



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

RESERVED ON: 01.04.2019

DELIVERED ON: 15.04.2019

CORAM:

THE HON'BLE MR.JUSTICE P.N.PRAKASH

Cr1.O.P. (MD) No.5810 of 2014 & Cr1.M.P. (MD) Nos.1 & 2 of 2014

Nagappan : Petitioner/Accused No.1

vs.

A.P. Nagarathinam : Respondent/Complainant

Criminal Original Petition filed under Section 482 of Cr.P.C. seeking to call for the records relating to the private complaint in C.C. No.165 of 2012 on the file of the Judicial Magistrate Court No.II, Dindigul and quash the same.

For petitioner Mr.R.Gandhi

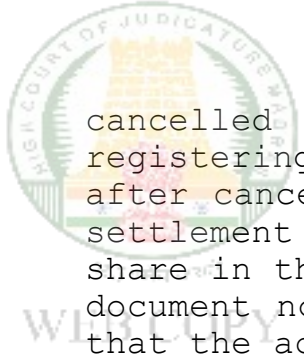
For respondent Mr.S.Alagarsamy

ORDER

This criminal original petition has been filed seeking to call for the records relating to the private complaint in C.C. No.165 of 2012 on the file of the Judicial Magistrate Court No.II, Dindigul and quash the same.

2.For the sake of convenience, the petitioner and the respondent will be referred to as the accused and the complainant respectively.

3.The property in question is a land and building in patta no.961 of Nilakkottai Village (hereinafter referred to as "the property"). It is the case of the complainant that the property devolved on his wife Vasantha Devi and on her death, he (complainant) and his daughter Sathya inherited the same; the complainant and his daughter Sathya executed a deed of settlement to the accused, who is a distant nephew of the complainant, on 23.03.2004; when the said deed of settlement was presented for registration, the Sub Registrar kept it pending on the ground that the requisite stamp duty was not paid; after executing the deed of settlement, the complainant flew to Singapore in connection with his business and after his return from Singapore in the year 2008,



cancelled the deed of settlement unilaterally on 24.08.2008 by registering a deed of cancellation vide document no.2582 of 2008; after cancelling the deed of settlement, the complainant executed a settlement deed in favour of his daughter Sathya with regard to his share in the property and the said settlement deed was registered as document no.2566 of 2008. It is the allegation of the complainant that the accused entered into a sale agreement dated 12.08.2008 with one Durairaj and had the said sale agreement registered as Document No.3693 of 2008 on 05.12.2008.

4 It is the grievance of the complainant that the accused ought not to have registered the sale agreement after the settlement deed was cancelled; therefore, the complainant gave a police complaint, based on which, a case in Cr. No.57 of 2009 was registered by the District Crime Branch, Dindigul and after investigation, the FIR was closed as "mistake of fact" on 12.05.2010.

5 On notice, the complainant filed a protest petition which has now been taken on file as private complaint in C.C. No.165 of 2012, for quashing which, the accused is before this Court.

6 Heard Mr. R. Gandhi, learned counsel for the accused and Mr.S.Alagarsamy, learned counsel for the complainant.

7 The learned counsel for the complainant submitted that the complainant wanted to avail loan from a bank and since he was over 60 years of age, the bank refused to give him loan and therefore, he settled the property in favour of his distant nephew, i.e., the accused, who promised him to get him a loan; however, the accused did not get the promised loan and therefore, the complainant cancelled the settlement deed unilaterally on 24.08.2008, to thwart which, the accused had a sale agreement dated 12.08.2008 registered in the office of the Sub Registrar, Nilakottai, in respect of the property. In support of his contention that disputed questions of fact should not be gone into in a petition filed invoking Section 482 Cr.P.C., the learned counsel for the complainant placed reliance on the judgment of the Supreme Court in **The Delhi Development Authority, New Delhi vs. Lila D. Bhagat and Others**¹.

