

In the High Court of Judicature at Madras

Dated : 13.1.2020

Coram :

The Honourable Mr. Justice T.S. SIVAGNANAM

Writ Petition No.19631 of 2015 and MP.No.1 of 2015

1.K.Palanisamy
2.K.Marappan
3.K.Vijayakumar
4.K.Gopalasamy

...Petitioners

Vs

1.The District Registrar, Administration
Registration Department, Tiruppur.

2.The Joint Sub-Registrar-I,
Registration Department, Tiruppur.

3.K.Easwaramurthy
4.S.Easwari
5.K.Sagunthala
6.K.Saravana Kumar
7.K.Senthil Kumar

...Respondents

PETITION under Article 226 of The Constitution of India praying for the issuance of a Writ of Certiorari to call for the records relating to the impugned proceedings passed in Na.Ka.No.3737/B1/2014 dated .4.2015 on the file of the 1st respondent herein quash the same

For Petitioners : Mr.K.Govi Ganesan

For Respondents 1 & 2 : Mr.P.P.Purushothaman, GA

For Respondents 3 to 7 : Mr.Mukund for

M/s.Sarvabhauman Associates

ORDER

I have heard Mr.K.Govi Ganesan, learned counsel for the petitioners, Mr.P.P.Purushothaman, learned Government Advocate appearing for respondents 1 and 2 and Mr.Mukund, learned counsel appearing for respondents 3 to 7.

2. The petitioners have challenged the order passed by the first respondent dated NIL.4.2015 initiating prosecution against them under Section 82 of the Registration Act, 1908 (for short, the Act).

3. Section 82 of the Act deals with penalty for making false statements, delivering false copies or translations, false personation and abetment. There are four Clauses in Section 82 of the Act, of which, the first respondent attempted to bring the case of the petitioners under Clause (a) of Section 82 of the Act, which states that whoever intentionally makes any false statements, whether on oath or not and whether it has been recorded or not before any officer acting in execution of the Act in any proceeding or enquiry under the Act, shall be punishable with imprisonment of a term which may extend to seven years, or with fine, or with both.

4. The purpose for enacting Section 82 of the Act is to impose penalty for offences, which do not come under the purview of the Indian Penal Code. Thus, it has to be seen as to whether the first respondent was right in bringing the case of the petitioners under Section 82(a) of the Act. To decide this issue, the following facts would be relevant :

The petitioners' case is that the lands in S.F.No.116 of Neruperichel Village, Tiruppur Taluk along with other properties belonged to their grandmother one Mrs.Ayee Ammal. She purchased the same vide sale deed dated 21.4.1926 and registered as doc.No.293 of 1926 on the file of the then Sub-Registrar, Uthukuli. The further case of the petitioners is that their grandmother was entitled to 1/8th share in the said lands along with other co-sharers. On 05.4.1976, the said Mrs.Ayee Ammal died. The petitioners' father one Mr.Palani Gounder (a) Karupasamy Gounder was her only son and he also died on 17.9.2000. Since both the petitioners' grandmother and father died intestate, the petitioners became the joint owners of the property. In order to enjoy the property separately by metes and bounds, they effected partition among themselves by a partition deed dated 07.11.2007 and it was registered as doc.No.10081 of 2007 on the file of the second respondent herein.

5. The petitioners would state that the second respondent registered the partition deed after verifying the sale deed dated 21.4.1926 executed in favour of the petitioners' grandmother. However, respondents 3 to 7 filed a complaint before the first respondent to initiate prosecution against the petitioners contending that the lands in dispute belonged to one Mr.Palani Gounder and his brother one Mr.Karuppanna Gounder, that the petitioners' father sold the same to one Mr.Palani Gounder vide sale deed dated 09.6.1947 registered as doc.No.554 of 1947 on the file of the Sub-Registrar, Tirupur, that after the death of Mr.Palani Gounder, his son one Mr.Kandasamy Gounder and one Mr.Kaliappa Gounder succeeded to the property in question, that they also passed away respectively on 22.8.2013 and 25.1.2013, that respondents 3 to 7 succeeded the same and

the revenue records got mutated in their names and that thereafter, the lands were subdivided, various transactions took place between their family members and sales took place in favour of third parties. Therefore, it was the contention of respondents 3 to 7 that the petitioners had no right over the property and that too, to effect partition and register a partition deed among themselves.

6. The question would be as to whether the first respondent, based on this complaint, was justified in initiating prosecution under Section 82(a) of the Act. To bring the case under the said provision, the first respondent ought to have rendered a concrete finding that the petitioners intentionally made a false statement, whether on oath or not and whether it has been recorded or not before any officer acting in execution of the Act in any proceeding or enquiry under the Act.

7. On a reading of the impugned order, it is evidently clear that the first respondent has not brought out as to how the petitioners intentionally made any false statements before the Authority. The first respondent sought to justify his action by referring to the document of the year 1947. However, there was no finding to the effect that the petitioners were aware of such transaction and that they intentionally made false statements. In fact, on a perusal of the impugned order, it is seen that the first respondent adjudicated the title to the property by stating that the petitioners had no right to partition the properties among themselves. There is a reference to the document of the year 1926 registered in favour of the petitioners' grandmother.

8. The question would be as to whether the property, which was sold in favour of the petitioners' grandmother was also the subject matter of the document of the year 1947 and as to whether the petitioners can be held to be guilty for having not brought to the notice of the second respondent about the said document and the fact that they were not parties to the document.

9. In any event, the finding rendered by the first respondent to the effect that the parties should approach the competent civil court is the correct finding. But, having held so, the first respondent erroneously proceeded to hold that the petitioners were liable to be prosecuted. It is true that the fraudulent or dishonest intention is not an essential factor as regards the offence of falsely presenting a party under the section before the Registering Officer. However, the petitioners' case is not a case of fraudulent presentation of a person, which falls under Clause (c) of Section 82 of the Act.

10. The attempt of the first respondent is to bring the case of the petitioners under Clause (a) of Section 82 of the Act. However, there is no finding recorded by the first respondent that the petitioners intentionally made a false statement before the Registering Authority. Therefore, in the considered view of this Court, the provisions of Section 82 of the Act could not have been invoked in the instant case and the correct procedure that should have been adopted by the first respondent is to direct the parties to work out their remedies before the competent civil court. Instead of doing so, the first respondent ventured into the title to the property. This is evidently clear from the stand taken by the second respondent in his counter wherein one entire paragraph has been devoted as to how the petitioners have no right over the property. This finding could not have been rendered. But, what was required to be recorded was intentionally making a false statement. Thus, in the absence of any such finding rendered by the first respondent, the impugned order has to be held to be unsustainable.

11. In the light of the above, the writ petition is allowed and the impugned order is set aside leaving it open to the petitioners as well as respondents 3 to 7 to approach the competent civil court. No costs. Consequently, the connected MP is closed.

-s/d-

Assistant Registrar

True Copy

Sub-Assistant Registrar

To

1.The District Registrar, Administration Registration Department, Tiruppur.

2.The Joint Sub-Registrar-I, Registration Department, Tiruppur.

+1 CC to Mr.K.Govi Ganesan, Advocate sr 3307

+1 CC to M/s. Sarvabhman Associates sr 3021.

+1 CC to Govt. Pleader sr 3935.

WP.No.19631 of 2015
and MP.No.1 of 2015

LN(CO)
SP(11/02/2020)