

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 08.03.2019

CORAM:

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

Crl.O.P.Nos.6757, 7892 & 7948 of 2016

and

Crl.M.P.Nos.3567, 4122 & 4152 of 2016

- 1.N.Valarmathi
2.A.Pugazhenthithi ... Petitioners in Crl.O.P.No.6757 of 2016
3.S.Rani
4.S.Sankari
5.N.Charulatha
6.P.Jeyashree ... Petitioners in Crl.O.P.No.7892 of 2016
7.A.Manivannan
8.K.Vasudevan ... Petitioners in Crl.O.P.No.7948 of 2016

Versus

- 1.The State represented by,
Inspector of Police,
E8, Kelambakkam Police Station,
Kancheepuram District.
2.C.Kalaichelvan
3.Prakash Babu,
Inspector of Police,
Control Room, Kancheepuram,
Main Road, Kanchipuram HQ,
Kancheepuram-605 606. ... Respondents in all Crl.OP's
4.Govindaraj
Inspector of Police,
E8, Kelambakkam Police Station,
Kancheepuram District. ... Respondent in
Crl.O.P.No.7948 of 2016

COMMON PRAYER: Criminal Original Petitions are filed under Section 482 of the Code of Criminal Procedure, to call for the records of FIR No.410 of 2015 dated 04.10.2015 on the file of the 1st respondent and quash the same.

In all CrI.OP's

For Petitioners : Ms.P.Bagyalakshmi.

For R1 : Mr.M.Mohamed Riyaz
Additional Public Prosecutor

For R2 : Mr.C.S.Dhanasekaran
Mr.B.Balavijayan

For R3 : Mr.N.Manokaran
Mr.Vinoth Raja

COMMON ORDER

These Criminal Original Petitions have been filed to quash the FIR in Crime No.410 of 2015 dated 04.10.2015 registered for the offences under Sections 448, 427, 420, 465, 468, 471 and 506 (ii) r/w 120(B) of IPC.

2.The learned counsel for the petitioners would submit that the allegations made in the FIR, no Prima facie case made out to constitute any of the offence registered by the 1st respondent. The entire complaint foisted by the 3rd respondent in furtherance of the malafide intention only to grab the property of the petitioners. The petitioners are joint owners of the property comprised in survey No.312/7, 312/1B (1B1, 1B2), 315/6, 315/8 and 312/2 situated at Sathankuppam Village, Thirupporur Taluk, Kancheepuram District admeasuring total extent of 2 Acres and 32 Cents. The 2nd respondent no way connected to the said property. Even then, he foisted a false complaint alleging that the petitioners were entered into the property on 15.09.2015 and demolished the compound wall over the property and thereafter, on 23.09.2015, they also threatened the 2nd respondent and his watchman with dire consequences.

3.She further submitted that the 1st petitioner/A3 was working as a Head Constable at Thirumangalam All Women Police Station. The 2nd petitioner/A5 was working as a B.T Assistant at Government High School, Indalur, Cheyyur Taluk, Kancheepuram District. Therefore, their presence were not at all there at the time of alleged occurrence. She further submitted that the above mentioned property originally belonging to one Mannar Pillai and his wife Ranganayaki Ammal. Both have given birth to seven children in which four sons and three daughters. Both were died on 14.05.1985 and 21.12.1990 respectively. After their death all the legal heirs have entered into the family arrangement in the form of Koorchit dated 14.07.1991, which was executed and signed in front of members of Kelambakkam panchayat.

4.According to the said Koorchit, three daughters have been allotted property admeasuring 2.5 Acres in Sathankuppam Village,

Thirupporur Taluk, Kancheepuram District and 1.18 Acres in Kalvai Village. In respect of male members are concerned, they have been allotted property in other areas. While being so, the male Legal Heirs fraudulently entered into a sale deed dated 15.09.1997 and registered a document No.1877 of 1997 in respect of 2.06 Acres land comprised in Survey No.312/1B (1B1, 1B2), 315/6, 315/8 and 312/2 in Sathankuppam Village, Thirupporur Taluk, Kancheepuram District, which belonging to female heirs as per the Koorchit. The female heirs have no knowledge about the said sale deed. Thereafter, the male heirs also executed Power of attorney dated 01.12.1999 in favour of the 2nd respondent is one of the brother in respect of 26 Cents of land comprised in Survey No.312/7 in premises bearing No.41 Sathankuppam village.

