

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 25.09.2020
PRONOUNCED ON : 23.03.2021

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Cr1.O.P.No.16079 of 2015
and
M.P.No.1 of 2015

1.Jeevarathinam
2.Valliammal
3.Gowri
4.Gobi
5.Sekar
6.Babu

... Petitioners / Respondents

Vs.

M.Suseela

... Respondent / Complainant

PRAYER: Criminal Original Petition is filed under Section 482 of the Code of Criminal Procedure, to call for the records relating to the complaint in D.V.Case No.4 of 2015, on the file of the Judicial Magistrate, Ambattur and quash the same.

For Petitioners : Mr.C.Jayaprakash

For Respondent : Mr.R.Muthukumar

सत्यमेव जयते
O R D E R

This Criminal Original Petition has been filed praying to quash the complaint in D.V.Case No.4 of 2015, on the file of the Judicial Magistrate, Ambattur.

2. The circumstances, which led the petitioners to come forward with this petition are in brief, as under.

(i) The respondent has filed the complaint under Section 12 of the Protection of Women from Domestic Violence Act, 2005, against the petitioners in D.V. Act Case No.4 of 2015, on the file of the learned Judicial Magistrate, Ambattur.

(ii) The respondent is the wife of the 1st petitioner's brother, Late Munusamy, who died on 04.06.1964; petitioners 2, 3 and 5 are respectively wife, daughter and son of the 1st petitioner; petitioners 4 and 6 are husband and son of the 3rd petitioner; the 4th petitioner is the brother of the respondent, who married the daughter of the 1st petitioner.

(iii) The property comprised in Survey No.481, T.S.No.34, Block No.54 in Mugappair Village, Bajanai Kovil Street, Plot No.3 in Area 5 cents or 2180 sq.ft. with tiled house originally belonged to the ancestors of the petitioner's husband, who enjoyed the ownership and possession for generations, the same was passed on to the petitioner's father-in-law one Durairaj, who was having possession and enjoying the property.

(iv) The respondent married one Munusamy S/o.Durairaj in the year 1963 and from the date of marriage, she is residing in the property and enjoying the same. Since the petitioners have no proper place of residence, the husband of the respondent permitted them to reside in a portion of the property. After the demise of the respondent's husband, the petitioners tortured the respondent and threatened her to sell the property to a third party. Since the respondent refused sell the property, the petitioners trying to sell the same in an illegal manner. Hence, the respondent gave a complaint to the V-7 Nolabur Police Station, Chennai on 02.04.2014. Further, the respondent filed a suit in O.S.No.189 of 2014, on the file of the District Munsif Court at Ambattur, for permanent injunction, which is pending. The petitioner had filed a type set enlisting documents.

3. The learned counsel appearing for the petitioners would submit that the 1st petitioner with his self earned money acquired the property during the year 1967 and the same was registered vide Doc.No.1827/67, SRO., Sembium. Thereafter, the petitioners are living in the property by paying appropriate taxes till date and also obtained patta in their name. While that being so, the respondent, who is living along with her daughter Vasantha, all of a sudden, in order to grab the property of the 1st petitioner, by inducement of her grand son Bhoopathy, now claims right over the property, by creating document, as if she is residing in the said property till date.

4. The learned counsel for the petitioner would further contend that the respondent, with created documents, filed a civil suit in O.S.No.189 of 2014, on the file of the District Munsif Court, Abattur, against the petitioners and also filed a false complaint against all the petitioners, by taking privilege of the Protection of Women from Domestic Violence Act, in order to harass, humiliate the petitioners to undergo the ordeal of appearing before the Criminal Court. The learned counsel for the petitioners relied on the the Judgment of the Hon'ble Apex

Court in *Paramjeet Bhatra Vs. State of Uttarakhand & Ors* reported in (2013 (110 SCC 673); in *Rashmi Jain Vs. State of Uttar Pradesh* reported in (2014 (13) SCC 553); in *Sushil Sethi Vs. State of Arunachal Pradesh* reported in (2020 (3) SCC 240); in *Thermax Ltd & Ors Vs. K.M.Jhonny* reported in (2011 (13) SCC 412); *Priyanka Srivastava & Ors Vs. State of Uttar Pradesh* reported in (2015 (6) SCC 287); and in *Motilal Songara Vs. Preme Prakash* reported in (2013 (9) SCC 199).

