

IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 22.01.2020
CORAM

THE HONOURABLE MR.JUSTICE M.DHANDAPANI

Crl.O.P.No.1069 of 2014

1.V.A.Viswanathan
2.Chennaiyappan
3.Lakshmi
4.Gunavathi
5.V.S.Yuvaraj
6.K.M.Palanisamy
7.M.Rasu
8.Santhi
9.C.V.Radhakrishnan

... Petitioners/Accused Nos.1 to 9
Vs.

1.State Rep. By
The Inspector of Police,
Kunnathur Police Station,
Tiruppur District.
(Cr.No.1048 of 2010) ... Respondent/Complainant

2.A.Rangasamy ... Respondents/Defacto Complainant

Prayer: This petition has been filed under Section 482 of Cr.P.C., seeking to call for the records relating to the case in C.C.No.161 of 2011 on the file of the the District Munsiff cum Judicial Magistrate, Perundurai, quash the same.

For Petitioners: Mr.N.Manokaran
For R1 : Mr.C.Iyyapparaj
For R2 : Mr.P.K.Natarajan

सत्यमेव जयते
O R D E R

This criminal original petition has been filed seeking to call for the records relating to the case in C.C.No.161 of 2011 on the file of the the District Munsiff cum Judicial Magistrate, Perundurai, quash the same.

2.The petitioners herein have been arrayed as A1 to A9. The case of the prosecution is that the first accused is the purchaser, Accused Nos. 2 to 5 are the vendors, Accused Nos.6 to 8 are the witnesses and Accused No.9 is the document writer and

scribe of the document number 5883 of 2010 dated 24.09.2009. The accused A10 was the head clerk of the Sub-Registrar of Kunnathur. According to the prosecution all the accused have indulged in a criminal conspiracy and created a forged sale deed involving the property belonging to one A.Rangaswamy (defacto complainant) situated in S.F.No.224/8C, Santhi Palayam Village and they have presented the said forged sale deed before the Sub-Registrar, Kunnathur, and the A10 has registered the document without collecting stamp duty and without verification of proper revenue records and thereby caused loss to the Government and hence, the petitioners committed the offence.

3.On filing the final report, the case has been taken on file in C.C.No.161 of 2011 on the file of the District Magistrate Cum Judicial Magistrate, Perundurai. Now, the petitioners have come forward with the present petition seeking to quash the above said proceedings pending in C.C.No.161 of 2011.

4.The learned counsel appearing for the petitioners would submit that the 1st petitioner purchased a property vide Survey No.224/8 through the sale deed and claiming the worship rights through "pangubadi pathai". He would submit that in fact with regard to the subject property, there are Civil suits pending before the Civil Court, viz., O.S.Nos.126/2010, 45/2012 and 203/2015 filed by the 1st petitioner and O.S.Nos.45 and 46 of 2013 filed by the second respondent/defacto complainant before the District Munsif Court, Gobichettipalayam. He would also submit that the petitioners have filed an affidavit of undertakings wherein he has clearly stated that he will not claim any title or ownership over the subject property measuring 2/1/2 cents situated in S.F.No.224/8 Santhi Palayam Village, Erode Taluk and that the petitioners would work out their remedy before the Civil Court in the suits already filed on pending. Therefore, the learned counsel would pray this Court to quash the proceedings in C.C.Nos.161/2011.

5.Heard the learned counsel for the petitioners as well as the respondents and perused the entire materials placed on record.

6.It is not in dispute that as regards the subject property already there were civil suits pending before the District Munsif Court, Gobichettipalayam. The matter pertains to civil dispute mainly pending between the 1st petitioner who is the main accused (A1) and the defacto complainant. Now, the 1st petitioner has come forward with an affidavit of undertaking, wherein he has stated as follows:

"2.I submit that I purchased the following extent from the petitioners 2 to 5 under a sale deed dated 24.09.2009 (Doc.No.5883/2009-SRO, Kunnathur).

S.F.Nos.224/1,224/2,224/5,224/6	0.25 Acres
S.F.Nos.222/2E & 222/3	0.45 Acres

The above sale deed was attested by the petitioners 2 to 5/accused Nos.2 to 5, the petitioners 5 to 8 have signed as witnesses and the 9th petitioner is the scribe of the sale deed dated 24.09.2009.

3.I submit that the 2nd respondent gave a complaint to the 1st respondent alleging that the petitioners had included the title to the property in and over 21/2 cents in R.S.No.224/8, in which A/m. Kannimar Koil, which is a Kula Deivam of Minna Vettuvagounder community is located. Hence, FIR in Crime No.1048/2010 was registered. The 1st respondent police filed police report C.C.No.161/2011 for the alleged under Sections 120 B, 467, 468 IPC and Section 81 of the Registration Act r/w 3(1) of the Tamil Nadu Stamp (Prevention of Under Valuation of Instruments) Rules 1968. We have filed the above quash petition.

