

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on : 06.09.2018
Pronounced on : 14.03.2019

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Crl.O.P.No.16570 of 2010

1.V.Madhusudanan,
S/o.V.Munikrishnaiah.

2.P.Jaishankar,
S/o.Perumal. Petitioners/A1 & A2

Vs.

1.State rep. by the
Inspector of Police,
Central Crime Branch,
Team XX,
Thousand Lights,
Chennai - 600 006.

2.A.Venkatesh,
S/o.K.P.Arumugam ... Respondents/complainants

[Impleaded the second respondent
as per the order of this Court
dated 11.01.2011 in M.P.No.3 of
2010 in Crl.O.P.No.16570 of 2010]

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PRAYER: Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure, to call for the records in C.C.No.61 of 2009 on the file of the Court of Judicial Magistrate No.1, Poonamallee and quash the same.

For Petitioners: No appearance
For R1 : Mrs.V.Saratha Devi,
Government Advocate (Crl. Side)
For R2 : Mr.K.Prem Kumar

O R D E R

This Criminal Original Petition is filed to call for the records in C.C.No.61 of 2009 on the file of the Court of Judicial Magistrate No.1, Poonamallee and quash the same.

2.No representation for the petitioners. Heard Mrs.V.Saratha Devi, learned Government Advocate [Crl.Side] for the first respondent and Mr.K.Prem kumar, learned counsel appearing for the second respondent.

3.The petitioner, who are accused in C.C.No.61 of 2009, pending on the file of the Judicial Magistrate Court No.1, Poonamallee, for the offences under Sections 420 r/w. 34 of the Indian Penal Code and 120 (b) of the Indian Penal Code has filed this quash petition.

4.The gist of the case is that one Meenatchiammal, mother of the defacto complainant owned vacant land measuring 6000 sq.ft. in Old Door No.51 and New Door No.16 Thirumullaivoyal Village, Saraswathi Nagar, Ambattur Taluk, Thiruvallur Distirct, within the Avadi Municipality comprised in Rs.No.364 and Sruvey No.364/IAIAIAI plot No.104 and 105. During the life time of Meenatchiammal, she executed an unconditional Power of Attorney in favour of A1 Madhusudhanan and subsequently cancelled the same on 28.05.2003 and duly informed the accused i.e. A1 about the cancellation of Power of Attorney. But the accused Madhusudhanan illegally sold the said properties even after cancellation of the power of attorney to the accused A2 Jaishankar on 09.06.2003, by using pre dated stamp papers, who in turn sold to third parties and caused wrongful loss to the defacto complainant to an extent of Rs.40,00,000/- (Rupees forty lakh only).

5.The contention of the petitioner as it could be seen from the quash petition is that Meenatchiammal, the mother of the defacto complainant had executed a power of attorney in favour of the first petitioner to deal with the property, subsequently cancelled the Power of Attorney, which was not informed to the petitioners. The defacto complainant in not having gone for any civil litigation, filed the present complaint with ulterior motives for offences under Sections 420, 120-B I.P.C.

6.Further in the petition, it is averred that the transaction in favour of the first petitioner/A1 by the deceased Meenatchiammal was supported by consideration. The replies to the notice of the defacto complainant have been suppressed. Further, the subsequent purchaser one Mr.Jayachandrudu Naidu has not made any complaint and not claimed having suffered loss. On the contrary, the prosecution to impute such an averment in the charge is not correct. The cancellation of power of attorney does not make any insinuation against the first petitioner and it is clear that such cancellation was not voluntary but the handiwork of the defacto complainant, whose subsequent conduct clearly shows that he was out to make money out of such complaint. In the absence of owners not making any complaint the legal heirs of Meenatchiammal have no right to make such claim. Further converting inherent civil case as a criminal case, the complaint has been lodged against them.

7.The defacto complainant had not taken any steps to set aside the sale deed. In the above case, there is no material to implicate the second petitioner, who has been roped in on the charge of conspiracy. The second respondent/defacto complainant submits that his mother Meenatchiammal had executed the Power of Attorney in favour of the first petitioner/A1 on 19.07.2002 and registered it as document No.1214/2002 for maintaining the said property and the same was cancelled on 28.05.2003 vide document No.964/2003. Both the documents are registered documents. The said Meenatchiammal died on 16.07.2003. Though the first petitioner/A1 was aware of the cancellation of the Power of Attorney, he in conspiracy with the second petitioner/A2, who is none other than the brother-in-law with pre dated stamp papers created a forged sale deed and registered the same on 09.06.2003. The said Jayachandrudu Naidu sold the properties to the third parties. The legal notice dated 31.05.2003 informing about the cancellation of the Power of Attorney was received by the accused. Despite the same both the accused conspired together and created the false documents, encumbered the properties and sold the properties to third parties.

