



IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 14.10.2020

PRONOUNCED ON : 28.10.2020

CORAM

THE HONOURABLE MR.JUSTICE P.N.PRAKASH

CRL.O.P.NO.7041 OF 2014

AND

M.P.NO.1 OF 2014

K.Saravanan

.. Petitioner/2nd Accused

Vs.

1.The Inspector of Police (Law & Order)
Thoraipakkam Police Station
Thoraipakkam

2.The Inspector of Police
O/o.the Commissioner of Police
Crime Branch, Team XVII
Egmore, Chennai-8

3.Amirthammal .. Respondents/Respondents
W/o.Late Ramakrishnan
[R3 impleaded vide order of the Court
dt.23.07.2014 in M.P.No.2 of 2014]

Criminal Original Petition filed under Section 482 Cr.P.C.
to call for the entire records relating to the Crime No.604 of
2013 pending on the file of the respondents/police and quash the
same.

For Petitioner : Mr.Vijayakumar
for M/s.P.C.Harikumar Associates

For R1 and R2 : Mr.L.Charles Premkumar
Govt. Advocate (Crl. Side)

For R3 : Mr.C.Prabakaran
for Mr.V.Anand



O R D E R

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

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2. On the complaint lodged by Amirthammal (3rd respondent/de facto complainant), the 1st respondent police registered a case in Crime No.604 of 2013 on 15.03.2013 under Section 465, 467, 468, 471 and 420 IPC against Karthikeyan (A1), Saravanan (A2) and Kandasamy (A3), for quashing which, Saravanan (A2) has preferred this Criminal Original Petition under Section 482 Cr.P.C.

3. It is reported that Kandasamy (A3) is no more and that, the case has been transferred from the file of the 1st respondent to the file of the 2nd respondent.

4. On notice, Amirthammal entered appearance through Mr.V.Anand, Advocate.

5. Ramakrishnan, husband of Amirthammal was the brother of Kandasamy (A3). Karthikeyan (A1) and Saravanan (A2) are the sons of Kandasamy (A3). Ramakrishnan and Amirthammal were issueless and they were living in Virudhunagar District, whereas, Kandasamy (A3) and his family were residing in Chennai.

6. According to Kandasamy - group, Ramakrishnan and Amirthammal adopted Karthikeyan (A1), when he was hardly five years old and Ramakrishnan purchased two properties in the name of Karthikeyan (A1) vide document No.1024 of 1982 dated 10.05.1982 and document No.1055 of 1984 dated 10.05.1984, wherein, Karthikeyan (A1) has been shown as their adopted son. At the time when the properties were purchased, Karthikeyan (A1) was a minor and was around five years old. It is the further case of Kandasamy - group that, Ramakrishnan executed a Will on 03.02.1997, appointing Kandasamy (A3) as the Executor and bequeathing four immovable properties to Karthikeyan (A1) and one property to his wife (Amirthammal).

7. Ramakrishnan died on 20.04.1997, after which, Probate proceeding in O.P.No.8 of 2009 was filed in this Court. Amirthammal disputed the genuineness of the Will and so, the Probate proceeding was converted into a suit in T.O.S.No.28 of 2010 and the parties are contesting. In this background as stated above, on the complaint lodged by Amirthammal, the police registered the F.I.R., which is the subject matter of this quash petition.

8. In the complaint, Amirthammal has made sweeping allegations against Kandasamy (A3) and his two sons



characterizing them as frauds. Her specific allegation is that, Karthikeyan (A1) had given a Power of Attorney to his father Kandasamy (A3), on the strength of which, Kandasamy (A3) executed a Settlement Deed, registered as document No.2923 of 2012 in favour of Saravanan (A2), settling 40.75 cents of agricultural land in survey No.23/1B in Seevaram village, Chengalpattu District and in that Settlement Deed, he has mentioned the document number of the Power of Attorney as 116 of 1997, whereas, document No.116 of 1997 relates to another person by name Jayapaul and thereby, they have committed fraudulent acts. It may be relevant to state here that this property has been shown as item No.2 in the Will of late Ramakrishnan and the same is the subject matter of the suit in T.O.S.No.28 of 2010.

9. In the complaint, Amirthammal has further stated that, she has entered into a Sale Agreement, registered as document No.4889 of 2009, in respect of the same property with one Isakkimuthu, Murugaiah and Shankar. Thereafter, Amirthammal has sold the said property to one Sudalaimuthu on 04.12.2012. After having sold the property, Amirthammal has lodged the present complaint on 28.12.2012, alleging that the Power of Attorney document mentioned in the Settlement Deed document No.2923 of 2012 is incorrect.

10. Mr.Vijayakumar, learned counsel for Saravanan submitted that the Power of Attorney that was given by Karthikeyan (A1) to his father Kandasamy (A3) was registered as document No.166 of 1997, but, while typing the Settlement Deed, the number was wrongly typed as 116 of 1997.

11. Be that as it may, the fact remains that both parties are alienating the properties mentioned in the Will, during the pendency of the suit in T.O.S.No.28 of 2010 and all transfers will be subject to the principle of lis pendens. The allegation that the Power of Attorney document has been shown as document No.116 of 1997 in the Settlement Deed, will not by itself attract any penal provision, much less, Sections 465, 467, 468, 471 and 420 IPC.

12. It is most pertinent to state here that in the complaint, Amirthammal has not made any allegation that the Will of her husband Ramakrishnan was fabricated by the accused, though she is contesting the suit in T.O.S.No.28 of 2010 vehemently. Amirthammal has sold another property viz. plot No.8/20 in Villivakkam, Chennai that has been bequeathed to Karthikeyan (A1), during the pendency of the suit. In such view of the matter, the F.I.R. in Crime No.604 of 2013 is clearly an abuse of process of law and therefore, it is completely quashed even as against Karthikeyan (A1). It is open to the parties to have all their rights settled in T.O.S.No.28 of 2010.



In the result, this Criminal Original Petition is allowed and the F.I.R. in Crime No.604 of 2013 is quashed as against all the accused named therein. Connected Miscellaneous Petition is closed.

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Sd/-
Assistant Registrar(CS VII)

//True Copy//

Sub Assistant Registrar

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To

1. The Inspector of Police (Law & Order)
Thoraipakkam Police Station
Thoraipakkam
2. The Inspector of Police
O/o.the Commissioner of Police
Crime Branch, Team XVII
Egmore, Chennai-8
3. The Public Prosecutor
High Court, Madras.

+1cc to Mr.C.Prabakaran, Advocate, S.R.No.35070

+1cc to M/s.P.C.Harikumar Associates, Advocate, S.R.No.34837

CRL.O.P.No.7041 of 2014

PP(CO)
CS/20/11/2020