5. The learned counsel for the respondent would submit that the respondent married one Munusamy S/o.Duraiaraj in the year 1963 and since from the day of marriage, she is residing in the property and enjoying the same. Since the petitioners have no proper place of residence, the husband of the respondent permitted them to reside in a portion of the property. After the demise of the respondent's husband, the petitioners tortured the respondent and threatened her to sell the property to some third party. The respondent filed a counter reiterating the complainant and a typed set enclosing the Death Certificate of her husband Munusamy, Legal heir Certificate, Old Age Pension Receipt, Ration card, Voter ID, Gas Connection Card. Since the respondent refused to sell the property, the petitioners attempted to sell the same in an illegal manner. Hence, the respondent gave a complaint to the V-7 Nolambur Police Station, Chennai on 02.04.2014. Further, the respondent filed a Suit in O.S.No.189 of 2014, on the file of the District Munsif Court at Ambattur, for permanent injunction, which is pending.

6. I have heard the learned counsels appearing on either side and perused the materials available on record.

7. Considering the submissions and on perusal of the materials it is seen that the respondent's husband Munusami died on 04.06.1964 and thereafter, she had been living with her brother at Adaiyalampattu Village and she used to visit the petitioners as well as her father-in-law and mother-in-law. The petitioners' father Duraisami contributed for the marriage of the respondent's daughter, in the year 1975, by selling a family property and after the marriage, the respondent living with her daughter in Maduravoyal Village at No.57, Perumal Kovil Street, Chennai-95. Thereafter, since the land value had appreciated many folds, staking claim over the property of the petitioners, designing it as a family property of her husband, she filed a civil Suit in O.S.No.189 of 2014, before the District Munsif Court, Ambattur, and a Police complaint was lodged that she disturbed of her peaceful possession and forced to sell the property. Since no action was taken, she sent a petition to The Chief Minister Cell, enquiry conducted and closed, latter the present complaint has been lodged. It is seen that the petitioners are residing in the said property

along with their parents and from the year 1967. The 1st petitioner purchased the property by a registered document in Doc.No.1827/1967 on 09.06.1967, thereafter, the patta had also been changed name of Jeevarathinam. It is reported that Jeeva Rathinam Died on 19.06.2015.

8. The respondent filed a typed set in which the death certificate, legal heirs certificate and other documents have been filed. The death of the respondent's husband Munusami was on 04.06.1964. The Death Certificate produced in Sl.No.139102, B&D No.3791, dated 01.06.2004. On perusal, on the face of it, it is a forged document. In the place of death, it is mentioned as No.3, Bajanai Kovil Street, Mogappair, Chennai - 37, as on 04.06.1964, the street was named as Kannathammal Kovil Street and the name has been changed as Bajanai Kovil Street only in the year 1995, further, it is mentioned that Munusami S/o.Late Duraisami, the said Duraisami died in the year 1990. Further, the Mogappair was annexed to Corporation on 17.06.1996. On verification, it is found that as on 04.06.1964, 40 persons have died in Mogappair Village and all their death particulars have been registered and computerized in the Corporation.

9. The Death Certificate produced by the respondent is not available in the Corporation records. Likewise, the Legal heirs Certificate R.Dis/B3/1795/97, dated 12.05.1997 of Munusami is also forged for the reason that Bajanai Kovil Street, Mogappair, M.S.37 has been inscribed, it should be Chennai-37. Further, in 1997, Pincode of Mogappair has been changed to Chennai 50, the area falling within Ambattur Industrial Estate is Chennai-58 ie., from the year 2000. Further it is seen that in the legal heir certificate, the name of the respondent and her daughter alone is found, mother of Munusami, Annammal died in the year 2003 and Duraisami father died on 05.08.1990. Ambattur Panchayat got merged Panchayat, it was classified as Town Municipality on 13.01.1971, including the Mogappair Village. Thereafter, it was upgraded to Selection Grade Municipality on 01.04.1975, Special Grade Municipality on 26.05.1992; Bifurcation of Ambattur as Mogappair and Annangar West Region was during 1992. In 1992, the Municipal Ward was converted to Anna Nagar Mogappair Ward No.36/52 and in 2011, it was merged with Chennai Corporation and in 2011 it is a Revenue Village and Ambattur Taluk and as Chennai City. Mogappair was shifted from Saidapet Taluk to Ambattur Taluk in the year 1971. The legal heir certificate is dated 12.05.1997. In view of the same, the legal heir certificate produced found to be forged. There verification was done by the officials and police personnels and reported by the Additional Public Prosecutor with documents.