5.In fact, this property also allotted to the female heirs as per the Koorchit. Again the 2nd respondent executed a sale deed dated 09.03.2007 in favour of his wife, in respect of the property admeasuring 26 Cents comprised in Survey No. 312/7. The three female heirs came to know about the alleged sale deed and the power of attorney and filed a suit in O.S.No.28 of 1998 before the learned Subordinate Judge, Chengalpet for partition and claiming 3/7th shares for the reason that the male heirs have violated the family arrangement as per the Koorchit. It was decreed in their favour by the decree dated 30.03.2001 as against which the male heirs have filed an Appeal Suit in AS.No.80 of 2003 and it was allowed and even then upholding the family arrangements and Koorchit by order dated 14.07.1991. As against the said order, the female heirs filed S.A.No.1149 of 2006 before this Court and this Court also confirmed the decree of the first appellate Court vide the Judgment dated 16.11.2006.

6.Further, she submitted that finally the family arrangement of Koorchit entered between the legal heirs dated 14.07.1991 was confirmed and as per the Koorchit the property allotted to the female heirs became absolute. She further submitted that thereafter, one of the female heirs namely Yasodha died on 29.03.2012 and her husband died on 19.06.2012 left behind three legal heirs. Another female heir namely Tamilselvi 15.02.2013 leaving behind the 2nd petitioner (her husband) and her daughter as her legal heirs. Thereafter, the legal heirs of the female heirs entered into Power of Attorney and as well as executed sale deed insofar as some of the property which was allotted as per the Koorchit.

7.The brother of the 2nd respondent herein hold power on behalf of the legal heirs of the female heirs over the properties in Sathankuppam Village. The said Manivannan applied for patta and after due enquiry, patta was issued in the name of female legal heirs. The said order was challenged before this Court by way of Writ Petitions and are pending. In continuation

of title dispute between heirs of the male legal heirs and heirs of the female legal heirs, the power holder of the female legal heirs lodged the complaint and the same is registered in Crime No.25 of 2014 by the Land Grabbing Cell in which the 2nd respondent and one Selvaraj also obtained Anticipatory Bail from this Court. However, the said FIR was quashed by this Court and the Hon'ble Supreme Court of India also confirmed the same. As such, the petitioners have filed the suit in O.S.No.290 of 2015 on the file of the District Munsif Court, Chengalpet for declaration and injunction as against the 2nd respondent and 18 others and it is pending for trial. Therefore, the present complaint is nothing, but clear abuse of process of law and the entire allegations are Civil in nature. Therefore, it cannot be sustained as against these petitioners.

8.The learned counsel for the petitioners relied upon the Judgement of the Hon'ble Supreme of India in the case of State of Haryana Versus Bajanlal reported in AIR 1992 SC 604 and the prayed to quash the FIR.

9.Per contra, the learned counsel for the 2nd respondent submitted and filed a counter stated that there are totally eight accused in Crime No.410 of 2015 registered for the offences under Sections 448, 427, 420, 465, 468, 471 and 506(ii) r/w 120(B) of IPC. He contended that the brother of the 2nd petitioner purchased lands measuring to an extent of 2 Acres and 6 Cents in Survey Nos.312/1B, 315/6, 315/8, 312/2 at Sathankuppam Village, Thiruporur Taluk, Kancheepuram District and the property admeasuring 26 Cents in Survey No.312/7 was purchased by his wife. Since, the date of purchase, the brother of the 2nd respondent and his wife are in absolute possession and enjoyment of the property. Initially, the female legal heirs of Mannar Pillai filed a Suit in O.S.No.28 of 1998 for partition and the said suit was dismissed by this Court and the female legal heirs did not file any appeal before the Hon'ble Supreme Court of India. Therefore, the Judgement of this Court in S.A.No.1149 of 2006 became final without any challenge. He further contended that accordingly, the female heirs of Mannar Pillai are not entitled to any share in the suit property. Even thereafter, they filed a suit and on false impression they obtained patta and the same is under challenge before this Court by way of Writ Petitions.

