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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED :18.11.2021

CORAM

THE HONOURABLE MR.JUSTICE V. BHARATHIDASAN

Crl.O.P.No.16549 of 2016
and
Crl.M.P.No.8029 of 2016

1. Subash
2. S. Gokulnath ... Petitioners/A1 &
A2

Vs

1. The State rep. by
Inspector of Police,
District Crime Branch,
(Anti Land Grabbing Cell),
Tiruvannamalai,
Tiruvannamalai District.

2. Malik Basha ... Respondents

Criminal Original Petition filed under Section 482 of Criminal Procedure Code to call for the records pertaining to crime No.13 of 2016 pending on the file of the first respondent and quash the same.

For petitioners ... Mr. B. Jawahar

For respondents ... Mr. C.E.Pratap,
Government Advocate (Crl.side)
for R1

... Ms. V.Lavanya,
Legal Aid Counsel, for R2

ORDER

The petitioners, who are arrayed as A1 and A2, have filed this petition to quash the First Information Report in Crime No.13 of 2016 registered for the offences under Sections 465, 468, 471, 477A, 420 and 506(i) of IPC on the file of the first respondent police.



2. The allegation in the First Information Report is that the property situated at Desur Village in Survey No.477 /7, 477/10, 477/11 to an extent of 0.53 cents belongs to one Adam Sahib and they have given a power of Attorney in favour of one Rahith Ahmed, through whom, the defacto complainant purchased the property in the year 2011. After that, the defacto complainant came to know that in the year 2000, the first petitioner, without any title whatsoever, said to have executed a settlement deed in favour of 2nd petitioner in respect of Survey No.477/11 vide Document No.342 of 2000 with an intention to cheat the defacto complainant and also committed forgery. Hence, the complaint has been lodged on 18.06.2016. Now, the present Petition has been filed to quash the same.

3. The learned counsel for the petitioners would submit that, the lands in survey No.477 originally belongs to Government, the said lands were assigned in the name of the first petitioner, thereafter, a patta was also granted in his name and in the year 2000 itself. Later on, the first petitioner has executed a settlement deed in favour of the second petitioner, who is none other than his own son. In the year 2004, one Ameer John tried to interfere with the possession of the petitioners and hence, the first petitioner has filed a suit in O.S.No.362 of 2004 on the file of the District Munsif cum Judicial Magistrate Court, Vandavasi, in which, he has also obtained an order of interim injunction in I.A.No.527 of 2004 restraining him from interfering with the peaceful possession and enjoyment of the property. Thereafter, in the year 2005, the said Ameerjohn has filed a suit against the first petitioner in O.S.No.134 of 2005 on the file of the District Munsif Court, Vandavasi, for seeking delivery of possession in respect of Survey No.477/7. According to the petitioner, even in the said suit they have mentioned that they purchased the property in Survey No.477/7 and both the suits are pending. Subsequently, in the year 2011, the defacto complainant said to have purchased the property through a Power Agent from the legal heirs of the said Ameer John. Now, after a long period of 11 years, the present complaint has been lodged as if the petitioners had committed crime. According to the petitioners, the defacto complainant has given a criminal colour to the civil dispute, which is pending between the parties and the present complaint has been lodged only to harass the petitioners, and it is abuse of process of law.

4. The learned Government Advocate (crl. side) would submit that when civil disputes are pending , the first petitioner, who is not having title over the property in dispute,



had executed a settlement deed in favour of the second petitioner only in order to cheat the original owner of the property. Since the complainant made out a prima facie case, the First Information Report has been registered in Crime No.13 of 2016 and the same is still pending investigation.

5. Even though notice served on the 2nd respondent and his name is also printed in the cause list, there is no representation on behalf of the 2nd respondent. Hence, Ms. V. Lavanya, learned counsel is appointed as Legal Aid Counsel for the 2nd respondent.

6. This Court considered the submissions made on either side and perused the materials available on records carefully.

7. From the perusal of the records, it could be seen that there are two civil suits pending between the parties in respect of the disputed property. That apart, in the suit filed by the first petitioner in O.S.No.362 of 2004, on the file of the District Munsif cum Judicial Magistrate, Vandavasi, and an order of interim injunction was also granted in favour of the petitioners in respect of Survey No.477/11 restraining the said Ameer John from interfering with the peaceful possession and enjoyment of the property. Subsequently, the said Ameer John and his power of attorney, namely, Mohamed Hanief, have filed a suit against the first petitioner in O.S.No.134 of 2005 seeking delivery of possession and the same is still pending. From the legal heirs of the said Ameer John, the petitioner said to have purchased the property in the year 2011. Hence, it could be seen that there is a title dispute between the parties in respect of Survey No.477/11. Now, after a long period of 11 years, giving a criminal flavour to the civil dispute, the 2nd respondent, who is said to have the subsequent purchaser, filed the present complaint.

8. In the above circumstances, this Court is of the view that it is only a civil dispute between the parties and no prima facie case has been made out for the above said offence and hence, this criminal complaint is liable to be quashed.

9. Accordingly, this Criminal Original Petition is allowed and the complaint against the petitioners in Crime No.13 of 2016 on the file of the first respondent is quashed. Consequently, connected miscellaneous petition is closed.



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10 . The Legal Services Authority is directed to pay the remuneration to Ms.V.Lavanya, learned counsel who appeared on behalf of the 2nd respondent, as Legal Aid Counsel.

Sd/-

Assistant Registrar(CS-IV)

// True Copy //

Sub Assistant Registrar

mrp

To

1.The District Munsif cum
Judicial Magistrate, Vandavasi.

2.Inspector of Police,
District Crime Branch,
(anti Land Grabbing Cell),
Tiruvannamalai,
Tiruvannamalai District.

3.The Public Prosecutor,
High Court,
Madras.

Copy to:
The Secretary,
The Legal Services Authority,
High Court Campus,
Chennai.

+lcc to M/s.V.Lavanya, Advocate SR.No.59394

Cr1.O.P.No.16549 of 2016

PMK(CO)
CB(01/12/2021)