8.The learned Government Advocate (Cr1.Side) submits that on receipt of the complaint, investigation has been carried out and witnesses are examined, statements are recorded, documents are secured and after thorough investigation citing the witnesses LW1 to LW19 and documents in this case and charge sheet was filed. She further submits that the points raised by the petitioner are to be raised during the trial and cannot be adjudicated in this quash petition.

9.Considering the rival submission and on perusal of the materials placed and the charge sheet, it is found that the legal heirs of Meenatchiammal have been examined as LW1 to LW4 who have spoken to the fact about the execution of the Power of attorney and cancellation of the same to A1 and informing A1 about the cancellation of Power of attorney. LW5, the counsel had sent the legal notice to the A1 and A2 regarding the cancellation of Power of attorney and had produced the acknowledgment card for the same. LW6 to LW9, are the witnesses to the documents, LW10, the Official from the Registration Department, who had handedover the certified copy of the documents and the Encumbrance Certificate. LW11, the mediator, mediated the sale of the land between A2 through LW12 to LW14. The Investigating Officers are LW15 and LW16, who had registered the FIR, examined the witnesses, conducted investigation and filed the charge sheet.

10.From the statement of witnesses and the documents it is clear that A1 was aware about the Power of Attorney being cancelled after the death of Meenatchiammal and admittedly the subsequent sale deed between A1 and A2 was after the death of the said Meenatchiammal, on 09.06.2003, after the cancellation of the Power of Attorney. A2 is none other than A1's brother in law. The second respondent/defacto complainant filed a Civil Suit in O.S.No.65 of 2010 before the District Munsif, Ambattur, in which the petitioners/accused and the subsequent purchasers of the property in the Sub Registrar Office, Ambattur are arrayed as defendants and by Judgment dated 01.07.2012, obtained a decree. The civil Court had given Judgment and decree in favour of the second respondent/defacto complainant and the decree is extracted hereunder:

"i) that the sale deed registered dated 09.06.2003 registered as Doc.No.3109/2003 at SRO, Ambattur, executed by the 1st defendant to and in favour of 2nd defendant is be and hereby declared as null and void and not binding on the plaintiff

ii) that the sale deed registered dated 10.01.2007 registered as Doc.No.263/2007 at SRO, Ambattur, executed by the 2nd defendant through his power agent 3rd defendant to and in favour of 4th defendant is be and hereby declared as null and void and not binding on the plaintiff

iii) that the sale deed dated 10.01.2007 registered as Doc.No.262/2007 at SRO Ambattur executed by the 2nd defendant through his power agent/3rd defendant herein in favour of 5th defendant is be and hereby declared as null and void and not binding on the plaintiff.

iv) that the 6th defendant is directed to a mandatory injunction to remove such transaction entered in the records at the office of SRO, Ambattur, Chennai within tow months

v) that the defendants or any others on behalf of them are be and hereby restraining by a permanent injunction from interfering with the plaintiff's peaceful possession and enjoyment of the suit property morefully described in the schedule hereunder

vi) that there is no order as to costs.

सत्यमेव जयते
SCHEDULE OF PROPERTY

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All piece and parcel of land and premises bearing at Old Door No.51 and New Door No.16 Thirumullaivoyal Village, Saraswathi Nagar, Ambattur Taluk, Thiruvallur Distirct and within the Avadi Municipality comprised in Rs.No.364 and Sruvey No.364/IAIAIAI plot No.104 and 105 and measuring 6000 sq.ft."

11.In view of the same, this Court finds that there is enough materials to proceed against the petitioners/Accused No.1 & 2. Accordingly, this Criminal Original Petition stands dismissed. The trial Court is directed to dispose of the case C.C.No.61 of 2009 as expeditiously as possible, since the case is of the year 2009, by giving top priority.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

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To

1.The Judicial Magistrate No.1,
Poonamallee.

2.The Inspector of Police,
Central Crime Branch,
Team XX,
Thousand Lights,
Chennai - 600 006.

3.The Public Prosecutor,
High Court, Madras.

+2cc to Mr.Prakash Goklaney, Advocate Sr.24545

Cr1.O.P.No.16570 of 2010

vba[col]
srg 09/04/2019

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