

IN THE HIGH COURT OF JUDICATURE AT MADRAS

RESERVED ON : 01.10.2020

PRONOUNCED ON : 01.04.2021

CORAM

THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Crl.O.P.No.1634 of 2015 and M.P.No.1 of 2015
and
Crl.O.P.No.6415 of 2015 and M.P.Nos.1 & 2 of 2015

Kumararaja.R ... Petitioner in Crl.O.P.No.1634 of 2015
1.Jalal
2.Sankaran Nair ... Petitioners in Crl.O.P.No.6415 of 2015

Vs.

1. Assistant Commissioner of Police
St. Thomas Mount
Chennai - 600 016

2. D.V.Nagarajan (died)

2.Pushpa

4.Dhanushram @ Manikandan ... Respondents in both Crl.O.Ps

[R3 & R4 suo-motu impleaded as per
order of this Court in
Crl.O.P.Nos.1634 & 6415 of 2015,
dated 18.09.2020.]

COMMON PRAYER: Criminal Original Petitions are filed under
Section 482 of the Code of Criminal Procedure, to call for
records in Connection with P.R.C.No.9 of 2013 on the file of the
learned Judicial Magistrate, Tambaram and quash the same in so
far as the Petitioners / A8 , A5 & A10 respectively are
concerned.

For Petitioners : Mr.M.Babu Muthu Meeran
in both Crl.OPs

For 1st Respondent : Mr.C.Iyyappa Raj,
in both Crl.OPs Additional Public Prosecutor

For 3rd and 4th Respondent: No appearance

COMMON ORDER

This Criminal Original Petitions have been filed praying to quash the proceedings in P.R.C.No.9 of 2013 on the file of the learned Judicial Magistrate, Tambaram, insofar as the petitioners are concerned.

2.During the pendency of the above petition, since the 2nd respondent/defacto complainant died, this Court, by order, dated 18.09.2020, suo-motu impleaded his wife and son as 2nd and 3rd respondent on behalf of the 2nd respondent/defacto complainant.

3.The short facts of the case, in nutshell, is as follows:-

(i)The defacto complainant (died) namely one Nagarajan is the absolute owner of the property, measuring to an extent of 0.63 Cents, comprised in S.No.(Old) 21/A S.No.(New) 21/3, bearing Patta No.093, situated at Arunthathipuram 1st Street, Esa Pallavaram, Tambaram Taluk, Kancheepuram District. The above said properties owned by the defacto complainant, by way of inheritance succeeded, since he is the only son of his father. Mutation were effected in the revenue records in the name of defacto complainant and he is paying kist in respect of the above property and has become absolute owner of the property. The accused in this case, conspired together to cheat the defacto complainant by creating forged document in respect of his land, executed settlement deed in favour A1 through Doc.No.3373 of 1985, in respect of 2.5 cents, while the defacto complainant left to Kerala for his livelihood. During that period entrusted the said property with the custody of Sankaraiah in the year 1981. The said Sankaraiah, in connivance with one Jalal, with an intention to cheat the said Nagarajan, sold out a portion of the said land, in favour of one Errammal, Jilanibi and Mariyammal, through a forged document vide Nos.1445/82, 2566/89, 1920/2007, pertaining to the extent of 0.70 Cents; A2 sold out the property to the extent of 0.6 Cents, through Doc.No.1120/71; A3 and A4 sold out the said property in favour of Kumararaja S/o. Ramamoorthy, (A8) through a fabricated and created document in Doc.No.1453/2004, in respect of the extent of 15 Cents of land.

(ii)Similarly, A6 Dhanapal, who was working as Sub Registrar, Pallavaram, created a document and executed a sale deed in favour of his wife Kanthammal vide Doc.No.1342/70, 470/1975 pertaining to the extent of 2 cent; A7 obtained a sale deed pertaining to the property to extent of 0.4 cent as if the said property belong to one Natarajan and thereby he created a fabricated document on his favour; A9 encroached a portion of the property on the defacto complainant, without any valid document; and A10 alienated the property of the defacto

complainant, by purchasing the property from one Muthu and Thippaiyya, as if they are the owner of the said property through Doc.No.955/67, 1556/72 and 1268/72 and 2749/78 to an extent of 6.5 cents. Therefore, A1 to A10 committed the offence of forgery.

