

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on: 29.03.2019

Pronounced on: 02.08.2019

CORAM:

THE HONOURABLE MR.JUSTICE SUBRAMONIUM PRASAD

W.P.No.23985 of 2013

K.Kathirvel

.. Petitioner

Vs.

1.The Inspector General of Registration,
Santhome High Road, Chennai - 600 004.

2. The District Registrar,
O/o. The District Registrar,
Villupuram District.

3. The Sub-Registrar,
Sathiyamangalam S.R.O.,
Villupuram District.

4. The Inspector of Police,
Nallan Pillai Petral Police Station,
Villupuram District.

5. M.Subramani

6. S.Anbalagan

7. S.Vinayagam

8. S.Murugan

9. S.Palani

10. S.Sampath

11. K.Kuppan

.. Respondents

PRAYER: Writ petition filed under Article 226 of the Constitution of India, for a Writ of Mandamus, directing the 1st, 2nd and 3rd respondents herein to proceed criminal action as against the respondents 5 to 11 herein by lodging a criminal complaint against the respondents 5 to 11 herein and to withheld

the Sale Deed dated 21.05.2010 in Document No.907 of 2010 which was fraudulently executed by the respondents 5 to 10 herein to and in favour of the 11th respondent herein in respect of the petitioner's land property situated at Villupuram District, Gingee Taluk, Sathiyamangalam Mathura Palapadi Village, comprised in Survey No.442/2A, measuring 0.49 cents of agricultural land by considering the petitioner's dated 05.10.2010.

For Petitioner : Mr.J.James

For Respondents: Mr.T.M.Pappiah

Spl.Govt. Pleader for R1 to R4

for Mr.Akhil Akbar Ali, Govt Advocate

Mr.K.Balu for R6 to R10

R5 - Expired (Steps not taken)

No appearance for R11

O R D E R

Lands are situated at Villupuram District, Gingee Taluk, Sathiyamangalam Mathura Palapadi Village. The petitioner is a auction purchaser. The District Munsif has issued a sale certificate on the basis of sale deed. The property was registered in the Sub Registrar Office, Sathiyamangalam. The possession of the property was handed over to the petitioner on 26.01.1981 and that day onwards, the petitioner had been in possession and enjoyment of the property without interference and hindrance.

2. The property belongs to one Rangasamy Gramani, who had borrowed money. A civil suit in O.S.No.791 of 1972 was filed before the Hon'ble District Munsif Court, Tindivanam, by Kanthappa Chettiar, for recovering money. The suit was decreed on 30.07.1992 and in the execution of the decree, property was attached. In an auction conducted on 10.09.1980, the property was purchased by the petitioner. The petitioner alleges that one M.Subramani, 5th respondent herein, S/o.Muthusamy Gounder residing at Puthupalayam Village, purchased the property from the judgment debtor Rangasamy Gramani, by way of sale deed dated 29.01.1973. Since the said M.Subramani, was interfering with the petitioner, the petitioner states that he filed a suit in O.S.No.212 of 1985 before the District Munsif Court, Gingee, for a declaration for title of the property and sought for a permanent injunction restraining the said Kanthappa Chettiar with the interference from the possession. The petitioner states that the suit was decreed by an order dated 30.07.1992.

3. The learned District Munsif by an order dated 30.07.1992, observed that the sale deed dated 29.01.1973, executed by the Rangasamy Gramani, judgment debtor in favour of M.Subramani is null and void. Appeal was preferred by Mr.Subramani against the judgment dated 30.07.1992, was dismissed by the Sub-Court in A.S.No.81 of 1992 by its order dated 30.08.1999. There is no subsequent appeal and therefore, the order attained finality. The petitioner states that, when he went to obtain the encumbrance certificate in respect of the property from the concerned Registrar Office, he was shocked to find that the 5th respondent/M.Subramani and his sons respondent Nos.6 to 10 had executed the sale deed dated 21.05.2010 on the same property in favour of one K.Kuppan, 11th respondent herein and the sale deed was registered in document No.907 of 2010 before the Sub-Registrar Office, Sathiyamangalam.

4. The petitioner states that the above said M.Subramani and his sons have wantonly and purposefully created the illegal sale deed knowing full well about the decree dated 30.07.1992, passed by the District Munsif in O.S.No.212 of 1985 and also the dismissal of the appeal by the Sub-Court in A.S.No.81 of 1992, by an order dated 30.08.1999.

