

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 06.11.2020

PRONOUNCED ON : 19.11.2020

CORAM

THE HONOURABLE Mr.JUSTICE P.N.PRAKASH

CRL.O.P.No.16020 of 2016

AND

CRL.M.P.Nos.7820 of 2016 & 12674 of 2019

G.Ganesh

.. Petitioner

Vs.

1.State rep. by the Inspector of Police
Anti-Land Grabbing (Special) Cell
Villupuram
(F.I.R.No.7 of 2016)

2.Chezhiyan

.. Respondents

Criminal Original Petition filed under Section 482 Cr.P.C., to call for the records in Crime No.7 of 2016 on the file of the 1st respondent and quash the same by invoking the inherent jurisdiction under Section 482 of the Criminal Procedure Code

For Petitioner : Mr.S.Sathiaseelan

For 1st Respondent : Dr.S.Padma

For 2nd Respondent : Mrs.P.Kritika Kamal

Govt. Advocate (Crl. Side)

ORDER

This matter is taken up for hearing *via* video conferencing.

2. For the sake of convenience, the parties will be referred to by their names.

3. Chezhiyan (*de facto* complainant) lodged a complaint dated 29.11.2012 to the Inspector of Police, Land Grabbing Cell, Villupuram alleging that Ganesh (petitioner/A-6) had grabbed his lands and made them into plots and sold to various persons illegally. Enquiry was conducted by the police on this complaint and the same was closed, as the police found that the allegations were untrue. Chezhiyan presented a petition under Section 156(3) Cr.P.C. in the Court of the Judicial Magistrate No.II, Villupuram against 65 accused, which was sent to the respondent police for investigation. The respondent police registered an F.I.R. in Crime No.7 of 2016 dated 15.03.2016 under Sections 465, 468, 471, 420, 294(b), 323 and 506(i) IPC against 65 accused, for quashing which, Ganesh has filed the present quash petition under Section 482 Cr.P.C.

4. Heard Mr.S.Sathiaseelan, learned counsel for petitioner/A-6; Mrs.P.Kritika Kamal, learned Government Advocate (Crl. Side) for the 1st respondent and Dr.Padma, learned counsel for the 2nd respondent/*de facto* complainant.

5. Undisputed facts are as under :

5.1. In the complaint, the allegations of land grabbing relate to two survey numbers *viz.* survey No.16/1 and 19/5 in Keeranur village, out of which, the allegations in respect of the land in survey No.16/1 alone relates to Ganesh (petitioner/A-6) and not the rest.

5.2. Before sub-division in survey No.16/1, the land measuring 2.54 acres belonged to one Valliammal and her brother Kattayakonar in the ratio of 1:3.

5.3. Valliammal sold her share of the property to one Pottukanniammal *vide* sale deed dated 10.12.1979 registered as document No.2438 of 1979. The share of Kattayakonar devolved on his heir *viz.* Pichaikarakonar. Pichaikarakonar sold 1.97 acres in survey No.16/1 to Ganesh *vide* sale deed dated 06.12.2004 registered as document No.3039

of 2004. Pottukanniammal sold 0.23.0 ares in survey No.16/1, which is around 0.57.5 cents to Chezhiyan, the *de facto* complainant *vide* sale deed dated 10.01.2005 registered as document No.49 of 2005. According to Chezhiyan, A1 to A5 had sold excess land belonging to him to Ganesh, who in turn, had plotted out the land to various buyers, who have also been made as accused in this case.

6. Dr.Padma, learned counsel for Chezhiyan took this Court through the A-Register and submitted that Pichaikarakonar owned only 0.71.0 ares (175 cents). Whereas, Pottukanniammal owned 0.23.0 ares and 0.09.0 ares in survey No.16/1 and therefore, the heirs of Pichaikarakonar have title only to 1.75 acres, but, they have sold 1.97 acres to Ganesh, which according to her, is illegal and amounts to land grabbing. She also contended that Ganesh is a real estate promoter and hence, deserves no sympathy.

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7. This Court finds no substance in the aforesaid arguments of Dr.Padma, inasmuch as Ganesh had purchased 1.97 acres of land from the heirs of Pichaikarakonar by sale deed dated 06.12.2004. Only thereafter, Chezhiyan purchased 0.23.0 ares in survey No.16/1 from

Pottukanniammal. Whereas, on a perusal of the sale deed dated 10.12.1979 registered as document No.2438 of 1979 executed by the original owner Valliammal in favour of Pottukanniammal it is observed that only 63¾ cents alone was sold in survey No.16/1. Thus having bought lesser extent of land from Valliammal, Pottukanniammal has in fact sold excess land to Chezhiyan and that too subsequently, after Ganesh had purchased the share of Pichaikarakonar from his legal heirs *vide* document No.3039 dated 06.12.2004.

