichandran

For R1 : Ms.V.Saratha Devi,
Government Advocate [Crl.Side]

For R2 : Mr.R.Vasudevan

O R D E R

The petitioners, who are A4 and A5 in C.C.No.127 of 2010, which is pending on the file of the Judicial Magistrate Court, Avinashi for the offences under Section 120B and 420 of the Indian Penal Code have filed this Criminal Original Petition.

2.The first respondent had registered a case in Crime No.24 of 2009 on the complaint given by the second respondent/defacto-complainant. The first respondent after enquiry and investigation altered the charge to Section 468 r/w 471 of the Indian Penal Code.

3.There are totally five accused in this case. The first accused is the estranged son-in-law of the second respondent/defacto-complainant, who had married the second respondent's daughter viz., Anitha, who had passed away on 02.03.1999. The first accused i.e. the estranged son-in-law viz., Senthil Kumar had registered a Sale Deed in favour of the second and third accused in the year 1999 and thereafter, the second and third accused had registered a Sale Deed in favour of the fourth and fifth accused i.e. the petitioners herein in the year 2004, knowing well that Anitha, daughter of the second respondent had executed a will in favour of the second respondent, who was in possession and enjoyment of the property. On conclusion of the investigation, charge sheet has been filed against the petitioners and the other accused under Section 468 r/w 471 of the Indian Penal Code.

4.The gist of the case is that the second respondent's daughter Anitha had married the first accused, Senthil Kumar against the wishes of her parents, few days of their marriage they had separated and thereafter, there was a mutual separation and divorce agreement was signed by the deceased Anitha and the first accused Senthil Kumar before the Panchayathars. Thereafter, Anitha was living with her parents. Subsequently, HMOP No.479 of 1998 was filed before the Family Court, Coimbatore for divorce by mutual consent. When the H.M.O.P. was pending Anitha became sick due to her ill-health and she was admitted in the Hospital. While so on 20.01.1999, she had executed a Will in favour of the second respondent. Subsequently, Anitha passed away on 02.03.1999. Pursuant to the H.M.O.P. filed before the Family Court, Coimbatore, the first petitioner Senthil Kumar had created the forged documents and executed a Sale Deed in favour of A2 and A3 on 02.07.1999, thereafter, all the accused had conspired together and to strengthen their invalid and fraudulent documents have created another Sale Deed on 18.03.2004 in favour of the petitioners.

5.The contention of the petitioners is that originally the said land was settled by the paternal grand father of Anitha, thereafter, Anitha had married the first accused Senthil Kumar on 19.11.1997 and she had passed away on 02.03.1999. After, her death, the first accused Senthil Kumar had become the legal heir of deceased Anitha and he being the absolute owner of the property and the property devolved to Senthil Kumar by virtue of the Legal Heirship Certificate dated 05.05.1999. The second and third accused after obtaining a legal opinion and after perusal of the Encumbrance Certificates and Revenue records purchased the property from Senthil Kumar.

6.The learned counsel for the petitioners further submitted that after verifying the above documents as bona fide purchasers had purchased the property from the second and third accused vide a Sale Deed dated 18.03.2004 registered as Document No.689 of 2004 on the file of the SRO, Annur. Further submitted that the second respondent had suppressed the pendency of a Civil Suit in O.S.No.93 of 2007, which is pending on the file of the District Munsiff, Avinashi.

7.Further, there is no ingredients for the offences under Section 468 r/w 471 of the Indian Penal Code against the petitioners. There is no over tact attributed in the final report filed against the petitioners. If at all any forgery taken place it had been committed by the son-in-law of the second respondent viz., Senthil Kumar - the first accused. The petitioners are innocent purchasers and the second respondent had lodged the above false complaint only to extract money and to cause harassment to the petitioners. Hence, the petitioners prayed for quashing the proceedings against them.

8.The second respondent filed counter along with the typed set of papers, wherein it is disputed that Senthil Kumar - the first accused is the legal heir of her daughter Anitha. Without her consent and knowledge, the first accused - Senthil Kumar had registered his marriage with her daughter held on 19.11.1997 by fraud. After knowing the conduct and bad characters of Senthil Kumar her daughter started living separately with the second respondent from 04.02.1998 onwards.

