



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 05.03.2020

CORAM:

WEB COPY

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

Crl.O.P. (MD) No.2805 of 2020

and

Crl.M.P. (MD) Nos.1482 and 1483 of 2020

1.M.S.Ganesan
2.Subramanian
3.R.Rajasekar
4.Nallu
5.Pandiyammal
6.Rajangam
7.M.S.Murugan
8.Lakshmanan (died)

... Petitioners

-vs-

1.State represented by
The Inspector of Police,
Anti Land Grabbing Special Cell
District Crime Branch,
Madurai District.

2.N.Shajathi Begum

... Respondents

PRAYER : Petition filed under Section 482 of the Criminal Procedure Code to call for the records pertaining to the C.C.No.24 of 2019 on the file of the Judicial Magistrate, Anti Land Grabbing Special Court, Madurai in Crime No.11 of 2012 dated 03.02.2012 on the file of the respondent police and quash the same.

For Petitioner : Mr.C.Masilamani

For R1 : Mr.A.Robinson
Government Advocate (Crl.side)

For R2 : Mr.N.Nooshaj
(Son of the second respondent)



ORDER

This Criminal Original Petition has been filed for quashing the proceedings in C.C.No.24 of 2019 pending on the file of the learned Judicial Magistrate/ Anti Land Grabbing Special Court, Madurai. The defacto complainant is one Shajathi Begum.

2.The case of the prosecution is that the property in question is comprised in Surve No.6/9 in Tharmathupatti Village, Kappalur, Tirumangalam Taluk and measures an extent of 35 cents. According to the defacto complainant, the property originally belonged to one Gurusamy Naicker and Subbiah Naicker. From them, V.R.Lakshmana Asari purchased vide sale deed dated 04.02.1966 (Document No.713/1966). After the demise of Lakshmana Asari, the property devolved on his first wife Valliammal, his eldest son Pitchai and second wife Seethaiammal. These legal heirs of Lakshmana Asari sold the property in two parcels. They sold 35 cents of land in the said Survey number vide document No.659 of 1975 dated 13.02.1975 in favour of one Noorlakhan. Noorlakhan did not sell the property during his life time. He passed away on 25.06.2007.

3.Following his demise, it is under the possession and enjoyment of the defacto complainant. While so, one Lakshmanan S/o. Karuppanan of Kinnimangalam, impersonated VR.Lakshmana Asari and executed a power deed dated 15.12.2008 in favour of the first accused. The first accused on the strength of the said power deed sold the property in parcels in favour of A5 to A7. A2 to A4 had witnessed these transactions. Alleging that the accused have caused wrongful loss to her, the second respondent filed complaint before the Inspector of Police, Anti Land Grabbing Special Cell, District Crime Branch, Madurai. The same was registered in Crime No.11 of 2012 for the offences under Sections 120(b), 419, 468, 471, 420, 294(b), 506(ii) of IPC. Investigation was taken up and final report was filed before the jurisdictional Court. Cognizance of the aforesaid offence was taken and summons were issued. To quash the same, this Criminal Original Petition has been filed by the accused.

4.Even before the filing of the Criminal Original Petition, A8 Lakshmanan had passed away.

5.Heard the learned counsel for the petitioner and the learned Government Advocate. The second respondent's son N.Noosaj is present.

6.The learned Counsel for the petitioner reiterated the contentions set out in the memorandum of grounds. His core argument is that when they applied for encumbrance certificate,



the sale transaction that culminated vide sale deed dated 13.02.1975 was not reflected in their encumbrance certificate. He would further contend that what was sold by the first accused as power agent of A8 Lakshmanan in favour of A5 to A7, is completely different from what was said to have been purchased by Noorlakhan. The issue is civil in nature. The legal heirs of Noorlkhan have already filed O.S.No.2 of 2010, on the file of the District Munsif Court, Tirumangalam seeking relief of permanent injunction. It suffered a dismissal for non prosecution. It appears that a petition for restoration is pending.

7.The learned counsel for the petitioner would contend that instead of working out their remedies in the civil Court, the second respondent has maliciously instituted the impugned Court prosecution. He was repeatedly contend that a careful perusal of the materials on record would clearly indicate that what was purchased by Noorlakhan is quite different and distinct from what was purchased by A5 and A7. Since the continuation of the impugned prosecution amounts to an abuse of legal process, he wanted this Court to quash the same.

8.Per contra, the learned Government Advocate as well as the son of second respondent would contend that the impugned prosecution does not deserve to be quashed.

9.I carefully considered the rival contentions. I went through the power of attorney dated 15.12.2008 executed in favour of the first petitioner M.S.Ganesh. It is a registered document. The executant of the power of attorney clearly states that he purchased the property in question from Gurusamy Naicker vide sale deed dated 04.02.1966. I asked a direct question to the learned counsel for the petitioner as to whether the petitioners are in possession of the original sale deed dated 04.02.1966. The learned counsel for the petitioner frankly states that he has to get instructions from his client in this regard. Per contra, the son of the second respondent readily responded by stating that the original document has been filed in the Civil Court when filing O.S.No.664 of 2010 before the District Munsif Court, Tirumangalam.

10.While summarily tracing the title of Noorlakhan, it is seen that he purchased the property comprised in S.No.RS 6/9 from Valliammal, Seethaiammal and Pitchai in the year 1975. A reading of the said deed indicates that Lakshmana Asari died in the year 1970 itself. The specific allegation of the defacto complainant is that the power of attorney in favour of the first petitioner M.S.Ganesan was fraudulently created making use of the similarity of name. Lakshmana Asari who is the owner of the property in R.S.6/9, Tharmathupatti village, Kappalur, Tirumangalam, died in the year 1970 itself.



11. The learned Government Advocate also pointed out that the 5th petitioner Pandiammal is the wife of the first petitioner and 7th petitioner M.S.Murugan is the brother of the first petitioner. Serious allegations of forgery and impersonation have been made.

12. Therefore, I am of the view that it would not be safe for this Court to go into the factual contentions while exercising my jurisdiction under Section 482 of the Criminal Procedure Code. Therefore, leaving it open to the petitioners to establish their innocence before the Court below, this Criminal Original Petition stands dismissed.

13. The personal appearance of the petitioners before the Court below is dispensed with. The petitioners shall of course be present to answer the charges and at the time of examination under Section 313 of Cr.PC and at the time of pronouncing judgment. Except these three occasions, on other hearing dates the petitioners can be represented through counsel. Consequently, connected miscellaneous petitions are closed.

Sd/-

Assistant Registrar(P & A)

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/ /2020

Sub Assistant Registrar(CS)

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To

1. Judicial Magistrate, Anti Land Grabbing Special Court, Madurai.

2. The Inspector of Police,
Anti Land Grabbing Special Cell
District Crime Branch, Madurai District.

3. Additional Public Prosecutor,
Madurai Bench of Madras High Court, Madurai.

+1 CC to M/s.C.MASILAMANI, Advocate SR-10335[F] dated 06/03/2020

Cr1.O.P. (MD) No.2805 of 2020
05.03.2020

BUC (CO)

TR(19.03.2020) 4P 5C

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