5. The petitioner states that he has given a police complaint dated 11.10.2010, before the Superintendent of Police, Villupuram District. The said complaint was forwarded to the Inspector of Police, Economic Offence Wing II, dated 11.12.2013, who in turn forwarded to the Inspector of Police, Nallan Pillai Petral Police Station, Villupuram District / 4th respondent herein. CrI.O.P.No.26194 of 2010 before this Court was filed by the petitioner for a direction to register a complaint. This Court by an order dated 22.02.2011, observed that the 2nd respondent Police has registered a case on 11.10.2010 in Cr.No.10 of 2011 under Section 420 of IPC and that the matter is under investigation. The Revision Petition was disposed of by the above said observation. The petitioner has filed the instant writ petition, for a direction to the Registration Authorities to take necessary action against the respondent Nos.5 to 11. The 3rd respondent/Sub-Registrar, Sathiyamangalam, has filed a counter. 3rd respondent counter has stated that the judgment debtor Rangasamy Gramani had 0.98 cents in S.No.442/2A, Sathiyamangalam Vilage. He pledged 0.49 cents and got a loan. Since the loan was not paid, a suit was filed against the Rangasamy Gramani. The petitioner was sold in Court auction in the execution of decree and was purchased by the petitioner. It is stated that remaining 0.49 cents had been sold as per document No.154 of 1973 to the 5th respondent herein and this sale was prior to the auction in which the petitioner herein had purchased the property. Therefore, the contention of the 3rd respondent is that, out of 0.98 cents with Rangasamy Gramani.

0.49 cents was sold to the 5th respondent/M.Subramani and the balance 0.49 cents had been given on mortgage .

6. In para 9 of the counter filed by the 3rd respondent has stated as under:-

"It is respectfully submitted that it is very clear that the Survey No.442/2 pertained to this case covered a total extent of 0.98 cents, out of this 0.49 cents were pledged to Sanjeevi Gounder through Document No.597/1971 and the remaining 0.49 cents were sold to the 5 Respondent through Document No.154/1973. Hence the pledged even: of 0.49 cents alone brought to the purview of the Honorable court and the same was publically auctioned on 10.09.1980. But the remaining extent of 0.49 cents was sold to the 5th Respondent by Rengasamy Gramani and further the 5th Respondent had sold 0.49 cents of his property rightly purchased through Document No. 154 1973. As there was no fraudulent transaction happened as far as Registration procedure concerned. As per the judgment reported in 2003(3) MLJ 7645, in Ramasamy Nallamma Naickenpatty, it is highlighted that when a document of sale has been registered on payment proper Stamp Duty with Registration Fees, there is no power for the Registering Authority to retain the document on the ground that the property does not belong to the Vendor who executed the sale deed. Even if it belongs to someone else, it is for the real owner to file a suit to set aside the document before the competent civil court. It is not the duty of the Registering authority to verify whether a Vendor has right to sell the property or not. Hence it is just and necessary that this Honorable court may be pleased to dismiss the above writ petition is not maintainable."

7. Heard the counsel for the parties and perused the documents. The material on record shows that the petitioner has purchased land in a Court auction. The certificate of sale has been issued to the petitioner for purchasing the property in Court auction, the certificate of sale has not been filed. The petitioner has also filed a suit against 5th respondent and got the declaration of title in his favour.

8. The schedule of property in the suit reads as under:-

"All the part and parcel of the land measuring 0.98 situated at Nanjai survey No.442/2 bearing Patta No: 604 at Mathura Palapadi Village, Sathyamangalam, Gingee Taluk bound on the

By East- pathway of Puthupalayam

By South-House belongs to Rangasami Gounder

By west-Land belongs to Manika Gounder
By North- Land belongs to Chinnasami Land
In the middle 0.49 cents and well and tax 1.40
It is given under my signature and court seal on Monday ,
30th day of July 1992

Signature R.Nizar Ahamand,
District Munsif Court

Corrections: Nil Words:30 Total Words:380

Copy writer

Copy examiner

Principal sub court, Tindivanam"

9. This decree has confirmed in appeal by an order dated 30.08.1999 by Sub-Court, Tindivanam. The appellant decree reads as under:-

"This appeal has been filed by the defendant in Original Suit No:212 / 85 on the file of District Munsif Court, Gingee. This appeal has filed to set aside the decree and judgment passed by trial court by allowing this appeal with cost.

The date of filing of this Appeal : 28.8.92

The court fee for this Appeal Rs.23.00

This petition has come up on 17.8.99 before this court for final enquiry in the presence of Mr.N.Padmanabhan counsel for appellant and Mr.T.Ananthasayanam for respondent and after perusal of suit documents and perusal of judgment and decree and exhibits marked in the judgment and having stood over for consideration till this date, this court delivered the following:-

DECREE

1. This appeal is dismissed
2. The appellant has directed to pay a cost of Rs.501.50 to the respondent."

10. The 3rd respondent has filed a counter stating that, out of 0.98 cents, 0.49 cents was sold to the petitioner in Court auction and 0.49 cents has been sold by the Rangasamy Gramani to M.Subramani. Be that as it may, the short point that arises for consideration is as to whether the writ can be passed directing the respondent Nos.1 to 4 to file a criminal complaint against the respondent Nos.5 to 11. Material on record would show that the complaint has already been given to the Police and this Court by an order dated 22.02.2011 in CrI.O.P.No.26194 of 2010, on the very same allegation has passed an order, which reads as under:-

"ORDER

This petition has been filed under Section 482 Criminal Procedure Code, seeking a direction to the second respondent herein to register the case pertaining

to the petitioner's complaint dated 11.10.2010 in accordance with law.