10.Subsequently, the police protection petition was also dismissed as against them. After facing defeat, they filed a complaint and the said complaint was also quashed by this Court in Crl.O.P.No.16818 of 2014. Now, they filed this Quash Petition with a new theory of Koorchit that too after lapse of 15 years from the date of alienation of the property in the year 1997 and in fact alleged Koorchit did not neither produced nor marked in

the Civil Court in O.S.No.28 of 1998 to make the claim over the properties by the female heirs. He further submitted that there is no question of existence of any koorchit, while being so, the petitioners have trespassed into the property and completely demolished the entire compound wall and when the caretaker questioned the same and they are threatened him with dire consequences. Therefore, the 1st respondent rightly registered the case in Crime No.410 of 2015 for the offences under sections 448, 427, 420, 465, 468, 471 and 506(ii) r/w 120(B) of IPC. It is seen from the complaint that the averments are clearly made out the prima facie case to attract all the offences. That apart, the FIR cannot be quashed on the threshold and it has to be investigated further to unearth the crime committed by the petitioners. Therefore, he sought for dismissal of the Quash Petition.

11.The learned Additional Public Prosecutor submitted that there are eight accused in Crime No.410 of 2015 registered for the offences under Sections 448, 427, 420, 465, 468, 471 and 506 (ii) r/w 120(B) of IPC on the file of the 1st respondent. The petitioners in Crl.O.P.No. 6757 of 2016 arrayed as A3 & A5, the petitioners in Crl.O.P.No. 7892 of 2016 arrayed as A1, A2, A4, & A6 and the petitioners in Crl.O.P.No.7948 of 2016 arrayed as A7 & A8.

12.The crux of the allegations is that on 15.09.2015 the accused persons entered into the property and demolished the compound wall over the property and thereafter, on 23.09.2015 they also threatened the caretaker/watchman of the property one Mr.Mari's life with dire consequences. Therefore, he prayed for dismissal of the quash petition.

13.Heard, M/s.P.Bagyalakshmi, learned counsel for the petitioners and Mr.M.Mohamed Riyaz, learned Additional Public Prosecutor appearing for 1st respondent and M/s.C.S.Dhanasekaran & Mr.B.Balavijayan, learned counsels for the 2nd respondent and M/s.N.Manokaran & Mr.Vinoth Raja, learned counsels for the 3rd respondent.

14.The petitioners in Crl.O.P.No. 6757 of 2016 arrayed as A3 & A5, the petitioners in Crl.O.P.No. 7892 of 2016 arrayed as A1, A2, A4, & A6 and the petitioners in Crl.O.P.No.7948 of 2016 arrayed as A7 & A8 in Crime No.410 of 2015 registered for the offences under Sections 448, 427, 420, 460, 468, 465, 471, 405 & 112 of IPC r/w120(B) IPC on the file of the 1st respondent herein. The 2nd respondent is the defacto complainant.

15.Admittedly, the dispute between the female heirs and male heirs of the deceased Mannar Pillai and Ranganayagi Ammal, who died on 14.05.1985 and 21.12.1990 respectively. On 15.09.1997

one Selvaraj purchased the property to an extent of 2.06 Acres from the male legal heirs of the said Mannar Pillai and Ranganayagi Ammal. The female legal heirs filed a suit for partition in O.S.No.28 of 1998 as against the male legal heirs including the property purchased by Selvaraj. In the meanwhile, on 01.12.1999 the power of attorney was executed by the male legal heirs in favour of one Kalaiselvan to an extent of 0.26 cents on 30.03.2011. The said suit filed by the female legal heirs was decreed for partition but, the said decree was set aside by order dated 23.01.2005 by the first appellate Court in A.S.No.80 of 2003 and also declared that the female legal heir are not entitled to any share in the suit property.