4.I submit that in respect of the subject matter property, there are civil suits pending before the jurisdiction civil court. I have filed O.S.No.126 of 2010, O.S.No.45 of 2012 and O.S.No.203 of 2015, and the 2nd respondent/complainant has also filed O.S.Nos.45 & 46 of 2013 against us. All the five suits are pending before the learned District Munsif Court, Gobichettipalayam. Two out of the three suits filed by me in O.S.No.126 of 2010 and O.S.No.45 of 2012 were dismissed for default, and I have filed the restoration petitions and they are pending. Further, the suit in O.S.No.203 of 2015 was decreed ex-parte in favour of me, for which the 2nd respondent has filed a petition to set aside the ex-parte decree and the same is pending.

5.I submit that in view of the above factual position, I file this undertaking affidavit that I will not claim any title or ownership in and over the disputed extend measuring 21/2 cents (0.01.0

Hec.) in S.F.No.224/8, Santhipalayam Village, Nambiyar Taluk, Erode District in view of the pendency of the above civil suits. Further, I undertake to work out my right in respect of the disputed property in the above mentioned civil suits. I submit that I file this affidavit of undertaking without prejudice to my right to prosecute/defendant the suits stated supra. Under such circumstances, I pray this Hon'ble Court to quash the Criminal Case in C.C.No.161/2011 on the file of the learned Judicial Magistrate, Perundurai".

7.The learned counsel for the defacto complainant/2nd respondent would submit that since the 1st petitioner filed an affidavit of undertaking, stating that he will not claim any title or ownership over the disputed subject property and work out his remedy in the pending suits before the competent Civil Court where already civil suits are pending and therefore this Court may pass appropriate orders.

8.Considering the facts and circumstances of the case and in view of the fact that already the civil suits are pending before the Civil Court in respect of subject property between the 1st petitioner and the defacto complainant/2nd respondent and in view of the affidavit of undertaking now filed before this Court, this Court is of the view that the proceedings pending in C.C.No.161/2011 are liable to be quashed. However, both the parties are at liberty to work out their remedies before the Civil Court. It is made clear that till the finalization and outcome of the suits pending before the Civil Court, the 1st petitioner shall not claim any title or ownership rights over the subject property.

9.Accordingly, the Criminal Original Petition is allowed and the proceedings in C.C.No.161 of 2011 pending on the file of the Judicial Magistrate, Perundurai are hereby quashed.

-s/d-
Assistant Registrar

True Copy

Sub-Assistant Registrar

gbi

To

1.The Inspector of Police,
Kunnathur Police Station,
Tiruppur District.

2.The District Munsiff cum Judicial Magistrate,
Perundurai.

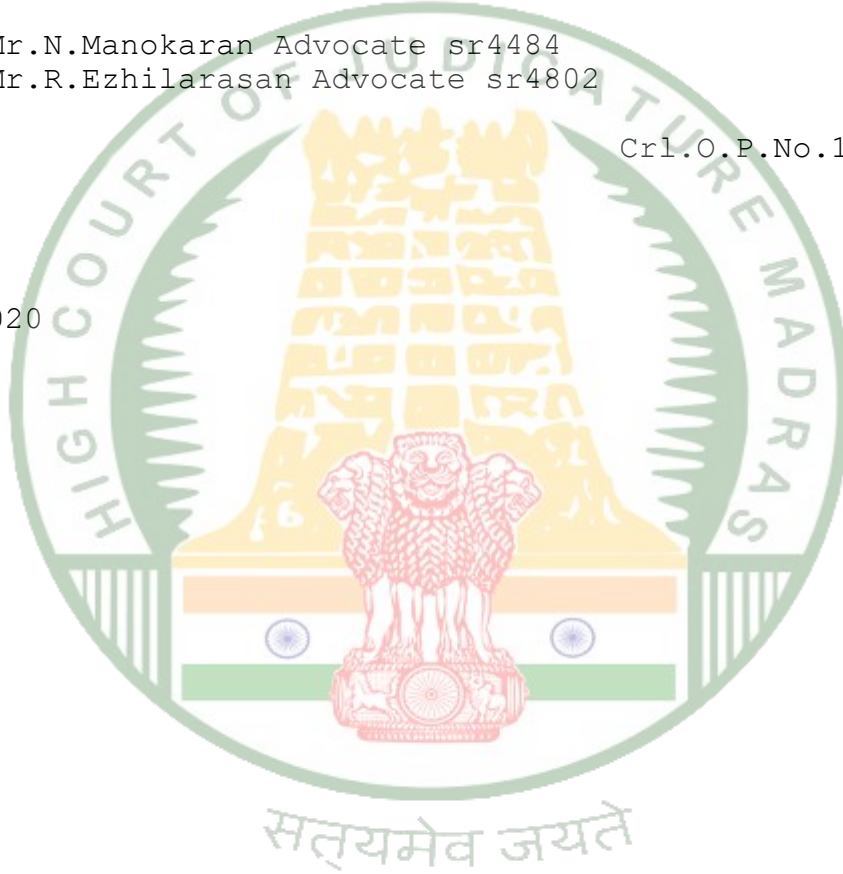
3.The Public Prosecutor,
High Court of Madras,
Chennai 600 104.

+1 cc to Mr.N.Manokaran Advocate sr4484

+1 cc to Mr.R.Ezhilarasan Advocate sr4802

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