8. In short, there were two sets of owners in survey No.16/1 viz. Pottukanniammal and Pichaikarakonar. Ganesh, the accused purchased Pichaikarakonar's share on 06.12.2004. Whereas, Chezhiyan, the *de facto* complainant purchased Pottukanniammal's share on 10.01.2005. As stated above, Pottukanniammal sold excess land to Chezhiyan.

9. Be that as it may, there is no scope for police investigation in this case, inasmuch as it is not the case of the *de facto* complainant that the documents were forged or there was impersonation. This is a case of simple boundary dispute, one claiming that the other had sold excess lands. This should have been resolved only in a civil Court. Both the

sales were effected during 2004-05. Whereas, the present F.I.R. has been registered in 2016, which in the opinion of this Court, is clearly an abuse of process of law. It may be profitable to allude to the following paragraphs in the judgment of the Supreme Court in *Mohammed Ibrahim and Others Vs. State of Bihar and Another* [(2009) 8 SCC 751] :

“17. When a document is executed by a person claiming a property which is not his, he is not claiming that he is someone else nor is he claiming that he is authorised by someone else. Therefore, execution of such document (purporting to convey some property of which he is not the owner) is not execution of a false document as defined under Section 464 of the Code. If what is executed is not a false document, there is no forgery. If there is no forgery, then neither Section 467 nor Section 471 of the Code are attracted.

20. When a sale deed is executed conveying a property claiming ownership thereto, it may be possible for the purchaser under such sale deed to allege that the vendor has cheated him by making a false representation of ownership and fraudulently induced him to part with the sale consideration. But in this case the complaint is not by the purchaser. On the other hand, the purchaser is made a co-accused.”

As in the above case, here also, the purchasers are not the complainants, but, they are co-accused along with the vendors. The complainant is the owner of the neighbouring land, which he has purchased subsequent to the purchase by the petitioner herein.

In the result, this Criminal Original Petition is allowed and the F.I.R. in crime No.7 of 2016 on the file of the 1st respondent *qua* Ganesh (petitioner/A-6) alone, is hereby quashed. Connected Miscellaneous Petitions are closed.

19.11.2020

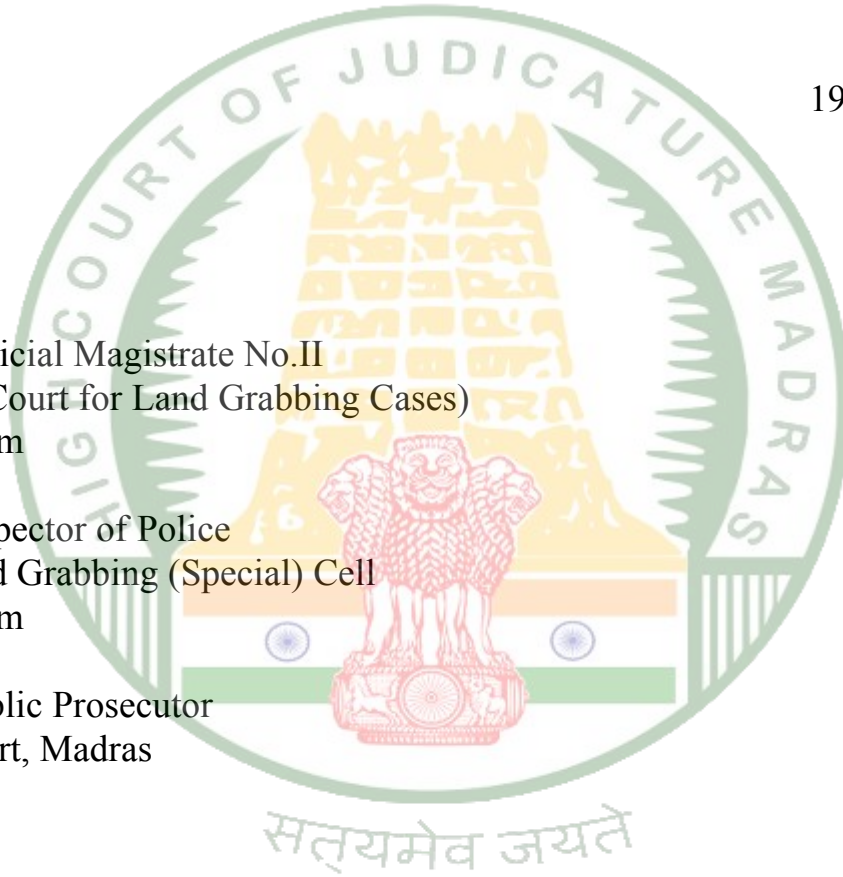
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To

1.The Judicial Magistrate No.II
(Special Court for Land Grabbing Cases)
Villupuram

2.The Inspector of Police
Anti-Land Grabbing (Special) Cell
Villupuram

3.The Public Prosecutor
High Court, Madras



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