2. The learned Government Advocate (Criminal Side) submitted that the second respondent police has registered a case in Crime No.10 of 2011 dated 08.02.2011 under Section 420 of IPC and the second respondent police will complete the investigation and file the final report within a period of three months.

3. Recording the submission of the learned Government Advocate (Criminal Side), the petition shall stand closed."

11. A case in Crime No.10 of 2011 has been registered under Section 420 of IPC by the Inspector of Police, Economic Offence Wing II. In view of the stand taken by the respondent, the writ as prayed for cannot be granted. The petitioner is in a possession of the property which he has purchased in Court auction. He has an order against the 5th respondent. This Court therefore cannot direct the 3rd respondent to lodge a complaint against respondent Nos. 5 to 10. It will amounts to a second FIR for the same offence and this FIR will be hit by the judgment of the Hon'ble Supreme Court of India in the case of T.T.Antony Vs. State of Kerala & Others, reported in (2001) 6 SCC 181. The relevant portions are reads as under:-

"19. The scheme of CrPC is that an officer in charge of a police station has to commence investigation as provided in Section 156 or 157 CrPC on the basis of entry of the first information report, on coming to know of the commission of a cognizable offence. On completion of investigation and on the basis of the evidence collected, he has to form an opinion under Section 169 or 170 CrPC, as the case may be, and forward his report to the Magistrate concerned under Section 173(2) CrPC. However, even after filing such a report, if he comes into possession of further information or material, he need not register a fresh FIR; he is empowered to make further investigation, normally with the leave of the court, and where during further investigation he collects further evidence, oral or documentary, he is obliged to forward the same with one or more further reports; this is the import of sub-section (8) of Section 173 CrPC.

20. From the above discussion it follows that under the scheme of the provisions of Sections 154, 155, 156, 157, 162, 169, 170 and 173 CrPC only the earliest or the first information in regard to the commission of a cognizable offence satisfies the requirements of Section 154 CrPC. Thus there can be no second FIR and

consequently there can be no fresh investigation on receipt of every subsequent information in respect of the same cognizable offence or the same occurrence or incident giving rise to one or more cognizable offences. On receipt of information about a cognizable offence or an incident giving rise to a cognizable offence or offences and on entering the FIR in the station house diary, the officer in charge of a police station has to investigate not merely the cognizable offence reported in the FIR but also other connected offences found to have been committed in the course of the same transaction or the same occurrence and file one or more reports as provided in Section 173 CrPC.

27. A just balance between the fundamental rights of the citizens under Articles 19 and 21 of the Constitution and the expansive power of the police to investigate a cognizable offence has to be struck by the court. There cannot be any controversy that sub-section (8) of Section 173 CrPC empowers the police to make further investigation, obtain further evidence (both oral and documentary) and forward a further report or reports to the Magistrate. In Narang case [(1979) 2 SCC 322 : 1979 SCC (Cri) 479] it was, however, observed that it would be appropriate to conduct further investigation with the permission of the court. However, the sweeping power of investigation does not warrant subjecting a citizen each time to fresh investigation by the police in respect of the same incident, giving rise to one or more cognizable offences, consequent upon filing of successive FIRs whether before or after filing the final report under Section 173(2) CrPC. It would clearly be beyond the purview of Sections 154 and 156 CrPC, nay, a case of abuse of the statutory power of investigation in a given case. In our view a case of fresh investigation based on the second or successive FIRs, not being a counter-case, filed in connection with the same or connected cognizable offence alleged to have been committed in the course of the same transaction and in respect of which pursuant to the first FIR either investigation is under way or final report under Section 173(2) has been forwarded to the Magistrate, may be a fit case for exercise of power under Section 482 CrPC or under Articles 226/227 of the Constitution."

12. In view of the decision of the Hon'ble Supreme Court of India, cited supra, that there cannot be two FIRs for a same offence. The prayer as sought for cannot be granted. It is expected that the 4th respondent, who is conducting the investigation would file an appropriate report after

investigating all the aspects of the matter. Writ Petition stands dismissed. No Costs.

Sd/-
Assistant Registrar(CO)

//True copy//

Sub Assistant Registrar

Pkn.

To

- 1.The Inspector General of Registration,
Santhome High Road, Chennai - 600 004.
2. The District Registrar,
O/o. The District Registrar,
Villupuram District.
3. The Sub-Registrar,
Sathiyamangalam S.R.O.,
Villupuram District.
4. The Inspector of Police,
Nallan Pillai Petral Police Station,
Villupuram District.

+2cc to Mr.J.James, Advocate SR.No.66292

+1cc to Government Pleader, High Court, Madras SR.No.67123

W.P.No.23985 of 2013

NR(CO)
GMY(22/08/2019)

सत्यमेव जयते

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