4.The learned counsel appearing for the petitioners/A8, A5 and A10 would submit that the petitioners are absolute owner of the property situated at Easa Pallavaram, Alandur Taluk, Kancheepuram District, comprised in Survey No.21 and 24 measuring to an extent of 6622 Square feet of land having purchased the same in and by way of registered sale deed, dated 31.03.2004, as document No.1453/2004, from one P.S.Sigamani and others. Originally. the property belonged to one P.T.Srinivasa Pandidhar and his wife Mrs. Jagadambal. They having purchased the said property by way of two registered sale deed documents No.241 of 1933, dated 06.03.1933, comprised in Survey Number 21 and 24, measuring to an extent of 3456 Square feet of land situate at Easa Pallavaram, Alandur Taluk, Kancheepuram District, another property purchased by them by way of a registered sale deed dated 12.11.1958 in document No.2344/1958, comprised in Survey No.21 and 24 measuring an extent of 3166 Square feet, situate at Easa Pallavaram, Alandur Taluk, Kancheepuram District. After their demise the legal heirs of said Srinivasa Pandithar entered in to a deed of Partition registered as Documents 1851 of 1972 dated 27.09.1972. The legal heirs P.S.Sigamani and others executed the sale deed document no.1453/2004 . After purchasing of the said property the petitioner mutated the records and applied for planning permission and obtained the same from the authorities and constructed a house thereon and paying the property tax to the Pallavaram Municipality and he was in peaceful possession and enjoyment of the same.

5.It was contended by the learned counsel for the petitioner that the defacto complainant claim now that the property in question to an extent of 63 Cents belongs to his grant father and after his demise, his son Venkatathri, who is the father of the defacto complainant, was enjoying the property. After his death, the defacto complainant inherited the property, as his only son. During the course of enjoyment, some unknown person trespassed into the property and created bogus document. Aggrieved over the same, he lodged the complaint before the Commissioner of Police, Chennai and the same was registered as Crime No.761 of 2007, under Sections 120 (b), 468, 471, 448 and 34 of IPC r/w 3(1)(V) of S.C. & S.T. (POA) Act, which was forwarded to the Assistant Commissioner of Police, St. Thomas Mount, after investigation final report was filed before the learned Judicial Magistrate, Alandur and the same was taken on file as P.R.C.No.9 of 2013.

6.The learned counsel for the petitioners further contended that the property purchased by the petitioners are entirely different property. Originally the defacto complainant's grandfather purchased the vacant land to an extent of 2700 Square feet, out of 63 Cents of land in Survey No.21 situate at Easa Pallavaram, Alandur Taluk, Kancheepuram District from one Chakili Chinnaya, through a registered sale deed dated 15.07.1905, in Document No.1736 of 1905, before S.R.O.Saidapet. From the sale deed it is very clear that the defacto complainant's grandfather purchased 2700 Square feet of land out of 63 Cents and suppressing the same, the present case has been registered and the petitioner falsely implicated, without any valid reason.

7.Moreover, the learned counsel for the petitioner submitted that the defacto complainant already filed a civil Suit in O.S.No.491 of 2008, before the learned District Munsif, Alandur, against the accused persons, unable to get any interim Orders, the suit pending from 2008. Further, the defacto complaint filed a civil suit in O.S.No.440 of 2008, before the same Court, as against one Kannan, for declaration to declare the defacto complainant as absolute owner of the property, which was dismissed on 13.10.2014, Suppressing all these facts, the defacto complainant filed a false complaint against the petitioners. There is no specific averment attributed against the petitioners and even if the allegations in the complaint are taken at their face value, the same would not make out any case against the petitioners. The petitioners came to be arrayed as accused only based on the mistaken identify of the property. The petitioners are forced to face the ordeal of trial on no material. the impugned proceedings against the petitioners, is illegal, unwarranted and it is nothing but an abuse of process of law and therefore, the proceedings in P.R.C.No. 9 of 2013 are liable to be quashed.

