

**BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT****DATED: 18.03.2019****CORAM:****THE HONOURABLE MR.JUSTICE P.N.PRAKASH****Cr1.O.P. (MD) No.5015 of 2014****and****M.P. (MD) Nos.1 & 2 of 2014**

1.K.Jamal Mohammed
2.K.Rashidha
3.K.Tajnisha
4.A.Abdulbari
to A4

... Petitioners / A1

vs.

R.Santhanakrishnan
Complainant

... Respondent /

PRAYER: Petition is filed under Section 482 Cr.P.C., to call for the records pertaining to the Private Complaint in C.C.No.231 of 2013 on the file of the Learned Judicial Magistrate No.I, Madurai filed by the Respondent and quash the same as illegal.

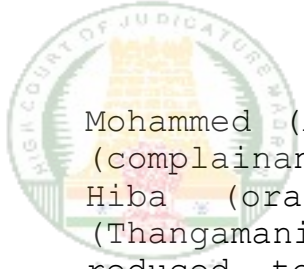
For Petitioners : Mr.Pandidurai
for Mr.T.Lajapathi Roy
For Respondent : Mr.C.M.Arumugam

O R D E R

The property bearing Door Nos.8B(pt), 9/1, 9/2, 9B and 9E, situated at Ward No.49, in Arunachalapuram Lane (hereinafter, referred to as "the house property") is in dispute. The house property belongs to the family of Haja Mohideen and his wife Fathimakani Beevi. After their death, the house property along with other properties devolved upon their heirs, namely, accused 1 to 3. There was a family partition of all the properties, vide Partition Deed dated 30.04.2007 registered as document No.4071 of 2007, under which, the house property was allotted to Rashidha (A2). Rashidha (A2) gave Power of Attorney to her husband Abdulbari (A4), on the strength of which, Abdulbari (A4) sold the house property to Santhanakrishnan (complainant), vide Sale Deed dated 22.03.2010 registered as document No.3488 of 2010, for a valuable consideration. Now, Santhanakrishnan is in the physical possession of the house property.

<https://hcservices.ecourts.gov.in/hcservices/>

2. While that being so, one G.Thangamani filed a suit in O.S.No.1198 of 2012, before the Sub Court, Madurai, against Jamal



Mohammed (A1), Tajunnisa (A3), Rashidha (A2) and Santhanakrishnan (complainant herein) contending that the house property was given as Hiba (oral gift) by Jamal Mohammed (A1) to one Parvathi (Thangamani's mother), on 27.01.1986. The oral gift has been reduced to writing, but not registered. Since the title of Santhanakrishnan to the house property has been questioned by Thangamani in the suit, Santhanakrishnan has filed the present private complaint in C.C.No.231 of 2013, before the learned Judicial Magistrate No.I, Madurai, against Jamal Mohammed and ten others, alleging that they have sold the house property to him by suppressing the Hiba dated 27.01.1986 given to Parvathi. Seeking to quash the said private complaint, accused 1 to 4 have filed this Criminal Original Petition.

3. Heard Mr.Pandidurai, learned counsel, representing Mr.T.Lajapathi Roy, learned counsel on record for the petitioners / A1 to A4 and Mr.C.M.Arumugam, learned counsel for the respondent / complainant.

4. Mr.Pandidurai, learned counsel for the petitioners / A1 to A4 submitted that the accused have never denied the title of Santhanakrishnan (complainant) to the house property, after it was sold to him, vide Sale Deed dated 22.03.2010 registered as document No.3488 of 2010. The learned counsel also contended that Santhanakrishnan (complainant) is in the physical possession of the house property and the accused have not at all disputed his possession. However, the learned counsel contended that Thangamani has filed a frivolous suit in O.S.No.1198 of 2012, based on a fabricated Hiba that was allegedly given by Jamal Mohammed to her mother Parvathi on 27.01.1986. The learned counsel for the petitioners brought to the notice of this Court that the petitioners herein have filed a written statement in O.S.No.1198 of 2012 acknowledging the title of Santhanakrishnan to the house property. Even in this quash application, the accused have in no uncertain terms acknowledged Santhanakrishnan's title and possession of the house property.

5. Mr.C.M.Arumugam, learned counsel for the respondent / complainant submitted that the private complaint was filed on the reasonable belief that the petitioners herein had joined hands with Thangamani for disputing the title of Santhanakrishnan (complainant).

6. This Court gave its anxious consideration to the rival submissions.

7. The petitioners / accused have unequivocally stated that Santhanakrishnan (complainant) is the owner of the house property and that he is also in possession of the house property, after it was sold to him by Sale Deed dated 22.03.2010 registered as document No.3488 of 2010. Admittedly, both Santhanakrishnan and the accused are together fighting the case in O.S.No.1198 of 2012. In



such view of the matter, this quash application deserves to be allowed and the entire prosecution in C.C.No.231 of 2013 against A1 to A7 is hereby quashed, though A5 to A7, namely, Thalpathi Mariappan, Kannan and S.Shajahan, who arranged the deal between Santhanakrishnan (complainant) and Rashidha (A2), are not before this Court.

8. The Trial Court is directed to proceed with the trial as against the other accused, namely, A8 to A11 expeditiously.

9. The Criminal Original Petition is allowed in the above terms. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(AD-I)

// True Copy //

Sub Assistant Registrar(CS)

To:
The Judicial Magistrate No.I,
Madurai.

+1 CC to M/s.C.M.ARUMUGAM, Advocate in SR-55167

Cr1.O.P. (MD) No.5015 of 2014
and
M.P. (MD) Nos.1 & 2 of 2014
18.03.2019

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SP/PK/10.04.2019 : 2P/3C