9.There was a panchayat in which both her daughter Anitha and the first accused Senthil Kumar agreed for a divorce and accordingly, a divorce deed was executed between them before the Panchayathars. Following that H.M.O.P. No.479 of 1998 was filed before the Family Court, Coimbatore for divorce by mutual consent. During the pendency of the above said H.M.O.P. her daughter i.e. Anitha due to her ill-health had executed a Will in favour of the second respondent on 20.01.1999, for the land to an extent of 3 Acres located in Kunnathur Village comprised in R.S.No.255 and 254 was granted in her favour under Patta No.473 and 474, thereafter, Anitha died on 02.03.1999. All the accused had conspired together to grab the landed property, which was enjoyed by the second respondent and had created the false documents in favour of A2 and A3 on 02.07.1999 and thereafter, to strengthen their invalid and fraudulent document had created another Sale Deed on 18.03.2004 in favour of the petitioners.

10.Without the knowledge of the second respondent, patta was transferred and on 17.04.2000, the second respondent had filed a petitioner before the RDO, Thiruppur for the cancellation of patta issued in their names. After enquiry, RDO on 10.07.2000, had directed that the names of the second and third accused to be deleted from Patta No.473 and 474.

11.Challenging the above said order, the second and third accused have preferred a Revision before DRO, Coimbatore. On 19.02.2001, the DRO, Coimbatore had confirmed the order of the RDO, Thiruppur and held that the second respondent i.e. Anitha's mother is the only owner of the property.

12.The orders of RDO and DRO had been produced wherein they have stated that the petitioners cannot plead that they are the bona fide purchasers, who have purchased the land only on 18.03.2004. No genuine purchaser will buy the landed property from a vendor, who has no patta and hence, the patta obtained by him was cancelled. Without verifying the patta, if a person buys a land, then he cannot claims to be a bona fide purchaser. This being the case, the order of DRO is on 19.02.2001, the petitioners had purchased the above said property on 18.03.2004 cannot claim that they are innocent purchasers.

13.The learned Government Advocate [Crl.Side] submitted that the investigation has been completed in C.C.No.127 of 2010, which is pending trial on the file of the Judicial Magistrate, Avinashi. Further, after a detailed and thorough investigation and on examination of the witnesses and recording of the statements and collection of documents, the charge sheet has been filed and the trial is yet to be commenced. During the pendency of the trial the petitioners have filed the above said Criminal Original Petition and stalled the trial for the past seven years and prayed that the quash petition to be dismissed.

14.Considering the rival submissions and on perusal of the materials produced, it is found that there is a categorical finding by the RDO and DRO with regard to the issuance of patta and cancellation of patta in the name of the second and third accused. Recognising the second respondent as the Legal heir of the deceased Anitha and her name to be included in the patta.

Admittedly, immediately, after the marriage there seems to be a misunderstanding between Anitha and her estranged husband Senthil Kumar and accordingly, a divorce deed was executed between them before the Panchayathars and a H.M.O.P. No.479 of 1998 was filed before the Family Court, Coimbatore for divorce by mutual consent. In the meanwhile, she had executed a Will in the name of the second respondent within two months thereafter she had passed away.

15.The above said Will has been gone into by the Revenue authorities in the proceedings of RDO and DRO and thereafter, given a categorical finding based on the documents and enquiry and the orders of the DRO in the year 2001. These petitioners had purchased the property only in the year 2004, the Sale Deeds are of the year 1999 and 2004 and there is no mention with regard to the Patta and Revenue records.

16.Considering the same, there is no merit in this petition and accordingly, this Criminal Original Petition stands dismissed and the Trial Court is directed to conclude the trial within a period of six months from the date of receipt of a copy of this order. Consequently, the connected Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS VIII)

//True Copy//

Sub Assistant Registrar

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To

1.The Judicial Magistrate,
Avinashi.

2.The Judge,
Family Court, Coimbatore.

3.The Inspector of Police,
District Crime Branch,
Coimbatore,
[Crime No.24 of 2009].

4.The Public Prosecutor,
High Court, Madras.

+1cc to Mr.K.S.Karthik Raja, Advocate sr.3050
+1cc to Mr.T.Susindran, Advocate Sr.2569

Crl.O.P.No.5494 of 2011

kk[co]
srg 19/02/2019