



WEB COPY

BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 25.03.2019

CORAM:

THE HONOURABLE MR.JUSTICE P.N.PRAKASH

CrI.O.P. (MD) No.6649 of 2014

and

M.P. (MD) Nos.1 & 2 of 2014

Venkatesaperumal

... Petitioner/Accused No.4

vs.

1.State through Inspector of Police
City Crime Branch Police Station
Tirunelveli, Tirunelveli District
(Crime No.14 of 2010)

... 1st Respondent/Complainant

2.S.Maria John

... 2nd Respondent/De facto Complainant

PRAYER: Petition is filed under Section 482 Cr.P.C., to call for the records in C.C.No.32 of 2013 on the file of the Special Judicial Magistrate, Special court for Land grabbing cases Tirunelveli in respect of the petitioner and to quash the same.

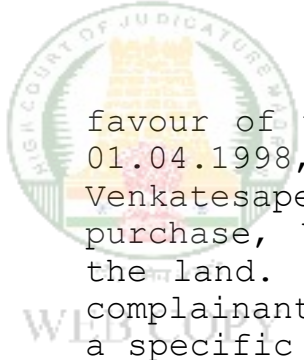
For Petitioner : Mr.V.Kannan

For Respondents : Mr.M.Chandrasekaran
Additional Public Prosecutor for R1
Mr.T.Antony Arul Raj for R2

O R D E R

On the complaint lodged by the second respondent, the first respondent Police registered a case in Crime No.14 of 2010 and after completing the investigation, have filed charge sheet in C.C.No.32 of 2013, before the learned Special Judicial Magistrate for Land Grabbing Cases, Tirunelveli, for the offences punishable under Sections 420, 467, 468, 471 and 120-B I.P.C. against five accused, for quashing which, the fourth accused is before this Court.

2. It is the case of the prosecution that, the property measuring 32 cents of land originally belonged to one Saradha (A1). One Murugesan filed a suit in O.S.No.202 of 1997, before the learned II Additional Sub Judge, Tirunelveli, for specific performance alleging that Saradha (A1) had entered into a sale agreement with Saradha (A1) on 23.12.1996 and that she was refusing to execute the sale deed. Saradha (A1) contested the suit by filing a written statement and took a stand that she had not executed any sale agreement in



favour of the said Murugesan. During the pendency of the suit, on 01.04.1998, it appears that Saradha (A1) sold 26 cents of land to Venkatesaperumal (A4) / petitioner herein. Ever since the date of purchase, Venkatesaperumal (A4) is in possession and enjoyment of the land. However, he sold the same on 08.03.2007 to the *de facto* complainant vide document No.1538 of 2007. Now, it is alleged that a specific performance decree has been passed in respect of the said property in favour of Murugesan and suppressing the said fact, Saradha (A1) had sold the property to Venkatesaperumal (A4), who, in turn, sold the property to the *de facto* complainant, after knowing full well about the specific performance decree. Hence, the charge sheet.

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

4. In the charge sheet, there are only two witnesses, namely, the *de facto* complainant as L.W.1 and the Inspector of Police as L.W.2. Apart from the *ipse dixit* of the *de facto* complainant that he has been cheated, there is no other material to support his assertion. Admittedly, Venkatesaperumal (A4) purchased the property from Saradha (A1) on 02.04.1998 for Rs.7 lakhs. But, there is no material to show that Venkatesaperumal (A4) knew about the suit in O.S.No.202 of 1997 filed by Murugesan. It appears that the suit was decreed *ex parte* only on 04.03.2004. There is also no material to show that Venkatesaperumal (A4) knew about the *ex parte* decree dated 04.03.2004, because that will not be reflected in the encumbrance certificate. Had Venkatesaperumal (A4) sold the property to the *de facto* complainant sometime in the year 2004 immediately after the decree, then this Court can legitimately draw an inference of culpability against him. On the contrary, the property was sold by Venkatesaperumal (A4) to the *de facto* complainant only on 08.03.2007. The *de facto* complainant himself came to know about the *ex parte* decree after the purchase and that is why, the *de facto* complainant has given the complaint only in the year 2010. In such view of the matter, the prosecution of Venkatesaperumal (A4) is an abuse of process of law.

5. Accordingly, this Criminal Original Petition is allowed and the proceedings in C.C.No.32 of 2013, on the file of the learned Special Judicial Magistrate for Land Grabbing Cases, Tirunelveli, as against the petitioner herein are hereby quashed. Consequently, connected Miscellaneous Petitions are closed.

Sd/-

Assistant Registrar(CS-I)

// True Copy //



To

1.The Special Judicial Magistrate,
Special Court for Land Grabbing Cases,
Tirunelveli.

2.The Inspector of Police,
City Crime Branch Police Station,
Tirunelveli, Tirunelveli District.

3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.

+1 CC to M/s.T.ANTONY ARUL RAJ, Advocate in SR-56678

+1 CC to M/s.V.KANNAN, Advocate in SR-56536

**Cr1.O.P. (MD) No.6649 of 2014
and
M.P. (MD) Nos.1 & 2 of 2014
25.03.2019**

krk

PK/11.04.2019 : 3P/6C