10. Thus, the respondent has not come with clean hands and make claim over the property. It is admitted by the respondent that her husband died in the year 1967 and the property has been

purchased by the first respondent on 09.06.1967. Thus, the claim of the respondent is not proper. In view of the forgoing reasons and on the facts and circumstances of the case, this Court finds that the proceedings in D.V.Case No.4 of 2015, is abuse of process of law and the same is liable to be quashed.

11. In the result, this Criminal Original Petition stands allowed and the proceedings in D.V.Case No.4 of 2015, on the file of the Judicial Magistrate, Ambattur, is quashed. Consequently, the connected miscellaneous petition is closed.

Sd/-
Assistant Registrar(CS III)

//True Copy//

Sub Assistant Registrar

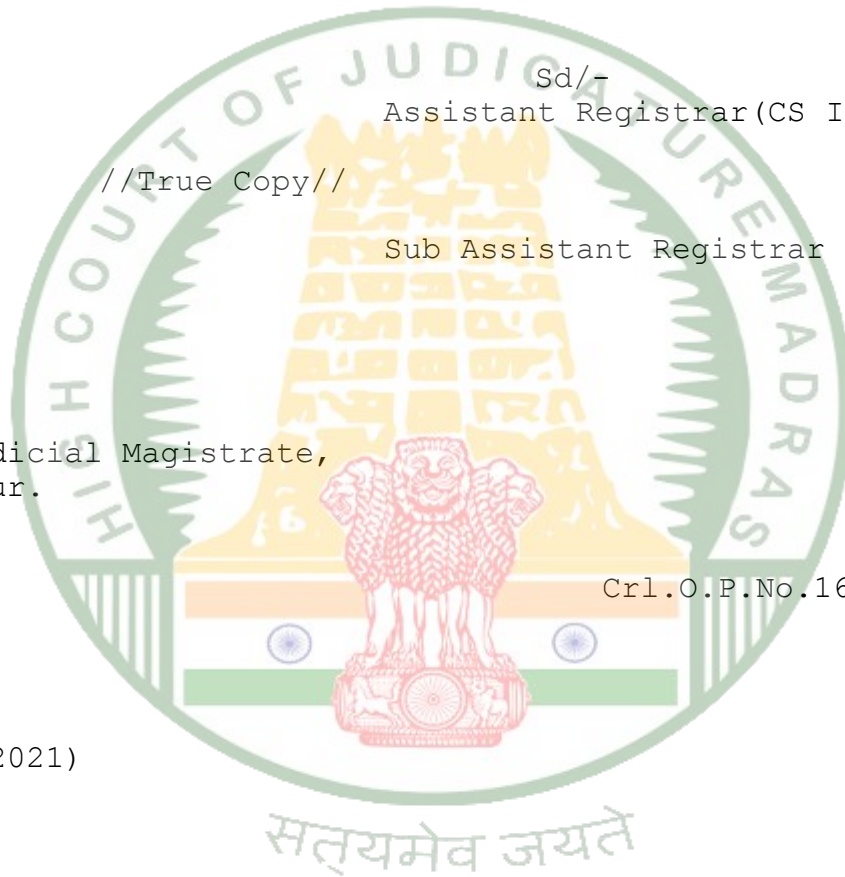
MPK

To

The Judicial Magistrate,
Ambattur.

Crl.O.P.No.16079 of 2015

GPL (CO)
KM(20/04/2021)



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