8.The learned counsel appearing for the defacto complainant would submit that originally, the property in question belonged to one Venkathathiri, who is the father of the defacto complainant, as ancestral property. The said Venkathathiri sold a portion of property measuring to an extent of 540 sq.ft., under sale deed dated 25.09.1953, in favour of one Gurusamy naiyanar under Doc.No.1678, subsequently, he sold another portion of the property, measuring to an extent of 826 sq.ft., under the sale deed dated 15.05.1968, in favour of one Balkis Beevi Ammal, under Doc.No.933/1968, at the Office Sub Registrar, Pallavaram, thus, the defacto complainant father sold 1366

sq.ft. Out of 0.11. cents and retained remaining portion of the property. The Petitioner's father died on 05.01.1981 and after his death, the defacto complainant acquired the title in respect of the suit property. The accused persons unlawfully trespassed into the suit property and put up illegal construction over the suit property and illegally occupied the same by taking advantage of the defacto complainant's absence in the suit property. Hence, the above complaint.

9.The learned Additional Public Prosecutor appearing for the respondent Police submitted that on the direction of this Court in CrI.O.P.No.22567 of 2007 filed by the defacto complainant, a case in Crime No.761 of 2007 was registered for offence under Sections 120(b), 468, 471, 448 and 34 IPC r/w 3(i)(v) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act. The complaint of the defacto complainant is that his father Venkatathiri inherited the property from his father Munusamy Maistry and he is absolute owner of the property measuring to the extent of 0.63 cents comprised in S.No.(Old). 21/A and S.No.(New).21/3 bearing patta No.93, situated at Arunthathipuram 1st Street, Esa Pallavaram, Tambaram Taluk, Kancheepuram District. The petitioners along with the other accused conspired together and created forged documents and trespassed into the property and put up construction and living there. The defacto complainant at the young age, after demise of his father, had gone to Kerala in connection with his job, at that time, he has entrusted the property to one Sankaraiah, the father of A1. Taking advantage of the absence of the defacto complainant, the said Sankaraiah had sold the property to other persons, who are the accused herein. All the accused persons joined together and created forged documents and usurped the property knowing very well that the property does not belong to Sankaraiah and also Srinivasa Pandithar. There have been several sale deeds which were executed right from the year 1982 onwards. These petitioners had purchased the property through the sale deed dated 31.03.2004 from A3 and A4. On receipt of the complaint, the investigation was commenced, documents were collected and LW1 to LW8 were cited as witnesses. LW1 is the defacto complainant; LW2 is his wife; LW3 and LW4 are their daughter and son and LW5 to LW8 are the Investigating Officers. On completion of investigation, the charge sheet came to be filed before the learned Judicial Magistrate, Alandur and the same was taken on file as P.R.C.No.9 of 2013 and now, it is pending for committal to the Court of Sessions.

10.Heard the learned counsels appearing for the parties and perused the materials available on record.

11.This Court has considered the rival submissions and perused the materials available on records.

12.The defacto complainant's grandfather Munusamy Maistry purchased certain properties from the year 1905 onwards. Thereafter, the defacto complainant's grandfather on 28.01.1932 leaving his son Venkatathari and his paternal Aunt Govindammal as legal heirs. The father of the defacto complainant Venkatathari and his mother Alamelu were living in the property and the defacto complainant is the only son to them. The mother of the defacto complainant died in the year 2007 and his father died on 04.01.1981. Earlier, his father sold some portion of the property to third persons and settled a portion of the property to his paternal Aunt Govindammal in the year 1952. The defacto complainant after coming back from Kerala in the year 1988, found that Sankaraiah with whom the property was entrusted, sold the property to various persons. As far as these petitioners are concerned, they purchased the property from A3 and A4 and also from the legal heirs of Srinivasa Pandithar. The said Srinivasa Pandithar hails from the same place and from him purchased some property.

