



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 06.09.2019

CORAM

THE HONOURABLE MR. JUSTICE G.K.ILANTHIRAIYAN

CRL.O.P (MD) No.1553 of 2018

T.Murugesan

... Petitioner

Vs

1.Seetha Devi
2.Raghavan
3.Velappan
4.N.Vadukanathan
5.Rajendran
6.Paulthurai
7.Geetha

... Respondents

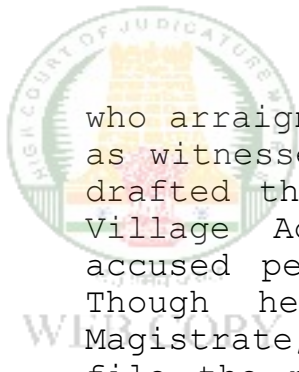
PRAYER: Criminal Original Petition filed under Section 482 of Cr.P.C, praying to call for the records relating to the orders dated 04.01.2018 made in Crl.M.P.No.3735 of 2017 passed by the Judicial Magistrate No.1, Nagercoil and set aside the same.

For Petitioner : Mr.N.Dilip Kumar
For Respondents : Mr.R.Murugan, RR 1 and 5
No Appearance for RR2 to 5, 6&7

O R D E R

This petition has been filed by challenging the order passed by the learned Judicial Magistrate No.1, Nagercoil dated 04.01.2018 in Crl.M.P.No.3735 of 2017, thereby, dismissing the private complaint filed by the petitioner.

2.The learned counsel appearing for the petitioner would submit that the petitioner is the original owner of the property comprised in R.S.No.1385/4, Neendakarai B Village, Rajakkamangalam Village, Agasteeswaram Taluk, Kanyakumari District and patta No.10809 has also been issued in the name of the petitioner. While being so, all the accused persons conspired together to grab the entire property and the husband of the 1st accused viz., A.Murugesan impersonated the complainant and executed a settlement deed in favour of the 1st accused viz., his wife on 04.08.2016. In the settlement deed, they stated that the father of the said Murugan is Thiraviyam Nadar, whereas, the husband of the petitioner born to one Hari Krishnan. In turn, she executed the sale deed in favour of his own son-in-law,

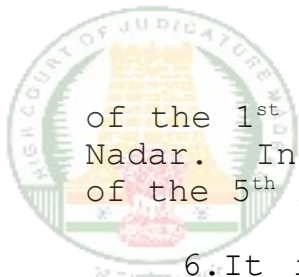


who arraigned as A5 herein. The second and third accused are stated as witnesses to the said document and also with the help of A4, who drafted the sale deed. A6 and A7, who are the Sub Registrar and Village Administrative Officer, who also conspired with other accused persons to grab the property belongs to the complainant. Though he lodged a complaint before the concerned Judicial Magistrate, it was not considered and hence, he was constrained to file the private complaint before the learned Judicial Magistrate No.1, Nagercoil, who simply dismissed the complaint only on the ground that the impersonated person viz., Murugesan, the husband of the 1st accused was not impleaded as an accused. He further submitted that even though in his sworn statement, he categorically stated that the said Murugesan died, the learned Judicial Magistrate mechanically dismissed only on the ground that the impersonated person was not added as an accused. Therefore, he prayed for setting aside the order.

3.Per contra, the learned counsel appearing for the respondents 1 and 5 would submit that the husband of the 1st respondent deriving the title over the same property by way of patta No.10809 issued by the concerned revenue authorities. Her husband born through one Thiraviyam Nadar and not through Hari Krishnan and he never impersonated anybody and executed a settlement deed in favour of the 1st respondent. On the strength of the settlement deed, the 1st respondent executed the sale deed in favour of the 5th respondent. Therefore, no crime is made out as against the respondents. The learned Judicial Magistrate rightly dismissed the private complaint for the reason that no prima facie case is made out in the complaint to attract any of the offence as alleged by the petitioner/complainant. He further submitted that a suit for declaration and injunction has also been filed as against the complainant in O.S.No.314 of 2018 on the file of the Principal Sub Court, Nagercoil, in which, the complainant/petitioner also appeared and filed written statement and it is pending for consideration. Therefore, the entire issues are civil in nature and the learned Judicial magistrate rightly dismissed the complaint and hence, he prayed for dismissal of this petition.

4.This petition has been filed challenging the order passed by the learned Judicial Magistrate, thereby, dismissing the private complaint for the reason that the impersonated person viz., one Murugesan, husband of the 1st respondent was not added as accused in the complaint.

5.The learned counsel appearing for the petitioner pointed out that the complainant is born through one Thiraviyam Nadar and he derived title over the property comprised in S.No.1385/4 situated at Neendakarai B village, Rajakkamangalam village, Agasteeswaram Taluk, Kanyakumari District through patta No.10809 and he is possession and enjoyment of the property even till today. While being so, the



of the 1st respondent as if he is the said Murugesan, S/o.Thiraviyam Nadar. In turn, the 1st respondent executed the sale deed in favour of the 5th respondent, who is non other than her own son-in-law.

6.It is also seen from the sworn statement recorded from the petitioner, where, he categorically stated that the Murugesan, who as alleged to be impersonated, died. The learned Judicial Magistrate without considering the above facts and circumstances, mechanically rejected only on the ground that the impersonated person was not added as an accused in the complaint.

7.Considering the above facts and circumstances of the case, this Court feels deem fit to remand the matter back to the concerned Judicial Magistrate for fresh consideration. Accordingly, this criminal original petition is allowed. The order dated 04.01.2018 made in C.M.P.No.3735/2017 passed by the learned Judicial Magistrate No.1, Nagercoil is set aside and the learned Judicial Magistrate is directed to examine necessary witness and decide the matter afresh on merits and in accordance with law. It is made clear that any of the observations made in this petition would not influence the mind of the learned Judicial Magistrate to decide the complaint.

8.With the above observation and direction, this criminal original petition is allowed.

Sd/-

Assistant Registrar (AD-I)

// True Copy //

Sub Assistant Registrar

To

The Judicial Magistrate No.1,
Nagercoil.

+1 CC to M/s.R.MURUGAN, Advocate (SR-85827[F] dated 09/09/2019

Order made in

CRL.O.P (MD) No.1553 of 2018

06.09.2019

ARUL

MS/30.09.2019/3P.3C