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IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 04.06.2019

CORAM:

THE HONOURABLE MR.JUSTICE P.VELMURUGAN

Crl.R.C.No.226 of 2014

1. S.Kanagarajan
2. T.S.Banumathi
3. R.Gulab

...Petitioners

Vs.

1. State rep. by
The Inspector of Police,
District Crime Branch Land Grabbing Special Wing,
Tiruppur District.

2. S.Ramalingam

...Respondents

This Criminal Revision case filed under Section 397 r/w 401 of Code of Criminal Procedure call for the records and set aside the order of the learned Special Judicial Magistrate for Exclusive Trial of Land Grabbing Cases, Special Court, Tiruppur, in C.M.P.No.188 of 2014 dated 06.02.2014.

For Petitioners: Mr.P.Kalimuthu

For Respondent : Mr.T.Shanmugarajeswaran
Government Advocate (Crl.Side)

ORDER

The criminal revision has been filed against the order of the learned Special Judicial Magistrate for Exclusive Trial of Land Grabbing Cases, Special Court, Tiruppur, in C.M.P.No.188 of 2014 dated 06.02.2014.

2 The first petitioners is brother of the second respondent and second petitioners is wife of first petitioner and third petitioner is writer of one of the disputed document



i.e. General Power of Attorney said to have been executed by the second respondent in favour of the second petitioner. The second respondent has filed a complaint against the petitioners and two others, before the Superintendent of Police, Tiruppur District, on 18.10.2013 and since no action was taken on the same, he filed a petition under Section 156(3) of Cr.P.C. before the learned Special Judicial Magistrate for Exclusive Trial of Land Grabbing Cases, Special Court, Tiruppur, in C.M.P.No.188 of 2014 seeking direction to the jurisdictional police to register the case on the complaint lodged by the second respondent. The learned Magistrate passed an order dated 06.02.2014, wherein direction was issued as sought for by the second respondent/complainant, against which, the petitioners have filed the present revision before this Court, seeking to set aside the same.

3 According to learned counsel appearing for the petitioners, the second respondent has sold the disputed land for a value of Rs.3,00,000/- and all the documents stand in the name of the first petitioner only. The second respondent has earlier filed complaints with the same allegation of land grabbing and after investigation, the case was closed as mistake of fact and he also filed a suit in O.S.No.191 of 2014 on the file of the learned Subordinate Judge, Udumalpet, and on civil revision petition filed by the petitioners herein before this Court, the plaint in the above suit was struck off on 07.03.2018. Further all the proceedings initiated by the respondent against the petitioners were closed and dismissed. Now the present petition has been filed with same allegations and the learned Magistrate without considering facts elicited by the petitioners passed the impugned order dated 06.02.2014 and that is also not a speaking order, simply direction was issued to register the case against the petitioner and to file a final report, stating that there is prima facie allegation against the petitioner. Therefore the non-speaking order dated 06.02.2014, passed by the learned Magistrate is liable to be set aside.

4 The learned Government Advocate (Crl.Side) would submit that earlier the second respondent has filed the complaint mentioning the same allegations against the petitioners and after an elaborate and detailed investigation, the Sub-Inspector of Police, Land Grabbing Special Cell, Tiruppur District, closed the complaint stating that there is no material to prove the land grabbing as alleged by the second respondent. Now the present petition has also been filed with the same set of allegations.



5 Despite service of notice, none appeared on behalf of the second respondent. Heard the learned counsel appearing for the petitioners and the learned Government Advocate (Crl.Side) appearing for the first respondent and perused the materials available on record.

6 It is the case of the second respondent/complainant that the first petitioner is his elder brother and their father executed a sale deed in favour of both of them in the year 1993 and in the year 2002 both of them availed loan by mortgaging the above sale deed in the name of both and constructed a complex and rented out the same. Property Tax and Electricity Bill are all paid in the name of both the first petitioner and the second respondent and they both collected the rent and share equally. The second respondent was living in the second floor of the complex and while that being so, in the year 2003, the first petitioner fraudulently obtained a General Power of Attorney from the second respondent in favour of the second petitioner, taking advantage of the illiteracy of the second respondent. Subsequently, sale deed was also fraudulently obtained in favour of the first petitioner through the power of attorney and the petitioners are trying to evict the second respondent unlawfully. It is also the case of the second respondent that all the documents are stand in the name of both the first petitioner and the second respondent and some fraud was committed by the first petitioner taking advantage of the illiteracy of the second respondent. Therefore he filed the complaint against the petitioners and since no action was taken on the same, he filed the present petition and the same was allowed, which was impugned in the present revision petition.

7 It is contended by the revision petitioners, that the learned Magistrate has passed non-speaking order and simply he has stated that there is prima facie case and issued direction to the first respondent to register the case and file a final report on the same.

8 On reading of the entire materials available on record and the order dated 06.02.2014, which is impugned in this revision, it reveal that the above order does not speak anything about the case of the either the petitioners or the second respondent and it was only stated that there is prima facie and hence issued direction. Therefore, this Court is inclined to set aside the order and remit back the matter to the Court below for passing speaking order.



9 Accordingly, the criminal revision is allowed and the order dated 06.02.2014 passed in C.M.P.No.188 of 2014 by the learned Special Judicial Magistrate for Exclusive Trial of Land Grabbing Cases, Special Court, Tiruppur, is hereby set aside and the matter is remanded back to the Court below. The learned Special Judicial Magistrate for Exclusive Trial of Land Grabbing Cases, Special Court, Tiruppur, is directed to adopt the procedures in accordance with law before forwarding the complaint to the first respondent and pass detailed order on the above petition, in order to avoid filing of closure report once again by the first respondent police.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

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To

1. The Special Judicial Magistrate for Exclusive Trial of Land Grabbing Cases,
Special Court, Tiruppur.
2. The Inspector of Police,
District Crime Branch Land Grabbing Special Wing,
Tiruppur District.
3. The Public Prosecutor, High Court of Madras.
4. The Section Officer,
V.R Section,
High Court, Madras

+1cc to Mr.P.Kalimuthu, Advocate sr.44835

Cr1.R.C.No.226 of 2014

gmr(co)
nr 23/01/2020