8 In **Lila D. Bhagat** (supra), the Delhi Development Authority had initiated prosecution against the accused therein for violating the master plan and putting a particular building to use, contrary to the master plan. The Delhi High Court quashed the prosecution, against which, the Delhi Development Authority moved the Supreme Court. In that context, the Supreme Court held that the Delhi High Court should not have gone into disputed questions of fact and quashed the prosecution. The facts obtaining in the instant case are totally different from those in **Lila D. Bhagat** (supra).



9 The learned counsel for the complainant placed reliance on the judgment of this Court in **Kali Naicker and 2 others vs. Jaganathan and 2 others**², wherein, this Court, while disposing of a second appeal, held that cancellation of a gift deed, when the donee had not accepted the gift, is valid. This Court is at a loss to understand as to how the said judgment, which had arisen in a civil case, could be made applicable to the facts of the case at hand. When questioned by this Court, the learned counsel for the complainant submitted that though the settlement deed was executed, it was not acted upon by the accused, because, possession was not given to him.

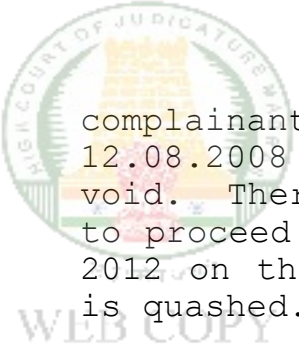
10 As a riposte, the learned counsel for the accused submitted that even in the settlement deed dated 23.03.2004, it is clearly stated that the donee and his heirs will be entitled to enjoy the property absolutely without any restriction and that the donor has no right to revoke or cancel the settlement deed. The learned counsel for the accused further submitted that the donor (complainant) had received some money as consideration for executing the settlement deed and thereafter, the complainant went to Singapore and on his return from Singapore, he found that the land prices have soared and so, he surreptitiously and unilaterally cancelled the settlement deed on 22.08.2008.

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

12 The fact remains that the complainant executed a settlement deed on 22.03.2004 in favour of the accused. The story that he executed the settlement deed for getting bank loan in the name of the accused defies credulity, because, even according to the complainant, after executing the settlement deed, he went to Singapore and returned only in the year 2008. Even in the protest petition filed by the complainant, there is no such averment. For the first time, this averment surfaced in his sworn statement.

13 Be that as it may, the fact remains that the complainant had cancelled the settlement deed he executed in favour of the accused in respect of the property unilaterally behind the back of the accused on 22.08.2008. At this juncture, it is felicitous to point out that in **G.D.Subramaniam vs. The Sub Registrar, Office of Konus Sub Registrar, Chennai and others**³, this Court has held that unilateral cancellation of a document is illegal. It is not the case of the complainant that his signature was forged by the accused. This is purely a title dispute and can be resolved only by a Civil Court.

14 In such perspective of the matter, it is open to the accused to file a suit for declaring the deed of cancellation of settlement deed as null and void and it is also equally open to the



complainant to file a suit for declaring the sale agreement dated 12.08.2008 entered into by the accused with Durairaj as null and void. There is no element of criminality at all for the prosecution to proceed further. Accordingly, the proceedings in C.C. No.165 of 2012 on the file of the Judicial Magistrate Court No.II, Dindigul, is quashed.

In the upshot, this criminal original petition is allowed. Connected Crl.M.Ps. stand closed.

Sd/-

Assistant Registrar(Crl.Side)

// True Copy //

Sub Assistant Registrar(CS)

To

- 1 The Judicial Magistrate Court No.II
Dindigul
- 2 The Additional Public Prosecutor
Madurai Bench of Madras High Court
Madurai
- 3 The Record Keeper
Criminal Records Section
Madurai Bench of Madras High Court
Madurai (2 copies)

+1 CC to M/s.S.ALAGARSAMY, Advocate in SR-61092

+1 CC to M/s.R.GANDHI, Advocate in SR-61304

Crl.O.P. (MD) No.5810 of 2014
15.04.2019

cad

PK/25.04.2019 : 4P/7C