13.The 2nd respondent has filed civil suits against the encroachers which are pending before the learned District Munsif, Alandur. As against the petitioners and others, the defacto complainant filed O.S.No.6 of 2008 and O.S.No.491 of 2008, a declaration suits. There seems to be some confusion with regard to the survey numbers of the properties and the petitioners herein are only subsequent purchaser of the properties and later they cannot be now termed as conspirators with the other accused. Further, in this case, apart from the defacto complainant and his family members, the others witnesses are all police officials and no independent witnesses examined and there is nothing to show that the revenue officials have been examined and cited as witness and no revenue documents have been verified.

14.Thus, the dispute in this case has to be necessarily gone through by the Civil Courts and it is for the civil Court to give authoritative finding with regard to the rights of the properties.

15.In view of the above, the continuation of the proceedings against the petitioners in P.R.C.No.9 of 2013, on the file of the Judicial Magistrate Court, Tambaram is an abuse of process of law and the same is hereby quashed as against the petitioners

alone. Accordingly, this Criminal Original Petition is allowed. Consequently, the connected Criminal Miscellaneous Petition is closed.

Sd/-
Assistant Registrar(CS VI)

//True Copy//

Sub Assistant Registrar

MPK

To

1.The Judicial Magistrate,
Tambaram.

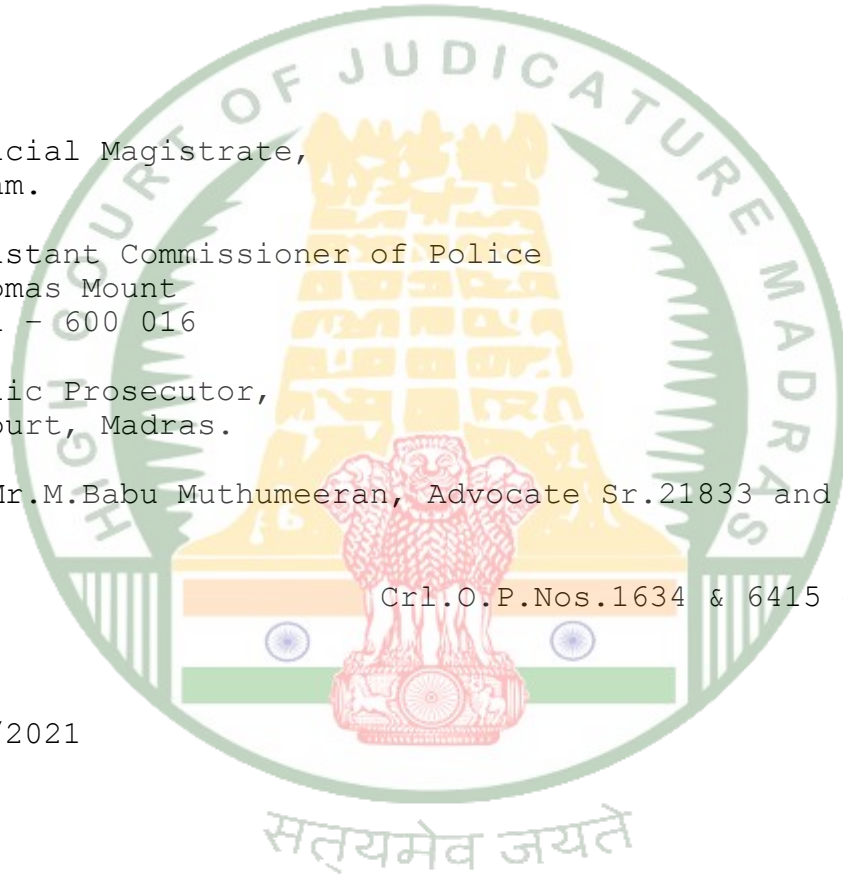
2.The Assistant Commissioner of Police
St. Thomas Mount
Chennai - 600 016

3.The Public Prosecutor,
High Court, Madras.

+2ccs to Mr.M.Babu Muthumeeran, Advocate Sr.21833 and 21834

Crl.O.P.Nos.1634 & 6415 of 2015

jp[col]
srg 13/07/2021



WEB COPY