16.The said Judgement was also confirmed by this Court in S.A.No.1149 of 2006 by an order dated 16.11.2006. Thereafter, the Patta, Chitta, Adangal were transferred in the name of Selvaraj in respect of the property which was given power to Mr.C.Kalaiselvan and executed sale deed in favour of K.Malarkodi and all the revenue documents are also muted in her favour. After disposal of Second Appeal the said one Manivannan, land broker obtained power of attorney from the female legal heir that too after seven years in respect of 2.06 acres and executed the power of attorney with other persons. Based on which, the accused Manivannan and others trespassed into the property with the help of JCB Vehicle.

17.On the strength of those documents they entered into the property and demolished the wire fencing with the help of JCB Vehicle. Thereafter, the defacto complainant filed direction petition for Police Protection and on police protection the compound wall again constructed. In the meanwhile, on the strength of power of attorney one of the accused in this case lodged complaint in Crime No.25 of 2014 and the same was quashed by this court and the same was also confirmed by the Hon'ble Supreme court of India. In fact, it is also seen that the accused filed a complaint as against the brother of the 2nd respondent herein and also filed a direction petition before this Court and the said petition was dismissed with cost by this Court.

18.Inspite of the same, the accused persons trespassed into the property in dispute and demolished the compound wall. In fact, the said compound wall was constructed by the 2nd respondent and his brother on the direction of this Court in CrI.O.P.No.11068 of 2014 and provided police protection. On 15.09.2015 immediately, watchman of the property lodged a complaint on 16.09.2015 before the 1st respondent and pending the said complaint again on 23.09.2015, the accused persons trespassed into the property and threatened the watchman and the persons who were working in the field. Therefore, again on the

same date the defacto complainant lodged complaint and the same has been registered in Crime No.410 of 2015 for the offence under Sections 448, 427, 420, 460, 468, 465, 471, 405 & 112 of IPC r/w120(B) IPC. In fact, the 2nd respondent also filed Crl.O.P.No.1229 of 2016 seeking direction to file a final report and the said petition was ordered by this Court dated 21.01.2016. Further, it is also seen that while dismissing the Anticipatory Bail filed by some of the accused and this Court recorded that:-

'12. Admittedly, there was a partition of properties among the male and female legal heirs on 14.07.1991. After disposal of the properties allotted to them, the female legal heirs have come forward with another partition in a clandestine manner in order to grab the property, which was already sold. It is clear that all the accused by colluding together have jointly tried to play fraud on the defacto complainant for the purpose of usurping the property in question by illegal means, thereby depriving the defacto complainant's legal rights. When the issue has already attained finality by means of a Civil Suit, the accused cannot play further fraud on the defacto complainant. Hence, this Court feels that it is a fit case for custodial interrogation of all the accused, irrespective of their age and status.'

19. Therefore, the allegations averred in the complaint are not Civil in nature. There is prima facie case to register the case for the cognizable offences under Sections 448, 427, 420, 460, 468, 465, 471, 405 & 112 of IPC r/w120(B) IPC as against the petitioners. Further, the FIR cannot be quashed on its threshold and it has to be investigated in depth to unearth the crime committed by the accused persons.

20. In view of the above discussion, this Court is not inclined to quash the FIR in Crime No.410 of 2015. Accordingly, this Criminal Original Petition stands dismissed.

21. Considering the FIR is the year 2015, the 1st respondent is directed to complete the investigation and file a final report within a period of eight weeks from the date of receipt of a copy of this order. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(CS IV)

//True Copy//

Sub Assistant Registrar

vv2/vsn

To

1.The Inspector of Police,
E8, Kelambakkam Police Station,
Kancheepuram District.

2.The Public Prosecutor,
High Court, Madras.

+4 cc's to Mr.C.S.Dhanasekaran, Advocate Sr.No.22402

+1 cc to Mrs.P.Bagyalakshmi, Advocate Sr.No.22511

+1 cc to Mr.N.Manokaran, Advocate Sr.No.22318

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CSL/15.03.2019



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